

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

CM(M) No.269/2024

Abdul Qayoom Mugloo

... Petitioner(s)

Through: -Mr. A.Hanan Kalwal, Advocate

Vs.

Irfana and Ors

...Respondent(s)

Through: -Ms.Zeenat Nazir, Advocate for caveator

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER
29.07.2024

1. The petitioner through the medium of present petition has challenged order dated 12.07.2024 passed by learned 4th Additional Sessions Judge, Srinagar in an appeal filed under Section 29 of the Protection of Women from Domestic Violence Act (hereafter for short "the D.V.Act") against order dated 13.12.2023 passed by learned Judicial Magistrate 1st Class (2nd Additional Munsiff) Srinagar (for short "the trial Magistrate).

2. Issue notice to the respondents. Ms. Zeenat Nazir, Advocate accepts notice on behalf of the respondents.

3. Heard and considered.

4. It appears that the respondents filed a petition under Section 12 of the D.V.Act against the petitioner and his brother, before the learned CM(M) No.269/2024

trial Magistrate. It was pleaded in the said petition that respondent No.1 entered into wedlock with the petitioner in the year 2002 and out of the said wedlock two daughters respondent Nos.2 and 3 were born. It was further pleaded that in the year 2005, the petitioner had pronounced divorce upon respondent No.1, whereafter upon reconciliation respondent No.1 again entered into wedlock with the petitioner in the year 2011. According to the respondents the petitioner started abusing respondent No.1 physically, economically and emotionally without any cause, as a result of which, she suffered at his hands. It was also pleaded that the respondent No.1 sold her share from her ancestral property and purchased a residential house in which the parties started living. It was pleaded that the petitioner pressurized respondent No.1 to transfer the said house in his name and when she refused to do so he started ill treating her as well as her children by abusing them and by giving beating to them. According to the respondents the petitioner has failed to maintain them and he has left the company of the respondents leaving them without any sustenance.

5. The learned trial Magistrate vide his order dated 30.12.2022 issued notice to the petitioner as well as his brother and directed the petitioner to pay monthly interim monetary compensation of Rs.10,000/- to respondent No.1 and Rs.5000/- each to respondent Nos. 2 and 3. The said order was made subject to objections of other side. After the petitioner filed his objections to the petition before the trial Magistrate, an order came to be passed on 10.05.2023, whereby, order dated

30.12.2022 was modified and it was directed that the interim monetary compensation of Rs.6000/- per month shall be payable only to respondent No.1 and not to her daughters who are major. It seems that the petitioners approached this Court by filing a petition under Article 227 of the Constitution bearing CM(M) No.267/2023, whereby they called in question order dated 30.12.2022. In the said petition it was inter alia pleaded by the petitioners therein that the petition filed under the D.V.Act pending before the Court of learned 2nd Additional Munsiff Srinagar is not maintainable. This Court in terms of order dated 18.10.2023 remanded the case to the trial Magistrate for deciding the issue of maintainability.

6. Pursuant to the aforesaid direction of this Court, the learned trial Magistrate by virtue of order dated 13.12.2023 held that the petition is maintainable against the petitioner herein but not against his brother who was implicated as respondent No.2 in the petition under the D.V Act. Accordingly, proceedings against him were dropped.

7. The aforesaid order came to be challenged by the petitioner by way of appeal under Section 29 of the D.V Act before learned 4th Additional Sessions Judge, Srinagar and the same has been dismissed by virtue of the impugned order.

8. It has been contended that as per report of the SHO concerned the petitioner is not residing with respondent No.1 since a long time, as such, it was not open to the learned trial Magistrate to proceed against the petitioner. It has been submitted that the petitioner has filed a Civil

Suit against respondent No.1 and the proceedings under Section 12 of the D.V Act have been filed only to pressurize him to withdraw the said suit. The petitioner has laid much emphasis on the contention that no application under Section 12 of the D.V Act could be maintained against him because he had left the company of respondent No.1 since long.

9. In the above context the definition of expression “**domestic relationship**” as contained in Section 2(f) of the D.V Act is required to be noticed. It reads as under:-

Section 2(f): "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

10. From a perusal of the aforesaid provision it is clear that “**domestic relationship**” would mean a relationship between two persons who are either living or have lived in past together in a shared household. So, merely because the petitioner and respondent No.1 are not presently living in a shared household, it cannot be stated that there is no domestic relationship between the two. It is an admitted fact that the petitioner and respondent No.1 both have lived together in previous past in a shared household as husband and wife. Thus, it cannot be stated that there is no domestic relationship between the parties. Once it is shown that the petitioner was in a domestic relationship with respondent No.1 at some point of time and respondent No.1 in her petition under Section 12 of the D.V Act has alleged acts of cruelty and domestic violence against the petitioner, it becomes a matter of trial as to whether such acts of cruelty

have actually taken place. Therefore, the learned trial Magistrate has rightly concluded that the petition as against the petitioner is maintainable. The contention of learned counsel for the petitioner in this regard is without any merit.

11. Learned counsel for the petitioner has also contended that while passing the impugned order, the learned Appellate Court has wrongly recorded that application for condonation of delay has not been made by the petitioner, which is contrary to the records.

12. In this regard it is to be noted that even if it is assumed that learned appellate Court has erred in observing that the petitioner has not filed any condonation of delay application, yet the fact of the matter remains that the said Court has decided the appeal of the petitioner on merits as well. Therefore, there is no justification to interfere with the order of the Appellate Court on this ground. The learned Appellate Court was fully justified in upholding the conclusion of the learned trial Magistrate.

13. For the foregoing reasons, I do not find any merit in this petition. The same is accordingly dismissed.

(SANJAY DHAR)
JUDGE

SRINAGAR
29.07.2024
Sarveeda Nissar

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No