

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

CRM(M) No.125/2023
CrIM No.309/2023

DR TANVEER HASSAN KHAN AND ORS

... Petitionere(s)

Through: - Mr. Danish Majeed Dar, Advocate.

Vs.

ANDLEEBA REHMAN AND ANR.

...Respondent(s)

Through: - Mr.R.A.Sogami, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT
Dt:04.09.2024

1) The petitioners have challenged the application filed by the respondents against them under Section 12 of Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the D.V.Act") which is stated to be pending before the Court of Judicial Magistrate 1st Class (Sub Judge), Kupwara.

2) As per case of the petitioners, petitioner No.1 had entered into wedlock with respondent No.1 on 12.05.2022 and out of the said wedlock respondent No.2 was born. It has been submitted that after the marriage, respondent No.1 started living with the petitioner in his house at Jawahar Nagar, Srinagar alongwith other family members i.e petitioners No.2 to 4. According to the petitioners the attitude and

behavior of respondent No.1 from the very inception of marriage was rude and obnoxious. It has been submitted that respondent No.1 started coercing the petitioner No.1 to leave his old aged parents, which was resisted by him and as a consequence thereof the matrimonial relationship between them turned sour. It has been further submitted that respondent No.1 would always harass and taunt the parents of petitioner No.1 and due to acrimonious relationship between the parties, respondent No.1 left the company of petitioner No.1 and went back to her parental home. It has been alleged by petitioner No.1 that respondent No.1 started meeting her ex-husband despite his expression of strong disapproval to it. It has been submitted that prior to filing of the impugned petition, on 13.02.2023, when petitioner No.1 went to see his child in the hospital, the relatives of respondent No.1, including her father, assaulted him and snatched his mobile phone and Rs.80,000/-, which resulted in filing of FIR No.17 of 2023, a copy whereof has been placed on record.

3) It has been contended by the petitioners that the impugned petition has been filed by respondent No.1 at Kupwara with a view to harass them, as respondent No.1 is neither permanently nor temporarily residing within the territorial jurisdiction of the Court at Kupwara. It has been contended that there are vague allegations leveled in the impugned petition without any specific details and, as such, it was not

open to the learned trial Magistrate to issue process against the petitioners. Hence the present petition.

4) The respondents have filed their reply to the petition in which they have contended that petitioner No.1 has always been harassing respondent No.1 as well as her three months old baby, inasmuch as, they have been left to fend for themselves. It has been contended that petitioner No.1 has been using filthy language against respondent No.1, which compelled her to file a report with the Police, resulting in registration of an FIR for offences under Section 498 A of IPC.

5) I have heard learned counsel for the parties and perused the material on record.

6) The main ground urged by learned counsel for the petitioners for impugning the application filed by the respondents against the petitioners is that there are no specific allegations in the impugned petition against the petitioners. The other ground that has been urged by the petitioners is that respondent No.1 has never resided within the territorial jurisdiction of learned trial Magistrate, as such, it was not open to her to file the impugned petition before the said Magistrate.

7) If we have a look at the impugned petition filed by the respondents against the petitioners, in the title of the said petition present address of the respondents has been shown as Khumriyal

Kupwara. The petitioners have disputed this fact by stating that respondent No.1 has never resided at the aforesaid address and is not even residing there at present. On this ground it has been urged by the petitioners that the learned trial Magistrate did not have jurisdiction to entertain the impugned petition.

8) Clause (a) of Sub Section (1) of Section 27 of the D.V.Act provides that the Court of Judicial Magistrate 1st Class, within the local limits of which the person aggrieved permanently or temporarily resides or carries on business or is employed, shall be the competent Court to grant a protection order and other orders under this Act and to try offences under this Act. The question whether the respondents were residing permanently or temporarily within the territorial jurisdiction of Judicial Magistrate 1st Class Kupwara, can be decided only after the trial of the case. Once the respondents have in their petition shown their temporary residence at Kupwara, the learned trial Magistrate was justified in entertaining the impugned petition. If the assertion of the respondents about their residence at Kupwara is being disputed by the petitioners, this issue can be decided only after trial of the case and not in present proceedings.

9) This takes us to the other grounds urged in the petition for impugning the application filed by the respondents under Section 12 of the D.V.Act. In this regard it is to be noted that the proceedings under

Section 12 of the D.V.Act cannot be equated with lodging of a criminal complaint or initiation of prosecution, as such, a Magistrate, after obtaining response from the husband and his relatives etc, would be well within his/her jurisdiction to revoke his/her order or he/she can even drop the proceedings. The Magistrate is vested with jurisdiction to even cancel the interim order passed by him/her and to drop the proceedings against the husband and his relatives, if he/she finds that they have been unnecessarily roped in or no case for grant of interim order is made out. Since the proceedings under Section 12 of the D.V.Act are not in strict sense criminal in nature, as such, bar to revoke the order by the Magistrate is not attracted in these proceedings. In taking the aforesaid view, I am supported by the Supreme Court decision taken in the case of *Kamatchi v. Lakshmi Narayanan*, 2022 SCC Online SC 446.

10) Adverting to the facts of the present case, the petitioners have rushed to this Court without even filing their response to the petition filed by the respondents. It was open to the petitioners to file response to the petition or to file application for dropping of the proceedings before the learned trial Magistrate, but instead of doing so they have invoked the jurisdiction of this Court under Section 482 Cr.P.C.

11) In the backdrop of aforesaid discussion and without going into the merits of the contentions raised, it is provided that the petitioners

may file an application before the learned Magistrate for dropping of the proceedings against them alongwith their response to the impugned petition and in case the same is done, the learned Magistrate, after hearing both the parties, shall pass appropriate orders in accordance with law within one month from the date such application is filed by the petitioners. Ordered accordingly.

(SANJAY DHAR)
JUDGE

SRINAGAR

04.09.2024

Sarveeda Nissar

Whether the order is speaking: Yes/No

Whether the order is reportable: Yes/No

