

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

CRM(M) No.36/2023

MST SHAMEEMA BEGUM **... PETITIONER(S)**

Through: - Mr. Sheikh Manzoor, Advocate.

Vs.

JAVID IQBAL KHAN **...RESPONDENT(S)**

Through: - None.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER (ORAL)

21.08.2024

1) The petitioner has challenged order dated 14.12.2022 passed by learned Principal Sessions Judge, Kupwara, whereby the appeal filed by the respondent against order dated 07.12.2021 passed by learned Judicial Magistrate 1st Class (Munsiff), in a complaint filed by the petitioner under Section 12 of the Protection of Women from Domestic Violence Act (hereinafter referred to as "the DV Act"), has been allowed and the order of the trial Magistrate has been set aside.

2) Notice of the petition was served upon the respondent but despite service, he did not choose to appear and contest the case.

3) I have heard learned counsel for the petitioner and perused record of the case.

4) It appears that the petitioner, who happens to be the wife of the respondent, filed a petition under Section 12 of the DV Act against her husband (respondent herein) before the Court of Judicial Magistrate 1st

Class (Munsiff), Kupwara (hereinafter referred to as “the trial Magistrate”). Along with the said petition, the petitioner also filed an application for grant of interim relief in terms of Section 23 of the DV Act. In the petition filed before the trial Magistrate, the petitioner alleged that she is legally wedded wife of the respondent and out of the said wedlock, no issue has born. According to the petitioner, she was subjected to verbal, emotional and physical violence by the respondent and she was not even provided the basic amenities of life like food, medicine and shelter. She sought monetary compensation as well as the order relating to residence from the respondent.

5) On 16.07.2021, the trial Magistrate, in exercise of his powers under Section 23 of the DV Act, passed an exparte interim order directing the respondent to provide accommodation comprising kitchen, bathroom and washroom to the petitioner and also to provide her sufficient protection.

6) The aforesaid order was challenged by the respondent by way of an appeal under Section 29 of the DV Act before the learned Principal Sessions Judge, Kupwara, who, vide order dated 06.08.2021 dismissed the appeal and gave liberty to the respondent to appear before the trial Magistrate and seek variation of order dated 16.07.2021 as the said order was made subject to modification.

7) It seems that the respondent appeared before the learned trial Magistrate and filed his objections to the petition, whereafter the trial Magistrate passed order dated 07.12.2021 after hearing the parties. Vide the said order, the learned trial Magistrate declined the relief of interim monetary compensation to the petitioner on the ground that she is working

as a Government Teacher and has sufficient income. However, the learned trial Magistrate directed the respondent to provide safe and secure residence to the petitioner in the shared household.

8) The aforesaid order was challenged by the respondent by way of an appeal before the learned Principal Sessions Judge, Kupwara. Vide impugned order dated 14.12.2022, the learned Sessions Judge allowed the appeal and set aside the order of the trial Magistrate, presumably, on the ground that the relief relating to residence to an aggrieved person can be granted only after trial while disposing of an application under Section 12 of the DV Act finally.

9) The learned counsel appearing on behalf of the petitioner has assailed the impugned order by contending that the learned Appellate Court has misconstrued the provisions contained in Sections 19 and 23 of the DV Act, as a result of which grave miscarriage has been committed by the said Court while passing the impugned order.

10) The issue which is required to be determined in this petition is as to whether a Magistrate, while considering the grant of interim order in favour of an aggrieved person in terms of Section 23 of the DV Act, can pass an order of residence even before the trial of the main case has concluded. In order to determine this issue, the provisions contained in Section 23 of the DV Act are required to be noticed. The same are reproduced as under:

“23. Power to grant interim and ex parte orders.—(1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

(2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a

likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.

11) From a perusal of the aforesaid provision, it is clear that a Magistrate has jurisdiction to grant an ex parte order in favour of an aggrieved person of the nature as provided in Section 18, Section 19, Section 20, Section 21 and Section 22 of the DV Act against the respondent. Section 18 of the DV Act relates to protection orders, Section 19 relates to residence orders, Section 20 relates to monetary reliefs, Section 21 relates to custody orders and Section 22 relates to compensation orders. Thus, it is clear that interim orders of the aforesaid nature, which includes an order relating to residence, can be passed by a Magistrate in exercise of his powers under Section 23 of the DV Act.

12) The next question that is required to be determined is as to at what stage an interim order can be passed by a Magistrate in exercise of his powers under Section 23 of the DV Act. Since we are concerned with the residence orders in the present case, therefore, it would be apt to notice the provisions contained in Section 19 of the DV Act, which read as under:

“19. Residence orders.—(1) *While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order—*

(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

- (b) *directing the respondent to remove himself from the shared household;*
- (c) *restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;*
- (d) *restraining the respondent from alienating or disposing off the shared household or encumbering the same;*
- (e) *restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or*
- (f) *directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:*

Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer in charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments,

having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.

13) A perusal of the aforesaid provision reveals that residence orders can be passed by a Magistrate while disposing of main application under Section 12 of the DV Act, meaning thereby that a residence order can be passed by a Magistrate after the trial of the case. However, when we read the provisions of Section 19 in conjunction with Section 23 of the DV Act, it becomes clear that while final residence order can be passed by a Magistrate at the time of final disposal of the petition under Section 12 of the DV Act, he is also vested with jurisdiction to grant interim residential order in favour of an aggrieved person if the Magistrate is satisfied that an application of the aggrieved person, prima facie, discloses that the respondent is committing or has committed an act of domestic violence or there is a likelihood that the respondent may commit an act of domestic violence, meaning thereby that the Magistrate at the time of passing an interim residence order in favour of the aggrieved person is not required to hold a trial but he is only required to draw satisfaction from the application filed by the aggrieved person.

14) Section 23 of the DV Act gives power to a Magistrate to pass an interim order of the nature as provided in the said provision. Residence order is an urgent relief to protect a woman from her taking shelter on road.

Therefore, passing of an interim order of the nature as defined under Section 19 of the Act is well within the jurisdiction of a Magistrate.

15) The view taken by the learned Appellate Court is clearly contrary to the provisions contained in Section 23 of the DV Act and the object of the said Act which is to provide immediate relief to an aggrieved person from domestic violence in the society. Thus, the impugned order passed by the learned Sessions Judge is not sustainable in law. The same has resulted in grave injustice to the petitioner who has been deprived of a shared household because of the impugned order. The same, as such, deserves to be set aside.

16) For the foregoing discussion, the petition is allowed and the impugned order 14.12.2022 passed by the learned Principal Sessions Judge, Kupwara, is set aside.

Srinagar
21.08.2024
"Bhat Altaf-Secy"

(Sanjay Dhar)
Judge

Whether the order is reportable: Yes/No