

IN THE COURT OF 4TH ADDL. SESSIONS JUDGE SRINAGAR

CNR No.	JKSGO10017812024
File No.	37/Appeal
Date Of Institution	08.08.2024
Date Of Order	16.12.2024

Sami-ullah Mistri S/o Abdul Majeed Mistri
R/o sector 2 Mustafa Abad Kallun Zainakote Srinagar
Appellant

Through :- Advocate Gulam Jeelani & Advocate Shaista Raheem

VERSUS

1. Mst. Asiya D/o Mohammad Shafi
2. Bazil Sami aged 12 years S/o Sami-ullah Mistri
through his mother respondent No. 1
Residents of sector 2 Mustafa Abad Zainakote Srinagar

Respondents

Through : Advocate, Arzan Dar and associates

Criminal first Misc. appeal against an order dated 20.07.2024 passed by the Id. court of Sub-Judge (City Magistrate) Srinagar in case titled Mst.Asiya and Anr Vs Sami-ullah Mistri .

Coram : Gowhar Majid Dalal
JO Code No. : JK00098

ORDER

1. The instant appeal has been assigned by the Pr. Sessions Judge Srinagar to this court for disposal under law and same has been presented by the appellant through counsel before this court wherein the interim application is allowed to the extent that the respondent is directed to provide the residential accommodation to the petitioners in the shared household or in alternative proper suitable accommodation or rentals to the tune of Rs.4000/- per month.

2. On presentation of this appeal summons came to be issued upon the other side and in pursuance to the summons other side caused appearance through counsel and contested the memo of the appeal. The relevant material was called from the trial court for perusal.
3. Perusal of the file reveals that petitioners have filed petition under D. V Act before the trial court seeking following reliefs under section 12 read with section 17,18,19,20 and 22 on behalf of petitioners /aggrieved persons :-
 - a) To punish the respondent/accused person for subjecting applicants/aggrieved persons to domestic violence.
 - b) To order for payment of appropriate compensation and damages to the applicants/aggrieved persons for the damages and injuries caused by the act of domestic violence committed by the respondent against aggrieved persons.
 - c) To provide a right to aggrieved persons to reside in the shared household.
 - d) To order for protection of the applicants/aggrieved persons and prohibit the respondent from committing any act of domestic violence against aggrieved persons.
 - e) To pay maintenance to the aggrieved persons to the tune of Rs. 1,00,000/- per month for their sustenance.
 - f) Directing non-applicants to pay compensation to the aggrieved persons. No 1 to the tune of Rs.25.00 lacs for the ornaments taken by the accused/respondent .
 - g) Any other reliefs which the court may deem fit and proper under the t in view of the present circumstances of the case may be also be granted.
4. The aggrieved persons stated in the petition that she is legally wedded wife of respondent no. 1/appellant here-in and the marriage has been solemnized on 10.10. 2010 in accordance with the Muslim Personal Law and out of the said wedlock one male child was

born ,petitioner no. 2 and the respondent after some days of marriage has harassed, humiliated and bullied the petitioners and demanded dowry and as such was tortured to the hilt and was humiliated and lot of untoward incidents kept on happening against the interest of the aggrieved person no. 1. That immediately after the marriage the respondent beaten the aggrieved person no. 1 to pulp so that he would bring the aggrieved person no. 1 under force and coercion so that the she would run on his dictations and it was during the span of two months from October to November he created havoc into the life of the aggrieved person no. 1 and after that the respondent went to Dubai in Novemeber,2010 while as she was staying at his place and was serving his parents and sister-in-law and other siblings so that she would responsibly and maturely stabilize the relationship between the respondent and her own self by compromising her own happens for the success of the respondent. That the respondent after being insisted by the aggrieved person no. 1 took her to Dubai and she was stationed in Dubai for two months , in these two months she came across heinous humiliations, as she was put with different cruelty as well as her own sense was deteriorated by the acts of the respondent as he had an affair with one girl Syed Sumaria Qadri, living in the same apartment where the aggrieved person no.1 was put by the respondent, when the aggrieved person no. 1 came to know about the affair, she resisted and her resistance resulted, in tremendous untoward retaliation against the aggrieved person no. 1 and she was beaten to pulp for objecting to such objectionable acts of the respondent. That pursuant to such happening an FIR came to be lodged under FIR no.

23/2014 under section 498A, 406, & 506 before the police station Women's Wing Rambagh, Srinagar on 11.06.2014, thereafter the aggrieved person no. 1 has also filed petition under section 125 Cr.P.C before the court of Ist Addl. Munsiff Srinagar on 10.06.2014 and the said court disposed of the petitioner vide its orders 31.07.2019, wherein the said court was pleased to record findings in relation to the subsistence of marriage between aggrieved person no. 1 and respondent as they still exist to behaving a marital status of husband and wife. That the aggrieved persons are having huge expenses in their daily life as there are basic necessities which are to be fulfilled in achieving a dignified life as guaranteed by the constitution and the law of the land, as such respondent is bound to pay the monthly maintenance/allowance towards the aggrieved persons to the tune of Rs. 1,00,000/- for their survival. That the respondent is working in Dubai and is a man of great subsistence is earning more than Rs. 5.00 lacs and has great value in the society and is living a life of high standards and the same standard of the living cannot be denied to the aggrieved persons ,who are equally deserving of the same living standard, and also the aggrieved person no. 1 is running shelter less as she does not have any place to live as she has been thrown out from the shared household, but through the medium of this petition the aggrieved person no. 1 wants to settled down in the shared household, so that the good right to the aggrieved person no. 2 is not denied to him as he is going to be separated from father and mother. Lastly the reliefs stated here-in-above has been prayed.

5. From the perusal of the record it would reveals that after presentation of the petition before the trial court u/s 12 D. V Act along with application for grant of interim relief and the Ld. trial court passed the exparte order dated 17.2.2024 . The operative portion of the said order is as under :-

“Therefore keeping in view the facts and circumstances of the case, the non-applicant shall provide accommodation in the shared household to the petitioners. Nothing observed in this order shall affect the merit of decision of the main petition. The said order is however, subject to objections from other side and other side is at liberty to file application for the modification of this order by or before next date of hearing.”

6. The respondent has filed the objections and has taken the plea of divorce and stated that the petition is not maintainable. The petitioner is not the aggrieved person and there is no act of domestic violence committed upon the petitioner as they are residing separately from last more than ten years. That the petitioner has suppressed the material facts and has not approached the court with clean hands. He has placed some frivolous and vexatious facts in the petition only to harass the respondent /appellant herein only to gain excessive monetary benefit from the respondent. The petition has been filed only to settle the personal scores by the petitioner and is against the interests of the present appellant. That he has pronounced the divorce on 10.06.2014 and has been acknowledged by the other side. That it is the petitioner No. 1 who has abused the respondent right from the inception of the marriage and has always created ruckus in the peaceful life of the respondent. That it is the habit of the petitioner to involve the respondent in the litigation and has filed so many cases against the respondent. That respondent has

never caused any mental physical torture to the petitioner. She has failed to act as a responsible and obedient wife of the respondent. That at present there is no relation exists between the parties. There is no domestic relationship between the parties. Lastly it has been prayed that the petition be dismissed.

7. Perusal of the record further reveals that the respondent has filed objections and thereafter after hearing the parties at length on the interim application and also considered the pleadings of the parties the trial court has finally disposed of the interim application vide its order dated 20.7.2024. The operative portion of the impugned order is as under :-

“Since maintenance has already been fixed by the court of Ist Addl. Munsiff Srinagar which seems to be sufficient. Keeping in view the assets and liabilities of the parties ,however, with regard to the interim residential order respondent is directed to provide the residential accommodation to petitioners. Interim application to that extent is allowed and the respondent is directed to provide proper residential accommodation to petitioner in shared household or in alternative proper suitable accommodation or rentals to the tune of Rs.4000/- per month. Nothing observed in this order shall affect on the merits of decision of the main petition”.

8. Aggrieved of the impugned order the appellant has challenged the same before this court on the following conditions:-

- a) That the impugned order is bad in law , without proper application of the judicial mind , bereft of substance as well as full of perversity, as such is liable to be quashed on the said ground alone.
- b) That the impugned order is devoid of any reasons or grounds on which the trial court has

based the decision. The reason being the heart and soul of an order or decision has to be cogent and clear backed with the authority of law and as such the impugned order should have been passed independently after appreciating the material on record.

- c) That the impugned order passed by the trial court reflects that the trial court instead of making its own independent observations has fully relied on the order of the Hon'ble Ist Addl. Munsiff Srinagar passed in the application u/s 125 Cr.P.C which goes against the mandate of law as the observation made by the court u/s 125 Cr.P.C is having no binding force on the trial court especially whereby the court of Ist Addl. Munsiff is subordinate to the trial court herein more so the trial in both the matter are independent to one another but the impugned order passed reflected that the trial court has acted subservient to the order passed by the Hon'ble Ist Addl. Munsiff court in an application filed under section 125 Cr.P.C.
- d) That there exists no cogent material on record whereby the status of the respondents as aggrieved persons is established .
- e) That the ld. trial court has miserably failed to take into account the fact that the respondents herein have knowingly and deliberately omitted to reveal the true facts in the affidavit of assets and liabilities and have specially omitted to reveal the fact of maintenance that is being already drawn by the respondents from the appellant and have alleged that the appellant has miserably failed to maintain them and since the said averments have been pleaded by the respondent no. 1 on affidavit as such the respondent no. 1 is guilty of perjury inviting legal consequences fully known to the respondents , however, the said fact has been ignored and over looked by the trial court rendering the order and proceedings deviant from the procedure of law.
- f) That the impugned order has not only caused prejudice to the appellant but has also set out a bad example with regard to the PWDV Act which is a serious legislation intended to provided reliefs to vulnerable and violence inflicted women and not settle scores arising out of grudges against one's ex-partners, as such this appeal.
- g) Lastly prayed that the appeal may be allowed and the impugned order dated 20.07.2024 as

passed by the trial court of 1st Addl. Munsiff be set aside as same is in the interest of justice and law.

- 9 I have heard the Ld. Counsel for the parties and perused the contents of the appeal along with impugned order 20.07.2024 and other relevant material annexed with the file minutely.
10. Ld. counsel for the appellant submitted that the respondents have preferred a petition seeking reliefs under the protection of Domestic Act along with an interim application seeking immediate reliefs which application was put to the objections of the appellant herein and thereafter the appellant has filed detailed objections in the matter, objecting the maintainability of the D.V petition including the interim application on both legal and factual grounds bringing to light certain facts that were important for the knowledge of the trial court being crucial for the adjudication of the matter. It is submitted that the said petition has been filed by the respondents before the trial only to harass and trouble the appellant in order to create ruckus in the personal life of the appellant and to prevent him from leading his life peacefully in order to settle personal scores because of the grudges that the respondent no. 1 holds against the appellant due to the past (now ceased) matrimonial bond shared by them. It is submitted that the appellant brought into notice of the court the fact pertaining to the maintenance amount of Rs. 11,000/- per month, that is being already drawn by the respondents by virtue of an order dated 31.7.2019. It is submitted that the order impugned passed by the trial court is bad in the eyes of law as there is lot infirmity and illegality in the impugned order . It is submitted that the order passed by the trial court is not passed in accordance

with the law. Lastly submitted that the impugned order be set aside as the order of rentals in favour of the respondent has been passed by the trial court without any proper law. and the said order clearly depicts the non-application of the judicial mind.

11. Ld. counsel for the respondent supported the impugned order dated 20.07.2024 and has submitted that the order impugned has been passed by the trial court in accordance with the law . There is no illegality or infirmity in the impugned order, as the trial court has passed the order impugned in its right prospective and appreciated the law on the point rightly. Ld. counsel for the appellant submitted that the Ld. court of Ist Munsiff has passed by the order of monthly maintenance in favour of the respondents whereby the petitioner no. 1 /respondent herein has been granted Rs. 4000/- and petitioner no. 2 /respondent herein has been granted Rs. 7000/- per month as monthly maintenance allowance and same has been granted in favour above mentioned petitioner in petition filed before the said court u/s 125 Cr.P.C and there is no infirmity or illegality in the said order passed by the Ld. 1st Munsiff Srinagar. He finally submitted that the appeal of the appellant be dismissed with costs.

12. It would be relevant to reproduce the provision of Protection of Women from Domestic Violence Act 2005 as under:

Section 12 provides presentation of application filed by the Protection Officer or the aggrieved person before the Magistrate seeking one or more reliefs under the Act.

Section 13 provides mode and manner under which the notices can be served upon the other side.

Section 19 provides the orders of residence which can be passed by the Magistrate in favour of the aggrieved person.

Section 20 provides the monetary relief and it says that Magistrate while disposing of the application u/s 12 may direct the respondent to pay monetary relief to the aggrieved persons and any child of aggrieved person which includes loss of earning, medical expenses, the maintenance for the aggrieved person as well as for her child and such order shall be in addition to an order of maintenance u/s 125 Cr.PC or any other law for time being enforce.

Section 21 provides custody order . section 22 provides orders which can be passed by the Magistrate.

Section 23 is relevant here as such is 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.”

13. The law is clear that the Magistrate has power to pass interim order during the pendency of application u/s 12 of Protection of Women from Domestic Violence Act. Under Sub section (1) it appears that Magistrate may pass interim orders as he deems just and proper and sub section (2) provides interim order can be passed by the Magistrate u/s 18 to 22 in favour of the aggrieved person/s and against the respondent if the Magistrate is satisfied that application prima-facie

disclose that the respondent is committing or has committed an act of Domestic Violence or there is likelihood that respondent may commit an act of Domestic Violence, he may grant such interim exparte order.

14. In the instant case the Ld. Magistrate has passed interim order of maintenance after hearing the Ld. counsel for the parties in terms of section 23(2) of D.V Act which requires satisfaction of the Magistrate. The marriage between the appellant and respondent is not in dispute and the paternity of the respondent no. 2 is also not disputed by the appellant and actually the appellant admitted that the expenses of respondent no. 1 is his liability and responsibility and he is ready to maintain him. Respondent no. 1 is residing in her parental house, is also not disputed. Out of wedlock there is one issue putting up with the mother is also not disputed. The aggrieved persons/respondents herein has raised many allegations against the appellant herein regarding physical and economic abuses and other various allegations and in the opinion of the Magistrate these allegations narrated in the complaint are sufficient to constitute Domestic Violence caused by the appellant herein against the aggrieved persons/respondents herein. The appellant herein has raised the contentions that the impugned order passed by the trial court reflects that the trial court instead of making its own independent observation has fully relied on the order of the Ld. court of 1st Addl. Munsiff Srinagar passed in the application u/s 125 Cr. P.C.
15. Perusal of the record reveals that the petitioner has earlier filed the petition u/s 125 Cr.PC before the court of Ist Addl. Munsiff/JMIC Srinagar , passed the

order dated 31.07.2019 in which the respondent no. 1 was directed to pay Rs. 4000/- toward petitioner no. 1 and Rs. 7000/- towards petitioner no. 2 as monthly maintenance allowance and in total Rs. 11,000/- is granted in favour of the petitioners against the respondent from the date of passing of the said order.

16. Perusal of the record reveals that the trial court has rightly passed impugned order in which only rental has been granted to the respondents, whereas maintenance allowance has already been granted by the Ld. court of 1st Munsiff /JMIC Srinagar in a petition filed before the said court vide its order dated 31.07.2019 in which the applicants/respondents has already granted the monthly maintenance to the tune of Rs. 4000/- in favour of the applicant/respondent no. 1 herein and Rs.7000/-in favour of the applicant/respondent no. 2 herein. The said file was also called for perusal.
17. The appellant had also filed a case before the principal judge family court against the present respondent no 1, for declaration with a prayer that the agreement executed between the parties(appellant & respondent no 1) on 17th May 2017 as final and binding, where in the amount was to be paid by the appellant towards the respondent no1, but the cheques are on file and has not been received by the respondent. The said suit has been dismissed for non prosecution of plaintiff/appellant here in on 20.10.2022. The said filed was also called for perusal.
18. The main arguments of the Ld.counsel for the appellant are that the parties are residing separately from last ten years and there exists no relationship

between the parties. It is settled law that there is no limitation law applicable to the petition filed under D. V Act . It is true that the petition has been filed after long period and the parties residing separately. The narration of the facts in the compliant coupled with the response submitted by other side, it is evident that the relation between the parties is not good which is sufficient to constitute the strain relation between the parties. The ground of the respondent in the petition is that she has been divorced by way of agreement which is annexed with the file which was called from the Pr. Judge family court for perusal. From the perusal of the said file that the cheques which were to be received by the petitioner are on file and has not been received so far. So in terms of the said fact it can be fairly held that the agreement has not been complied with by the parties. That the appellant has filed the suit regarding the relation between the parties, but said suit has been dismissed. Under the provisions of D. V Act it is not necessary that the parties must be in relation at the time of the presentation of the petition only, but the past relation also gives right to the aggrieved person to file the petition. As there was past relation between the parties so it cannot be said that at this stage without leading the evidence, that the petitioner is not the aggrieved person or there is no domestic violence committed upon her. These are the matters of fact and can be adjudicated during the course of trial. In the impugned order the option has been given to the respondent to provide the proper residential accommodation to the petitioner in shared household or in alterative proper suitable accommodation or rental to the tune of Rs. 4000/-per month. The discretion lies with the appellant to make the life of

the petitioner comfortable by way of any of the three options. Secondly the maintenance has not been granted by the trial court in view of the fact that the petitioners are getting maintenance by way of the order passed by the Ist Addl. Munsiff Srinagar in the petition under section 488 Cr.P.C.

19. Under these circumstances , keeping in view the facts and circumstances of the case, in view of the discussions made hereinabove, it can be clearly held that there is no illegality or infirmity in the impugned order passed by the trial court with result the impugned order passed by the trial court is set aside and appeal stands dismissed. The order dated 08.08.2024 passed by this court is vacated forthwith. The copy of this order be sent to trial court for information. The parties are directed to cause their appearance before the trial court on 30.12.2024. Office is directed to send the record to the concerned court forthwith. The appeal so disposed of, shall be consigned to records after due compilation.

Announced
16.12.2024

Shabir

4th Addl. Sessions Judge
Srinagar