

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKHAT
SRINAGAR

Reserved on: 30.08.2022
Pronounced on:02.09.2022

CRM(M) No.386/2021

ALTAF AHMAD ZARGAR & ANR. ... PETITIONER(S)

Through: - Mr. Wajid Mohammad Haseeb, Advocate.

Vs.

MST. SANA & ANOTHER ...RESPONDENT(S)

Through: - Mr. Sofi Manzoor, Advocate.

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

JUDGMENT

1) The petitioners have challenged the application filed by the respondents against them under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the DV Act), which is stated to be pending before the Court of learned Judicial Magistrate, 1st Class (1st Additional Munsiff), Srinagar.

2) As per the case of the petitioners, petitioner No.1 had entered into wedlock with respondent No.1 in the year 2016 and out of this wedlock, one child i.e., respondent No.2 herein, was born. It is alleged that from the very inception of the marriage, the attitude of respondent No.1 was not good towards the petitioners and she always wanted petitioner No.1 to live separately from his ailing mother, petitioner No.2 herein. It is submitted

that efforts were made by the petitioners to settle the differences between them and respondent No.1 and to resume the matrimonial relationship but all these efforts failed compelling petitioner No.1 to divorce respondent No.1 in terms of deed of divorce dated 23.08.2021.

3) It is submitted that as a reaction to the aforesaid act of petitioner No.1, respondent No.1 filed an application under DV Act before Special Mobile Magistrate (13th Finance), Srinagar, on 24.08.2021 against the petitioners. The petitioners appeared before the said Court in the said application and learned Magistrate started exploring the possibility of a negotiated settlement between the parties. It is alleged that in the last week of October, 2021, respondent No.1 along with her relatives came to the house of the petitioners and assaulted them and they were thrown out forcibly from their home. The petitioners are stated to have approached the police but the police did not take any action in the matter.

4) It has been submitted by the petitioners that upon enquiry relating to reasons for the police for not taking action in the matter, they came to know that respondent No.1 has filed another application under Section 12 of the DV Act (hereinafter referred as the impugned petition) against the petitioners before the Court of Judicial Magistrate, 1st Class (1st Additional Munsiff), Srinagar. It was also found by the petitioners that on 28.10.2021, respondent No.1 had approached the Court of learned Special Mobile Magistrate (Sub Judge), Srinagar, and made a statement that the parties have settled their disputes outside the Court and on this ground, she sought withdrawal of the earlier application under Section 12 of the DV Act

which was, accordingly, dismissed as withdrawn by the learned Magistrate vide his order dated 28.10.2021.

5) It has been contended that the second application under the provisions of the DV Act on same cause of action filed by respondent No.1 against the petitioners amounts to abuse of process of law and, as such, the same deserves to be quashed. It has been further contended that respondent No.1 has concealed the factum of filing of earlier application under the provisions of DV Act while filing the second application. It is also contended that respondent No.1 has made a false statement before the learned Magistrate while withdrawing her earlier application, by stating that she has settled the disputes with the petitioners and if the said statement is taken to be correct, then there was no cause available to respondent No.1 to file the impugned complaint against the petitioners.

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

7) it has been contended by learned counsel for the petitioners that filing of second petition under Section 12 of the DV Act by respondent No.1 against the petitioners on the same cause of action on which the earlier petition was filed by her against them amounts to abuse of process of law. The learned counsel has submitted that when respondent No.1 failed to obtain an interim order from the learned Magistrate in the earlier petition, she has mischievously filed the impugned petition and obtained an interim order from the learned trial Magistrate on 25.10.2021, whereby

petitioner No.1 has been directed to pay interim monetary compensation of Rs.3000/ to each of the respondents. According to the learned counsel, the course adopted by respondent No.1 amounts to forum shopping which has been deprecated by the Supreme Court in the case of **Vijay Kumar Ghai and Ors. vs. State of West Bengal & Ors** (Criminal Appeal No.463 of 2022 decided on 22nd March, 2022).

8) *Per contra*, learned counsel for the respondents has submitted that the cause of action in respect of two petitions filed by respondent No.1 against the petitioner is different, inasmuch as the first petition relates to the incidents of domestic violence that had taken place in April, 2018 onwards up to the date of filing of the said application i.e. upto 24th August, 2021 whereas the subject matter of the impugned petition is the incidents of domestic violence committed by the petitioners against respondent No.1 relating to the period from 9th October, 2021 up to the date of filing of the impugned petition i.e., 21.10.2021. Thus, according to learned counsel for the respondents, it cannot be stated that the cause of action in respect of the two petitions is the same. Learned counsel has submitted that each incident of domestic violence gives a fresh cause of action to an aggrieved person to file a petition under Section 12 of the DV Act.

9) It has also been submitted that the respondents have, in para (3) of the impugned complaint, clearly disclosed that they had earlier filed a petition under the DV Act before the Court of Special Mobile Magistrate, Srinagar, and this fact has been taken note of by the learned trial

Magistrate while granting interim monetary compensation in favour of the respondents herein. Thus, according to the learned counsel, there is no concealment of facts on the part of the respondents.

10) The petitioners, in effect, are aggrieved of the impugned petition filed by respondent No.1 against them and the order dated 25.10.2021 passed by the learned trial Magistrate on the said petition. So far as the proceedings under Section 12 of the DV Act are concerned, the same cannot be equated with lodging of a criminal complaint or initiation of prosecution. So, the trial Magistrate, after obtaining the response from the husband and his relatives etc. is well within his jurisdiction to revoke his order of issuing summons to them or he can even drop the proceedings. The learned Magistrate would be well within his jurisdiction to cancel the interim order of monetary compensation if he, upon going through the response of the husband and his relatives, finds that they have been unnecessarily roped in or that no case for grant of interim monetary compensation is made out. Since the proceedings under Section 12 of the DV Act are not, in strict sense, criminal in nature, as such, bar to alter/revoke an order by a Magistrate is not attracted to these proceedings.

11) In my aforesaid view, I am supported by the judgment of the Supreme Court in the case of **Kamatchi vs. Lakshmi Narayanan**, 2022 SCC OnLine SC 446. The Supreme Court in the said case has observed that scope of of notice under Section 12 of the DV Act is to call for a response from the respondent in terms of the Statute so that after

considering rival submissions, appropriate order can be issued. The Court further held that the matter stands on a different footing and the dictum in **Adalat Prasad's** case ((2004) 7 SCC 338) would not get attracted at a stage when a notice is issued under Section 12 of the Act.

12) From the above discussion, it is clear that a Magistrate if, after receiving the version of the husband and his relatives in a proceeding under Section 12 of the DV Act, comes to a conclusion that no case for proceeding against them is made out, he can drop the proceedings and he can even re-call his order of interim monetary compensation granted in favour of the aggrieved person.

13) Now coming to the facts of the instant case, vide order dated 25.10.2021, the learned Magistrate has, while issuing notice to the petitioners herein, awarded interim monetary compensation in faovur of the respondents. In the said order it has been clearly indicated that the petitioners herein are at liberty to approach the said Court for variance, modification and alteration of the said order. Thus, it would be open for the petitioners herein to file their reply to the main petition and once that is done, the learned Magistrate would consider all the submissions that have been made by the petitioners in the instant petition and if he finds that no case for proceeding against the petitioners is made out, he would be at liberty to recall his order dated 25.10.2021 and to drop the proceedings against the petitioners.

