

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

CRM(M) No.277/2026

ROUF AHMAD MIR & OTHERS

.....Petitioner(s)

Through: Mr.G.M.Shah, Advocate

V/s

MST ADFARA REHMAN

.....Respondent(s)

Through: None



CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER

06.05.2026

1. The petitioners through the medium of present petition have challenged order dated 12.11.2025, passed by learned Additional Sessions Judge, Ganderbal (hereinafter 'the Appellate Court'), whereby appeal under Section 29 of the Protection of Women from Domestic Violence Act (hereinafter 'the DV Act'), filed by the respondent against order dated 11.11.2023 passed by learned Chief Judicial Magistrate, Ganderbal (hereinafter 'the trial Magistrate') has been allowed and the aforesaid order passed by the learned Chief Judicial Magistrate has been set aside.
2. It appears that the respondent (hereinafter 'the aggrieved person') filed the petition under Section 12 of the DV Act

against the petitioners before the learned trial Magistrate. It is pertinent to mention here that petitioner No.1 happens to be the husband of the aggrieved person. In the petition the aggrieved person pleaded that she was married to petitioner No.1 in the year 2020 and she joined him in her matrimonial home on 10.10.2021, whereafter she was subjected to domestic violence and cruel treatment by petitioner No.1. It was also alleged that petitioner No.2, who happens to be her father-in-law, used to occasionally molest her, which caused great mental agony and humiliation to the aggrieved person. According to the aggrieved person, the petitioners were picking frequent quarrels with her on insignificant matters and they were subjecting her to verbal, physical and mental cruelty. She was expelled by petitioner No.1 from her matrimonial home and was deprived of shelter and maintenance.

3. It seems that initially learned trial Magistrate passed an *ex parte* interim order dated 24.05.2022, whereby petitioner No.1 was directed to pay interim monetary compensation of Rs.10,000/- per month in favour of the aggrieved person and he was further directed to provide one room alongwith a washroom to her for residential purpose with a further direction not to commit any kind of domestic violence against her person.

4. The petitioners filed their objections before the trial Court in which they admitted that aggrieved person is wife of petitioner No.1. It was alleged by the petitioners that respondent No.1 conceived but subsequently aborted the pregnancy without the consent and knowledge of petitioner No.1. The petitioners denied the allegations of cruelty and molestation and claimed that all the allegations regarding domestic violence are absolutely false. According to the petitioners, the aggrieved person left the matrimonial home out of her own volition and, despite best efforts of petitioner No.1, the differences between the two could not be reconciled and the aggrieved person refused to return to the matrimonial home. The petitioners further claimed that the assertion of aggrieved person that he is earning Rs.80,000/- per month is incorrect and that he is earning a modest salary and presently he has been suspended from service on account of complaint lodged by the aggrieved person against him.

5. The learned trial Magistrate, after considering the pleadings of the parties and taking into account statement of aggrieved person recorded during the trial of the case, came to the conclusion that no domestic violence has taken place against the aggrieved person, having regard to the inconsistency between her statement recorded before the Court and the assertions made

in the petition. Vide order dated 11.11.2023 the learned trial Magistrate dismissed the application of aggrieved person under Section 23 of the DV Act.

6. The aforesaid order came to be challenged by the aggrieved person by way of an appeal before learned Additional Sessions Judge, Ganderbal who vide impugned order dated 12.11.2025 has set aside the order passed by the learned Chief Judicial Magistrate and has awarded an interim monetary assistance of Rs.5000/- per month in her favour. A further direction has been issued that the aggrieved person be provided suitable residential accommodation or in the alternative she be paid a sum of Rs.2500/- per month as rent.

7. The petitioners have challenged the impugned order passed by the learned Additional Sessions Judge on the ground that the order passed by the trial Magistrate on 11.11.2023 is perfectly in accordance with law and the same has been overlooked by the Appellate Court, without any justification. It has been contended that the aggrieved person has levelled baseless and contradictory allegations against the petitioners, but this aspect of the matter has been ignored by the learned Appellate Court. It has been further contended that the learned Appellate Court has failed to appreciate that there are contradictions in the statement of

aggrieved person and her pleadings. Therefore, her case could not have been believed.

8. I have heard learned counsel for the petitioners and I have also gone through the impugned order as also the order passed by the learned trial Magistrate.

9. A perusal of the order passed by the learned trial Magistrate would reveal that the said Court while coming to the conclusion that allegations of domestic violence levelled by aggrieved person against the petitioners are unreliable, has minutely analyzed the statement of the aggrieved person recorded during the trial of the case by pointing out minor inconsistencies in dates mentioned by the aggrieved person. Such minor inconsistencies in the statement of the aggrieved person could not have been taken into consideration by the learned trial Magistrate at the time of deciding an application under Section 23 of the DV Act. By undertaking meticulous examination of the statement of the aggrieved person at this stage, the learned trial Magistrate had exceeded its jurisdiction. The learned Appellate Court has rightly observed that at the time of considering an application under Section 23 of the DV Act, the standard of proof is only prima facie satisfaction of the Court regarding the existence of domestic relationship and the

likelihood of domestic violence. A meticulous analysis of the evidence on record has to be avoided by the Court at this stage.

10. Another ground on which the learned trial Magistrate had refused the application of aggrieved person is that she had not filed affidavit relating to assets and liabilities. This aspect of the matter has also been dealt with by the learned Appellate Court by rightly pointing out that mere non filing of such affidavit does not extinguish the right to claim maintenance or protection under the DV Act. Even otherwise, it has been noted by the learned Appellate Court that the aggrieved person had filed the requisite affidavit which was available in the trial Court record.

11. It has been contended by the petitioners that petitioner No.1 has divorced the aggrieved person by virtue of deed of divorce deed dated 15.12.2023, a copy whereof has been placed on record. The deed of divorce has admittedly been executed by petitioner No.1 after the passing of order dated 11.11.2023 by the learned trial Court. The issue whether divorce has actually been pronounced by petitioner No.1 upon the aggrieved person and whether divorce would extinguish the right of aggrieved person to claim relief in terms of the DV Act, has to be dealt with by the trial Court at the time of final disposal of the petition under Section 12 of the DV Act. This Court would not like to

