

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

Crl R No.9/2023

Mrs. Syed Asma Balki

... Petitioner(s)

Through: -Mr.Saleem Gupkari, Advocate.

Vs.

Mudasir Shibzada

...Respondent(s)

Through: -Mr.Altaf Haqani, Sr.Advocate with
Mr. Asif Wani,Advocate

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER

06.11.2023

1. The petitioner has challenged order dated 13.02.2023, passed by Judicial Magistrate 1st Class (Judge Small Causes) Srinagar, (hereinafter for short "the trial Magistrate), whereby the learned trial Magistrate has decided application of the petitioner under Section 12 of The Protection Of Women From Domestic Violence Act, 2005 (hereinafter referred to as "the D.V.Act").

2. It appears that the petitioner had filed a proceeding under the D.V.Act against the respondent herein and in the said proceeding she also filed application under Section 12 of the D.V.Act, seeking interim monetary relief and other reliefs. On 17.08.2022, the learned trial Magistrate passed an ex-parte order directing the respondent herein to provide shelter to the petitioner with at least one bed room, one wash

room and space for kitchen in the shared accommodation. Further, direction was passed restraining the respondent from committing the acts of domestic violence against the petitioner.

3. It appears that the respondent after passing of the aforesaid ex-parte order appeared before the trial Magistrate and he filed objections to the application filed by the petitioner. The learned trial Magistrate, after hearing the parties, passed the impugned order, whereby, the ex-parte order dated 17.08.2022 was modified to the extent that instead of relief relating to shared accommodation, it was directed that the respondent shall arrange the rental accommodation for the petitioner or in alternative provide Rs.10,000/- per month to the petitioner as rental charges till disposal of the case.

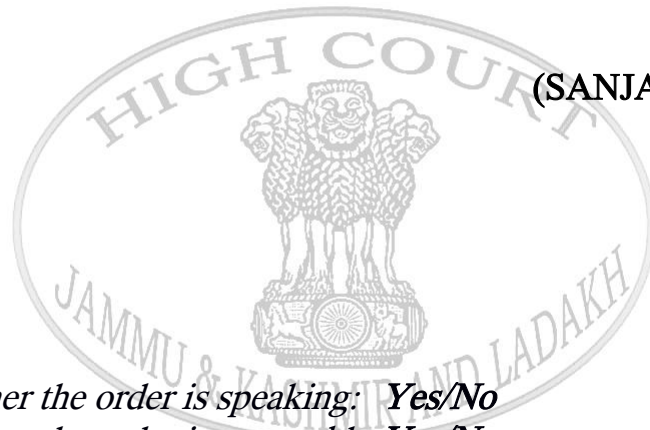
4. Learned Sr. Counsel for the respondent has raised preliminary objection to the maintainability of the petition on the ground that order passed by the trial Magistrate is appealable in nature and as such the petition under Section 482 Cr.P.C read with Section 397 Cr.P.C is not maintainable. Learned counsel has also contended that the proceedings under the D.V.Act are civil in nature and, as such, petition under Section 482 Cr.P.C is not maintainable.

5. If we have a look at the provisions contained in Section 29 of the D.V.Act, it provides that an appeal shall lie to the Court of Session within 30 days from the date on which the order is passed by a Magistrate. An order made by Magistrate under Section 12 of the D.V.Act is, therefore, appealable under Section 29 of the D.V.Act.

The petitioner without filing the appeal under Section 29 of the

D.V.Act has straightway rushed to this Court and filed the instant petition invoking the power of this Court under Section 482 Cr.P.C and 397 Cr.P.C.

6. Without going into the question, whether or not the proceedings under the D.V.Act are of civil in nature, one thing is clear that the remedy of appeal is available to the petitioner against the impugned order. Without availing the said remedy the petitioner could not have rushed to this Court to file proceedings under Section 482 Cr.P.C or by invoking revisional powers of this Court. On this ground alone, this petition is liable to be dismissed and is **dismissed** accordingly.



(SANJAY DHAR)
JUDGE

SRINAGAR
06.11.2023
Sarveeda Nissar

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No