

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

CM(M) No. 172/2021 (O&M)

*Reserved on : 28.04.2022  
Pronounced on:25.05.2022*

Neelofar Rasool

...Appellant(s)/Petitioner(s)

Through:- Mr. Hakim Suhail Ishtiyag, Advocate

v/s

Imtiyaz Ahmad Ahangar and  
others

...Respondent(s)

Through:- Mr. Sayed Faisal Qadri, Sr. Advocate  
with Mr. Mansab Wadoo, Adv.

**Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE**

**ORDER**

1. The petitioner in the instant petition has implored for the following reliefs :-

“i. By issuance of an order or direction, direct the respondent No. 1 to comply with the directions issued by the Trial Court vide order dated 16.08.2021.

ii. By issuance of an order or direction, direct the respondent No. 1 to allow the petitioner to reside in her matrimonial home at Shaheen Mohalla, Noorbagh, Srinagar as directed by the Trial Court vide order dated 16.08.2021.

iii. By issuance of an order or direction, direct the respondent Nos. 3 and 4 to ensure that the petitioner is allowed to reside in her matrimonial home at Noorbagh as directed by the Trial Court vide order dated 16.08.2021.

iv. By issuance of an order or direction, direct the respondents to hand over the custody of the minor child namely Umar Imtiyaz to the petitioner.”

2. The background facts under the shade and cover of which the reliefs aforesaid have been sought would reveal that a complaint had been filed by the petitioner herein under the provisions of Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the, ‘Act’) against respondent No. 1 (husband) before the Court of 2<sup>nd</sup> Additional Munsiff (JMJC), Srinagar, wherein the said Court had passed an order on 16.08.2021, *inter-alia*, directing the respondent No. 1 to pay an amount of Rs. 5000/- and Rs. 3000/- per month to the petitioner herein and the minor son respectively besides paying the education expenses of the child. The petitioner had been also allowed to reside in the shared household without any interference pursuant to another direction passed on 16.08.2021 by the said Court besides directing the respondent Nos. 1 and 2 herein being the husband and the brother-in-law of the petitioner respectively to refrain from committing any act of domestic violence against the petitioner.

3. The said directions contained in order dated 16.08.2021 had been addressed to respondent No. 3-the Designated Protection Officer.

4. In order to defeat and frustrate the direction passed by the Court below on 16.08.2021, the husband-respondent No. 1 herein is stated to have filed a civil suit impleading the petitioner herein with her two brothers as defendants therein in connivance with his father in respect of the residential house/(shared household) and having succeeded in obtaining an ex-parte order of status-quo qua the possession of the said house.

5. The said order of status-quo is stated to have got modified by the petitioner herein after filing response to the suit as well as the application for interim relief the giving right of residence to the petitioner herein in the said shared household.

6. Another attempt is stated to have been made by the father of the respondent Nos. 1 and 2 for avoiding the sharing of the household by filing an application in the said Court, wherein the suit had been filed by the father of the respondents Nos. 1 and 2 herein for recalling of the modified order which, however, is stated to have been rejected by the said Court on 14.09.2021.

7. It is being stated that after the respondents Nos. 1 and 2 failed in their attempts to defeat the order passed by the Court below in the domestic violence case filed by the petitioner herein, the implementation of the said order dated 16.08.2021 passed by the court below was sought

by the petitioner while laying a motion under Section 151 of the Code of Civil Procedure, wherein the Court below passed an order on 28.09.2021, directing the respondent No. 3-the Protection Officer to ensure the compliance of order dated 16.08.2021 also directing respondent No. 4 to provide necessary assistance to the respondent No. 3 in this regard.

8. The respondent No. 3, however, instead of carrying out the directions passed by the Court below dated 16.08.2021 and 28.09.2021 is stated to have made an attempt to hold a parallel Court in order to decide as to whether the petitioner is to be allowed to reside in the shared household or not. The respondent Nos. 3 and 4 are stated to have disregarded the order passed by the Court below. The respondents, thus, are stated to have deliberately and intentionally undertaken a contemptuous conduct undermining the rule of law and authority of the Court making every attempt to frustrate and avoid the implementation of the order of the trial court, thus, compelling the petitioner to approach this Court through the medium of the instant petition.

9. Upon coming of the petition for consideration on 10.11.2021, the presence of respondent Nos. 3 and 4 was sought through Mr. B.A. Dar, the then senior AAG besides summoning respondent No. 1 and 2.

10. On 16.11.2021, the petitioner herein came to be put in possession of the shared household in compliance of the order of the

Court below and also orders passed by this Court on 12.11.2021 till 16.11.2021.

11. The respondents Nos. 1 and 2 did not choose to appear, however, on 27.11.2021 respondent No. 1 appeared through his counsel along with the child and handed over the custody of the child to the petitioner in the open Court, agreeing that the child shall remain with the petitioner and that he shall have temporary custody of the child on 2<sup>nd</sup> and 4<sup>th</sup> Saturday of the Month from 11:00 AM till 4:00 PM Sunday. Further during the course of the proceedings conducted in the matter the respondent No. 1 paid the amount of maintenance to the petitioner and her minor child.

12. In essence, the directions passed by the Court below in the compliant of the petitioner stand complied with during the pendency of the instant petition. Petition, as such, shall stand disposed of, accordingly.

13. Though, nothing survives for adjudication in the instant petition in view of the compliance of the orders of the Court below, yet having regard to the facts and circumstances of the case, whereunder the petitioner herein had been compelled to seek enforcement and implementation of the orders passed by the Court below through the intervention of this Court on account of casual and lackadaisical approach of the nominated Protection Officer in carrying out the

directions passed by the Court below, it is felt desirable here to lay down certain guidelines in the matter in respect of the Protection Officer/s.

14. Going by the legislative history and object of the Act, it goes without saying that the same had been enacted to provide a remedy in civil law for protection of woman from being victims of an act of domestic violence and to prevent occurrence of the domestic violence in the society. The Act, *inter-alia*, provides for rights of the women to secure housing, the right of women to reside in a matrimonial house or shared household whether or not she has any title on such household empowering the Magistrate to secure the said right/s of a woman by passing an order.

15. The Act also provides for appointment of a Protection Officer for providing assistance to the woman/aggrieved person with respect to her medical examination/obtaining legal aid, safe shelter etc. fundamentally to assist the Magistrate in discharge of his functions under the Act. The Protection Officer has been put in the control and supervision of the Magistrate and had to perform the duties imposed on him by the Magistrate and by or under the Act.

16. Going by the scheme of the Act, the Protection Officer is an important entity entrusted with specific duties and bound to discharge the same in tune with the aims and objects of the Act. The Protection Officers, in essence, has to carry out the orders passed by the Magistrate under the Act. Though the Protection Officers ordinarily ought to have

no difficulty in carrying out the order passed by the Magistrate under the Act, yet in view of the situation having been noticed in the instant case, a Protection Officer nominated for carrying out the aims and objects of the Act, has failed in discharge of his statutory functions envisaged under the Act despite the clear cut orders having been passed by the Magistrate. The Protection Officer in the instant case has miserably failed to carry out the directions of the Magistrate, compelling the petitioner herein to approach this Court after having failed in her attempts to seek implementation of the orders from the Trial Magistrate.

**Guidelines :-**

- A. It shall neither be the duty of the Protection Officer nor his/her domain to undertake any mediation/conciliation once a Magistrate is seized of a domestic violence case. The Protection Officer has no mandate to undertake such an exercise.
- B. A Protection Officer is under a statutory duty to assist the Magistrate in discharge of his functions under the Act and to carry out directions/orders passed by such Magistrate under the Act as it is without making his own interpretation therein and in the event, a Protection Officer faces any difficulty in understanding purported spirit of a direction or faces any other difficulty thereto, such Protection Officer shall approach the concerned Magistrate for clarification.
- C. A nominated Protection Officer shall remain easily accessible to an aggrieved person for any immediate action the aggrieved person may require.

- D. A nominated Protection Officer need to be guided by imparting necessary training by the Government viz-a-viz the provisions of the Act and its application so that the purpose and objects of the Act are effectively fulfilled and achieved.
- E. The magistrate should as far as practicable ensure the presence of the concerned Protection Officer while passing orders interim orders under the provisions of the Act and make the Protection Officer to understand the nature of the order and the manner in which the same is to be executed. For example, the Protection Officer can get the order for monetary relief under section 20 complied with and executed in accordance with the procedure prescribed by the Code of Criminal Procedure, 1973. The Protection Officer should be made to understand his powers for effective implementation of the provisions of the Act as well as orders passed by the magistrate.

17. Registry to send a copy of this order to the Mission Director, Integrated Child Development Scheme/Director Social Welfare in the Union Territory of J&K and Ladakh and shall also circulate in all subordinate courts in the Union Territory of J&K and Ladakh.

**(JAVED IQBAL WANI)**  
**JUDGE**

**Jammu**  
25.05.2022.  
SUNIL-I

Whether the order is speaking ? : Yes  
Whether the order is reportable ? : Yes