

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRM(M) No.714/2022

Mohd. Hussain ...Petitioner(s)

Through:- Mr. Arshid Pervaiz Malik, Advocate

V/s

Shabnam Ara ...Respondent(s)

Through:-

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

JUDGMENT

1. The petitioner has challenged the application filed by the respondent against him under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the D.V.Act"), which is stated to be pending before the Court of Chief Judicial Magistrate, Rajouri (hereinafter referred to as "the Magistrate").

2. As per the case of the petitioner, he entered into contract of marriage with the respondent and after a few months, she left her matrimonial house along with household articles with the help of other family members and did not return to her matrimonial house. It is submitted that the petitioner has filed a complaint against the respondent, her father and brother and in this regard an FIR stands registered in Police Station, Darhal. According to the petitioner, in order to counter the said FIR, the respondent in connivance with her family members has filed the impugned application under Section 12 of the D.V.Act. An interim order under Section 23 of the

D.V.Act came to be passed by the learned Magistrate, whereby the petitioner was directed to pay interim maintenance of Rs.8000/- per month to the respondent. It has been submitted that the petitioner filed his detailed objections to the application filed by the respondent and when the learned Magistrate obtained domestic incident report from the Protection Officer, it was revealed that no incident of domestic violence had taken place against the respondent. It has further been submitted that after getting domestic incident report and recording statement of the respondent, ex-parte interim order was cancelled by the learned Magistrate in terms of his order dated 3rd June, 2022.

3. It is submitted that the impugned application filed by the respondent against the petitioner is abuse of the process of law, inasmuch as, no incident of domestic violence has even, *prima facie*, taken place against the respondent. It is submitted that once interim order of monetary compensation has been cancelled by the learned Magistrate, the impugned proceedings are liable to be quashed. It has been contended that because the respondent never resided with the petitioner, as such, there was no domestic relationship between the parties, as such, impugned proceedings are liable to be quashed.

4. I have heard learned counsel for the petitioners and perused the material on record.

5. The main ground urged by learned counsel for the petitioner while impugning the application filed by the respondent against the petitioner is

that incident of domestic violence has not taken place against the respondent, as such, the application deserves to be quashed.

6. So far as the proceedings under Section 12 of the D.V.Act are concerned, the same cannot be equated with lodging of a criminal complaint or initiation of prosecution and, therefore, a Magistrate, after obtaining 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 Magistrate would be well within his jurisdiction to cancel the interim order passed by him, if upon going through the response of the husband and his relatives, he finds that they have been unnecessarily roped in or no case for grant of interim order is made out. Since the proceedings under Section 12 of the D.V.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. I am supported in taking the aforesaid view by the Supreme Court in the case of Kamatchi v. Lakshmi Narayanan, 2022 SCC Online SC 466.

7. In view of the aforesaid discussion and the law on the subject, it is clear that the Magistrate has power to revoke the proceedings initiated against a person in terms of Section 12 of the D.V.Act, if and when the Magistrate finds that there is no ground to proceed against such person. Therefore, in the instant case it will be open to the petitioner to make an application before the learned Magistrate for dropping of the proceedings against him.

8. In the backdrop of aforesaid discussion and without going into merits of the contentions raised, it is provided that the petitioner may file an application before the learned Magistrate for dropping of the proceedings against him and in case the same is done, the learned Magistrate shall, after hearing both the parties, pass appropriate orders in accordance with law, within one months from the date such application is filed by the petitioner.

9. This petition shall stand disposed of in the above terms.

A copy of this order be sent to the learned Magistrate.

(Sanjay Dhar)
Judge

JAMMU.
20 .09.2022
Vinod.

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