

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CM(M) no. 117/2025

Reserved on: 09.05.2025

Pronounced on: 03.07.2025

Naveed Bashir Wani

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

Through: Mr. Muzaffar A. Bhat, Advocate

V/s

Varqa Bashir and others.

..... Respondent(s)

Through: Mr. Lone Altaf, Advocate

CORAM:

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL-JUDGE

J U D G E M E N T

1. This petition came to be filed by the petitioner under Article 227 of Constitution of India challenging the order dated 06.05.2024 passed by the Chief Judicial Magistrate, Ganderbal (for short "*Trial Court*") as well as the order dated 25.02.2025 by the Additional Sessions Judge, Ganderbal (*Appellate Court*) under Section 29 of Protection of Women's from Domestic Violence Act, (for short "*D.V.Act*").
2. The respondents have filed a petition under Section 12 of the said DV Act. They alongside that petition also filed an application seeking interim relief. The Trial court passed the order on 06.05.2024. Para 7 to 19 is taken note of:

“...Heard Ld. counsels for the parties. Ld. counsel for the aggrieved person apart from reiterating his application refers to annexures enclosed with the application including photographs to prima facie show the aggrieved person was mercilessly beaten by the respondents and also the fact that she is undergoing medical treatment. Ld. counsel for the aggrieved person contends that all

these incidents which are narrated in the application are supported with affidavit and these constitute acts of domestic violence as the respondents have made the life of aggrieved person miserable and she is not in a position to sustain all these shocks, and torture unmounted by the respondents. It is further stated that due to conduct of the respondents particularly respondent No. 1 the health condition of the aggrieved person has worsened and all the respondents particularly respondent No. 1 have remained very negligent in procuring proper treatment for the aggrieved person. It is further stated that right from the date of Nikkah with the respondent no. 1, all the family members repeatedly resorted to harassment, torture and extended illegal demands for dowry and property from the aggrieved person. Ld. counsel submits that this is a violence which has taken place within the precincts of matrimonial life and as such, this has entitled the aggrieved person to seek protection in terms of Section 23 of Domestic Violence Act. Ld. counsel emphasizes that interim order passed by the court is to the tune of Rs. 12,000/- but that amount is not sufficient to cater the requirement of aggrieved person and as such this amount may be enhanced to Rs. 50,000/- apart from the directing the respondent to pay an amount of Rs. 30,000/- as rentals for residential accommodation.

Mr. Tanveer, Ld. counsel for the aggrieved person also highlights the fact that the environment created by the respondents in such that he aggrieved person does not feel safe in the locality of the respondents and as such, he prays that residential alternative accommodation may be arranged at any place other than the vicinity of the respondents to ensure safety and well being of the aggrieved person. Highlighting the position of respondent no 1 & 4, who are stated to be serving in police department, Ld. counsel submits that they continue to extend threats to the aggrieved person and her family members.

Rebutting the objection raised by the other side that interim order has been passed on the assumption that the income of the respondent no.1 is Rs. 50.00 lacs from all sources, Ld., counsel submits that is an additional income but the basic recurring income of the respondent is Rs. 90,000/- per month which he draws as a constable. As far as the deductions projected by the other side from the salary of the concerned, it is contended by the Ld. counsel for aggrieved person that the aggrieved person cannot be subjected to sufferings because of luxuries or other needs which have been fulfilled by the respondent no. 1 from the salary. Ld. counsel submits that the first priority is maintenance and well-being of the aggrieved person who is dependent upon the respondent no. 1 and the deductions from the salary of the respondent no. 1 cannot be an excuse to deprive her from her maintenance which she is otherwise entitled and also the residential accommodation. Apart from that, Ld, counsel for the aggrieved person submits that the personal properties such as gold, copper and personal bearings, as demonstrated in the list of the application, have been retained by the respondent and thereby the respondents have deprived the aggrieved person of her right to such items which perse amounts to domestic violence.

On the other hand, Ld. counsel for the respondents firstly highlighted that this is a concocted and baseless case where the

other family members have been involved without any justification or cause. It is vehemently emphasized that there is no specific mention of any particular date of incident of domestic violence specifically. A general and omnibus allegations cannot be levelled by the aggrieved person against her husband and other family members. Ld. counsel emphasizes on the fact that it is requirement of law to specifically mention the incident of bearing, torture or other incidents so as to constitute the acts of domestic violence and random and general allegations such as “right from the date of inception nor all along her life” will not be sufficient to satisfy the requirement of law. It is further contended by the Ld. counsel for the respondents that since there is no such incidents of domestic violence which have taken place and as such, the aggrieved person could not specifically narrate with reference to date and time about such incidents. Moreover, there is no domestic incident report or any report lodged with the police reporting that respondents have resorted to any beating or any other criminal act. As far as the liability of the respondent no. 1 to maintain the aggrieved person is concerned, ld. counsel submits that the respondent no. 1 did never deny such maintenance to aggrieved person but the respondents submits that let there be a reasonable maintenance commensurate with the income of the respondent. It is pointed out that salary of the respondent is just Rs. 34,000/- out of which he has to maintain his father and mother. Apart from that, the respondent has liquidate personal consumption loan for which around 11,000/- EMI is being paid by him. It is strongly emphasized and reiterated by Ld. counsel for the respondent that the interim order passed by this court to the tune of Rs. 12,000/- is exorbitant on a higher scale and that order has been passed taking the income of the respondent no. 1 as Rs. 50.00 lacs and salary as Rs. 90,000/- but the same could not be proved prima facie by the aggrieved person and as such, this order may be modified and reasonable maintenance may be fixed. As far as residential accommodation is concerned, Ld. counsel submits that the aggrieved person is welcome in her matrimonial home and as such, there is no requirement of passing any order for providing alternate separate accommodation.

Considered the rival submissions of the parties and perused the file. As far as the factum of marriage is concerned that is not disputed and subsistence of the relation is also not disputed. The applicant has levelled certain allegations of cruelty, harassment, physical and mental torture which are denied by the respondents. The aggrieved person has pleaded that she has been removed from matrimonial home which the respondents still submit that they are ready to welcome the aggrieved person and they have never removed the aggrieved person from the matrimonial home. The aggrieved person submits that she has been kicked off from the matrimonial home while the respondent stated that for removal of gall bladder and post-surgical care the aggrieved person was allowed to stay with her parents and the respondents, on the requests of the parents of the aggrieved person, allowed her to stay but she herself never returned her matrimonial home. Both the parties have filed their affidavits of assets and liabilities. The aggrieved person has disclosed her qualification as B. Ed and PG and her monthly expenditure as Rs. 23, 500/-. The respondent has

shown his monthly income as Rs. 23,000/-. The respondent also shows this willingness to pay Rs. 2,500/- only after resumption. The respondent No. 1 also demonstrates in the affidavit of assets that an amount of Rs. 10.00 lacs is required for the marriage of respondent no. 5.

The basic question prima facie revolves around as to whether there has been a relationship. Both the parties admits this fact that there is no dispute so far as domestic relationship is concerned. The second important point is as to whether there has been domestic violence, this fact is dependent upon the evidence of the parties and at this stage, a general perusal of the application supported with an affidavit reveals that from the inception of the marriage on 15.09.2022, the respondents have resorted to incidents of domestic violence and this domestic violence right from 15.09.2022 continued to be perpetuated on her in different forms such as, physical and mental torture, assaulting on her, beating her and putting forward constant demands for dowry. These allegations are substantiated with an affidavit.

At this state, this court cannot return finding with respect to genuineness of ingenuineness of these allegations as these are subject matter of proof and taking all these allegations on their fact value domestic violence as defined in Section 3 of Domestic Violence Act is prima facie constituted. Therefore, this court proceeds to consider the reliefs as prayed in the instant interim application and with respect to which one application seeking modification of the order which has been filed by the respondents. The aggrieved person has referred income of the respondent no. 1 in two paragraphs such as in para No. 13 and 18 of the application. In para 13 the income of the respondent is stated as Rs. 90,000/- per month. There is no proof on the file to show that the monthly income of the respondent out of salary is Rs. 90,000/-, however, there is one pay slip for the month of May, 2022 which shows the total salary of the respondent no. 1 as on May, 2022 is Rs. 38,720/- and net pay is Rs. 34,171. It is not the case of the aggrieved person that the respondent carries any other business but states that the respondent is having monthly income from all sources which exceeds Rs. 50.00 lacs. These other sources are not disclosed either in affidavit of assets and liabilities or the basic application. Para 18 seems to be prima facie a general customary averment and at this stage, the same is not substantiated by any documentary proof much less to say any legally enforceable documents. The respondent not has in his affidavit of assets and liabilities disclosed that there is only one residential house which is in the name of respondent no. 2 and there is no property in his name. Even if it is assumed that the respondent no. 1 owns any moveable or immovable property unless the same fetches some recurring or static income these resources per se cannot be counted for the purpose of fixation of maintenance. If a person has property worth billions that does not mean that this property is giving a recurring income but it may be treated as an asset. In this case, there is a specific allegation that the respondent no. 1 is serving in a police department. This specific averment is admitted by the respondent no. 1. So, in the absence of any other proof to the contrary, the certificate which has been produced by the respondent no. 1 is assumed to be true whereby the gross salary of the respondent is

Rs. 38, 720/-. Ld. counsel has, during the course of arguments, submitted latest Last Pay Certificate (LPC) whereby the total gross salary of the respondent is Rs. 43, 874/- and his net salary as Rs. 39, 782/-. Besides that, there is a continuously deduction of an amount of Rs. 11,100/- towards loan against account No. 0169265300004782. The outstanding as on 14.07.2022 is Rs. 5,75, 602/-. The requirement of monthly expenses shown by the aggrieved person in her affidavit of assets and liabilities furnished by the respondent no. 1 is concerned against Serial No. 10 the monthly income shown is Rs. 23,000/- which, on consideration of income certificate, turns out to be false and as such, the income disclosed by the respondent no. 1 in affidavit of assets and liabilities is ignored and the income certificate of pay slip is considered for disposal of this application.

Persual of the file reveals that there is one more affidavit of assets and responsibilities filed on 25.03.2024 in which monthly income of the respondent no. 1 is Rs. 34,071/- which Ld. counsel for the respondent submits is the updated information.

Ld. Counsel for the aggrieved person submits that there is a shop of respondent no. 1 at Pattan and recurring income from the landed estate of the respondents. However, there is nothing on record to show that this income is of the respondent no. 1 or the same is of his family and moreover, the same is a factual question dependent upon the proof of the parties.

Considered the matter in its totality. Undoubtedly, the aggrieved person is residing at her parental home and she is undergoing medical treatment as well. The respondent no. 1 is ready to take the applicant back but the aggrieved person has certain reservation based on her apprehension and past incidents. The aggrieved person, at this stage, cannot be forced to resume matrimonial relations and live in the matrimonial home but however, if she willingly chooses to stay with her parents, when the respondents offers accommodation in the matrimonial home, she will not be entitled for such choice accommodation. However, if the aggrieved person chooses to stay at matrimonial home it shall always remain the responsibility of the respondent no. 1 to ensure that the congenial and safe environment is created for the aggrieved person and there is no harm caused or likely to be caused on the aggrieved person. The respondent undertakes that in case the aggrieved person resumes her relation with the respondent and stays at matrimonial home there will be no such harm or any threat to her life, property or honor and dignity. This court feels that as far as this accommodation part is concerned, the same is deferred till progress in the instant case is made by the leading evidence and a reasonable provision is made for shelter of the aggrieved person. In case after passing of this order the aggrieved person chooses to stay with the respondents she is at liberty to take any such decision and in that eventuality, it shall be the responsibility of the respondent no. 1 in particular and all the respondents in general to ensure that a cordial and congenial environment is provided to her for her safety and well being in the matrimonial home.

As far as the monthly maintenance as demanded by the aggrieved person is concerned this court feels that the aggrieved person has genuinely projected her monthly requirements for her basic

necessities including her medicine and medical expenses as well. There is no denial to the fact that she is not suffering from health issues requiring medical interventions. The respondent no. 1 is also not running away from his responsibilities but his sole prayer is that a reasonable maintenance in view of his income may be fixed. This court considers the pay slip furnished by the respondent generated from Government Website which shows the total salary of respondent as Rs. 43874/- and the same after deduction is Rs, 39, 782/-. The respondent no. 1 is a government servant earning regular salary and it is his duty to maintain the aggrieved person. Even if the respondent has many other responsibilities but those responsibilities cannot be projected to throttle way the responsibilities of his wife. The liquidation of the loan obtained by the respondent no. 1 cannot come in the way of granting reasonable maintenance to the aggrieved person and as such, this court does not deem it appropriate to allow such deduction from the income shown by the respondent no. 1. The respondent no. 1 is duty bound to deal with such liquidation out of his capacity and earnings. This court deems that an amount of Rs. 12,000/- which this court has fixed may not be sufficient to cater the requirement of the aggrieved person in view of her medical treatment and her daily requirements but her needs have to be fixed commensurate with the income of the respondent and as such, as an interim provision it shall be appropriate in case the same provision of Rs, 12,000/- is continued till disposal of the instant petition. Accordingly, the same is ordered that the respondent no. 1 shall continue to pay an amount of Rs. 12,000/- per month to the aggrieved person for her maintenance which includes her medical expenses for her medical treatment as well.

Before parting with it is apt to observe that this provision is an interim in its nature and at any point of time the parties can rethink and ponder over for amicable settlement.

In light of the above, both the application such as one filed in terms of Section 23 of Domestic Violence Act and other filed by the respondent seeking vacation of order are disposed off. Be made part of main file. Let the main application come up for further proceedings on 30.05.2024.”

3. The petitioner filed an appeal against the Trial Court order dated 06.05.2024, wherein it was submitted that a petition under D.V. Act was filed by respondent no.1 before the Trial court and along with the main petition an application for interim relief was also filed by respondent no.1 and that on the presentation of the petition on 27.06.2022, the trial court passed *ex parte* order directing appellant to pay monthly maintenance of Rs.12,000/- to respondent no.1. Thereafter, appellant/petitioner and proforma respondents were put to

notice and they appeared in the court and submitted objections to the main petition and same were treated as objections to application for grant of interim relief filed by the applicant therein and the appellant/petitioner also filed application seeking modification of order dated 27.06.2022. Both the applications were decided by the Trial court jointly by an order dated 06.05.2024, whereby the order of monthly maintenance of Rs.12,000/- was confirmed by the Trial court. The petitioner/appellant aggrieved of the order dated 06.05.2024 challenged its legality on the following grounds:

1. That the impugned order is bad in fact as well as in law.
2. That the Hon'ble Trial Court in confirming the order passed in ex-parte has traveled way beyond its jurisdiction.
3. That the allegation leveled in the basic application are vague and the income shown in the main petition is more than Rs. 50 Lacs and on that analogy Rs. 12,000/- were awarded at the time of presentation of application and once the appellant disclosed his income in his objections and affidavit filed thereof but the trial court instead of slashing down the maintenance the court has confirmed the ex-parte order.
4. That the allegations leveled in the main petition is vague and no specific allegation as to domestic violence has been mentioned in the complaint and once the appellant highlighted the same in his objections but the trial court never considered the objections filed by the appellant.
5. That the order has been passed in haste and without giving weightage to the objection and affidavit filed for assets and liabilities and the evidence on record.
6. That no domestic incident report is on file which ipso facto established the fact that there has been no act of domestic violence upon the respondent No. 01 by appellant or his family members and trial court has misinterpreted concept of maintenance under Section 125 Cr.PC with monitory relief recognized in DV Act.
7. That the appellant has been subjected to persistent and series of humiliation by the respondent No. 01.
8. That trial court has of its own returned facts upon the points which have never been pleaded and to qualify for any relief under DV Act the person coming before the court has to qualify to be an aggrieved person and in the instant case once the respondent No. 01 has not qualified to be aggrieved person no relief could have been granted in her favour.
9. That the Trial court has not taken into consideration the income of the appellant and his responsibility towards his family and expenses incurred upon his own self and has awarded monitory relief on higher side to respondent No. 01 ignoring the fact that

appellant has also availed loan facility from Bank concerned in order to meet out the marriage expenses.

4. In terms of the order impugned dated 25.02.205, the Appellate Court dismissed petitioner's appeal and upheld Trial Court order dated 06.05.2024. Both orders of Trial court and Appellate court are under challenge in this petition.
5. The counsel for the petitioner has stated that the courts below have failed to consider the minimal income of the petitioner, his financial liabilities towards his dependent parents and unmarried siblings and arbitrarily fixed an excessive maintenance amount of Rs.12,000/- causing undue hardship to petitioner. It is being also stated that both the Trial Court and Appellate Court have failed to appreciate that the D.V.Act is meant to protect women subjected to domestic violence and that in the present case respondent has voluntarily deserted the matrimonial home and has failed to establish any instance of violence. Petitioner is stated to have already filed a suit for restitution of conjugal rights which is pending adjudication before the competent court.
6. In the present case, petitioner is working in J&K Police Department. Whereas it is claimed that petitioner herein has salary of Rs.90,000/- per month, it is, nonetheless, contention of petitioner herein before the Trial Court that he has just salary of Rs.34,000/- out of which he has to maintain his father and mother. The Trial Court has rightly said that there is no dispute about the domestic relationship of parties. The Trial Court while passing order impugned has confined and restricted itself, and rightly so, to the grant of interim maintenance. The Trial Court while considering application of respondent for interim relief/

maintenance, has not taken into note the claim of respondent that petitioner herein has Rs.90,000/- income per month but has relied upon a Pay Salary Slip of petitioner herein of the month of May 2022 although there has been contention of aggrieved person/respondent herein before the Trial Court that petitioner has other sources of income as well. The Trial Court also took note of the Pay Slip generated from Government Website which showed his gross salary as Rs.43,874/- and consequently directed petitioner herein to pay Rs.12,000/- per month to aggrieved person/respondent.

7. The petitioner preferred an appeal against Trial Court order. Perusal of Appellate Court order reveals that it discussed the submissions of both the parties. The Appellate Court made a reference to the judgement of the Supreme Court passed in the case of Probha Tyagi Vs. Kamlesh Devi decided on 12.05.2022 reported in (2022) 8 SCC 90, that Section 12 does not make it mandatory for a Magistrate to consider Domestic Incident Report before passing any order under D. V. Act. Even in absence of DIR a Magistrate is empowered to pass *ex parte* or interim relief as well as final order under D. V. Act. Under Section 20 of the D.V. Act, an aggrieved wife is entitled to monetary relief, including maintenance, to ensure that she does not suffer from deprivation or financial distress.
8. The Appellate Court also made reference to Rajnesh v. Neha (2020) 3 SCC 794, wherein it was observed that while determining maintenance, the standard of living of the husband, his earning potential, and his capacity to provide for the wife must be assessed. It has been also said by the Appellate Court that aggrieved person/respondent no.1 cannot

be left to struggle for survival merely because the appellant/petitioner claims financial liabilities, like repaying of loan. He has a wife and he is liable to take care of her. The law recognizes that while the appellant/petitioner may have personal financial commitments, those cannot override his primary duty to maintain his wife.

9. It has also been argument of petitioner before the Appellate Court that interim maintenance should have been slashed down upon production of the salary slip, does not hold ground, has been rightly observed and held by the Appellate because of the fact that the court is required to balance the needs of the wife with the financial capacity of the husband.
10. Both Trial Court and Appellate Court have discussed in detail all aspects of the matter concerning interim relief/maintenance under and in terms of provisions of D.V. Act, which do not call for any interference, and therefore, instant petition is liable to be dismissed.
11. Hence the instant petition is without any merit and is accordingly **dismissed.**

(VINOD CHATTERJI KOUL)
JUDGE

SRINAGAR

03.07.2025

“Imtiyaz”

Whether the order is reportable: Yes/No