

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

**CM(M) No.292/2023**

... Petitioner(s)

Through: -Mr.A.H.Naik, Sr.Advocate  
with Mr. Zia, Advocate.

Vs.

**AND OTHERS**

...Respondent(s)

Through: -Mr.G.N.Shaheen, Advocate  
Mr. Asif Ali, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

**JUDGMENT**  
**Dt:22.05.2024**

1. The petitioner has invoked supervisory jurisdiction of this Court under Article 227 of the Constitution for quashing of order dated 03.10.2023, passed by learned Additional Special Mobile Magistrate, Kulgam, whereby the proceedings under The Protection of Women From Domestic Violence Act (hereinafter for short "the D.V.Act") filed by respondent No.1 against the petitioner, a direction has been passed against him asking him to provide well habitable room alongwith kitchen and bathroom in the shared household or to provide a residential accommodation to respondent No.1 in the same locality.

2. It appears that marriage between the petitioner and respondent No.1 took place somewhere in November, 2016 and out of said wedlock one female child was born. The relationship between the petitioner and respondent No.1 did not remain cordial, as a result of which they started residing separately. According to the petitioner he pronounced *talaq* upon respondent No.1 and thereafter he re-married. It also appears that respondent No.1 filed application under Section 125 Cr.P.C against the petitioner before the Court of Chief Judicial Magistrate Kulgam. In the said proceedings the learned Magistrate vide order dated 25.08.2021 passed an order of interim maintenance, whereby an amount of Rs.3500/- per month was awarded in favour of respondent No.1 and against the petitioner and further sum of Rs.3500/- per month was awarded as interim maintenance in favour of minor child. Thereafter, respondent No.1 filed petition under Section 12 of the D.V.Act before the learned trial Magistrate in which respondent No.1 also sought interim monetary compensation and she further sought interim order against the petitioner in accordance with the provisions contained in Section 23 of the said Act. The learned trial Magistrate by virtue of the impugned order declined to pass an interim order of monetary compensation in favour of respondent No.1, but a direction has been issued to the petitioner to provide shelter to respondent No.1 in the shared household or in alternative to make arrangements for

providing residential accommodation to respondent No.1 in the same locality.

3. The petitioner has challenged impugned order primarily on the ground that the learned trial court has not taken into account the ratio laid down by the Supreme Court in the case of *Rajnesh vs. Neha and another*, reported in 2021(2) SCC 324, inasmuch as, the fact that respondent No.1 has already been awarded interim maintenance in proceedings under Section 125 Cr.P.C has not been taken into account by the learned trial Magistrate while passing the impugned order. It has been further contended that respondent No.1 has sufficient source of income which is reflected from the transactions of her bank account and, therefore, the learned trial Magistrate could not have passed the impugned order against the petitioner.

4. Respondent No.1 has refuted the contentions raised by the petitioner. It has been contended that impugned order passed by the trial Magistrate is appealable in nature and without exhausting the remedy of appeal the petitioner has rushed to this Court and invoked its supervisory jurisdiction, which is not permissible in law. It has been further contended that the learned trial Court has taken into account the order regarding grant of interim maintenance in favour of respondent No.1 in proceedings under Section 125 Cr.P.C while passing the impugned order.

5. I have heard learned counsel for the parties and perused the record of the case.

6. The impugned order has been passed by the learned trial Court in exercise of its powers under Section 23 of the D.V.Act. Section 29 of the said Act provides for an appeal to the Court of Sessions from an order made by the Magistrate. Therefore, the impugned order passed by the learned trial Magistrate is appealable in nature. Admittedly, the petitioner has not availed the remedy of statutory appeal and instead the instant petition has been filed directly invoking the supervisory jurisdiction of this Court.

7. The Supreme Court in the case of *Shalini Shyam Shetty and another vs. Rajendra Shankar Patil*, reported in 2010 Vol. 8 SCC 329 has clearly laid down that High Court in exercise of its powers under Article 227 of the Constitution cannot act as a Court of appeal over the orders of the Court subordinate to it. The Supreme Court has further clarified that in case where an alternate statutory mode of redressal has been provided, that would operate as a restraint on exercise of this power by the High Court.

8. In view of the aforesaid position of the law, it is not open to the petitioner to invoke the supervisory jurisdiction of this Court without following the statutory remedy of appeal against the impugned order. The petition is liable to be dismissed on this ground alone.

9. Apart from the above, even on merits the petitioner does not have any case. His contention that learned trial Magistrate has not taken into account the ratio laid down by the Supreme Court in

*Rajnish vs Neha and anr* (Supra), is also without any substance. In the said judgment one of the principles that has been laid down is that the Court has to take into consideration the maintenance already awarded in the previous proceedings and grant an adjustment or set off of the said amount. In the instant case learned trial Magistrate has, in para (4) of the impugned order, clearly stated that order as to maintenance is not being passed because proceedings under Section 125 of Cr.P.C are going on between the parties and the respondent No.1 is receiving interim maintenance. The contention of the petitioner in this regard is, therefore, contrary to the records. The learned trial court was well within its jurisdiction to pass the order to provide share household to respondent No.1. In terms of Section 17 of the D.V.Act, every woman in a domestic relationship has a right to shared household. Therefore, respondent No.1 could not have been denied this statutory right.

10. For the foregoing reasons, I do not find any ground to interfere with the impugned order passed by the learned trial Magistrate. The petition lacks merit and is **dismissed** accordingly. Interim order shall stand vacated.

(SANJAY DHAR)  
JUDGE

**SRINAGAR**

22.05.2024

*Sarveeda Nissar*

*Whether the order is speaking: Yes/No*

*Whether the order is reportable: Yes/No*