

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

CRM(M) No. 704/2024

Reserved on 06.12.2024  
Pronounced on 13.12.2024

1. Mohammad Yasin Khan  
Aged about 44 years  
S/o Mohammad Ibrahim Khan  
R/o Ladakhi House,  
Rajbagh, Srinagar
2. Wajida Tabasum  
Aged about 46 Years  
W/o Faizan Jeelani  
S/o Mohammad Ibrahim Khan  
R/o Street 338, Ward 16,  
Humhama, Srinagar;
3. Bilquees Banu  
Aged about 69 Years  
W/o Mohammad Ibrahim Khan  
R/o Ladakhi House,  
Rajbagh, Srinagar.
4. Mohammad Ibrahim Khan  
Aged about 78 Years  
S/o Mohammad Hussain Khan  
R/o Ladakhi House,  
Rajbagh, Srinagar.

..... Appellant/petitioner(s)

Through: -  
*Mr. Salih Pirzada, Advocate*  
V/s

Nazia Iqbal  
D/o Mohammad Iqbal Bijal  
R/o Skitpo Guest House  
Upper Tukcha Road Zangsti Leh  
At present Mehjoor Nagar,  
Srinagar

..... Respondent(s)

Through: -

*Mr. Jahangir Iqbal Ganai, Sr. Advocate with Mr. Adil, Advocate*

**CORAM:**

HON'BLE MS JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

**(ORDER)**

06.12.2024

- I.** Instant petition has been filed under Section 528 BNSS, 2023 and Article 227 of the Constitution of India by the petitioners to seek

quashment of the application filed by the respondent under Section 12 of the Domestic Violence Act and the proceedings initiated thereupon besides the order dated 16.11.2024, passed in the said application by the learned Chief Judicial Magistrate, Srinagar, on the grounds taken in the memo of petition.

2. This Court while considering the matter in terms of order dated 27.11.2024, directed the Registrar General, High Court of J&K and Ladakh to confirm legal/rule position with respect to the dress code of the advocates in terms of a claimed right that a woman advocate can appear with her face covered and can turn down the request of the court to remove her face cover on the pretext of it being her fundamental right as an advocate to appear in the said state of attire.

3. Report has been submitted by the Registrar Judicial on 05.12.2024 wherein the dress code of the advocates for appearing in the Courts is explicitly detailed out in Chapter IV (Part VI) [Rules under Section 49(1) (gg) of the Advocates Act] of the Bar Council of India Rules. The dress code for lady Advocates in the aforementioned chapter is provided as under:

- a) *“Black full sleeve jacket or blouse, white collar, stiff or soft, with white bands and Advocates’ Gowns. White blouse, with or without collar, with white bands and with a black open breasted coat.*
- b) *Sarees or long skirts (white or black or any mellow or subdued colour without any print or design) or flares (white, black or black striped or gray) or Punjabi dress, Churidar-Kurta or Shalwar-Kurta with or without Dupatta (white or black) or traditional dress with black coat and bands.*
- c) *Wearing of Advocates’ gown shall be optional except when appearing in the Supreme Court or in High Courts.*
- d) *Except in Supreme Court and High Courts during summer, wearing of black coat is not mandatory.”*

4. It is nowhere stated in the rules that any such attire is permissible for appearing before this Court. Learned counsel who is representing petitioner

Ms. Syed Ainain Qadiri, D/o Syed Tasaduq Hussain Qadri R/O Riyazat Teng, Tehsil Khanyar, district Srinagar has chosen not to appear before this Court today, therefore, this Court does not require to go into this aspect of the matter any further.

**Brief facts**

- 5.** The petitioner No. 1, is the husband, petitioner No. 2 is the sister-in-law, petitioner No. 3 is mother-in-law and petitioner No. 4, is the father-in-law of the respondent, who are stated to have been falsely implicated in the impugned proceedings, on the allegations of having committed domestic violence against the respondent.
- 6.** It is stated that pursuant to the application under Section 12, filed by the respondent, praying therein, *inter alia*, a monthly maintenance of Rs. 50,000/-. The learned Magistrate was pleased to grant interim relief in favour of respondent vide order dated 16.11.2024, whereby petitioner No. 1, was directed to pay monthly maintenance of Rs. 25,000/- in favour of the respondent and the SHO concerned was directed to take bonds to the tune of Rs. 30,000/- from each of the rest of the petitioners for violating or committing any act of domestic violence. The learned Magistrate has also directed that petitioner No. 1, shall not alienate the land measuring 08 Kanals and 17 Marlas bearing Khasra No. 1083, situated at Ranbipur Thiksay Leh till next date. The protection officer was directed to investigate the matter and to file a detailed domestic incident report.
- 7.** It is stated that the matrimonial relations between petitioner No. 1, and respondent got strained which ultimately resulted in issuing of legal

notice to the respondent by petitioner No. 1, however, as no response to the legal notice dated 30.04.2024, was received, the petitioner No. 1, was constrained to send 2<sup>nd</sup> legal notice to respondent for commencement of Divorce proceedings as per Muslim Law and issued the First Talaq Notice, as the respondent had irretrievably broken down the nuptial knot and made her to understand that continuing the marriage with her will serve no purpose at all. The petitioner No. 1, after sending First Talaq Notice to respondent, again sent the legal notice dated 25.11.2024, accompanying the second Talaq notice as per Muslim law.

8. It is stated that the petition/application filed by the respondent under Section 12 of the Domestic Violence Act does not show any domestic violence on behalf of the petitioners, more particularly, on behalf of petitioners 2 to 4. There is not even an iota of domestic violence being spelt out in the complaint against the respondents to wreck vengeance against petitioner No. 1. It is stated that the respondent has never stayed at petitioner No. 1's parental house, therefore, there is no question of domestic violence at all. The vague allegations pertaining to rest of the petitioners were denied as not constituting sufficient basis for the impugned application being taken cognizance of by the learned Magistrate without there being any basis.
9. The learned Magistrate vide order dated 16.11.2024, passed an interim order, by virtue of which the SHO, concerned has been directed to take bonds to the tune of Rs. 30,000/- from each of the rest of the petitioners for not violating the order of the domestic violence Act.

10. Heard learned counsel for the parties, perused the material on record and considered the submissions.
11. Learned counsel for the petitioners submits that the proceedings initiated by the trial Court against the petitioners is bad in law in view of the ratio laid down by the Madras High Court in case titled *M. Amanullah and Ors. Vs. Bharatkathbegam and Anr.*, bearing CRP(MD) No. 833/2024 and CMP(MD) Nos., 4647 and 4648 of 2024.
12. The petitioners have challenged order dated 16.11.2024, passed by Chief Judicial Magistrate Srinagar, for short “the trial Court, whereby the learned trial Court has decided application of the respondent filed under Section 12 of The Protection of Women from Domestic Violence Act, 2005 for short as “D.V. Act”).
13. It appears that the respondent had filed a proceeding under D.V. Act against the petitioners herein and in the said proceeding she also filed application under Section 12 of D.V. Act, seeking interim monetary relief and other reliefs. On 16.11.2024, the learned trial Court passed an ex-parte order directing the petitioners herein to restrain from harassing and torturing the respondent herein and creating any domestic violence in any manner whatsoever and additionally the petitioners have been directed to pay an amount of Rs. 25,000/- as monthly maintenance towards the respondent herein for the time being. The trial Court has further ordered the SHO concerned along with CDPO concerned to visit the place of petitioners, read out the order and make them understand directions of the Court. The SHO has further been directed to take bonds to the tune of Rs. 30,000/- from each of the petitioners, so as not to violate the Court order. Furthermore, the petitioner No. 1 has been directed not to alienate the land measuring 08

Kanals and 17 Marlas bearing Khasra No. 1083 situated at Ranbirpur Thiksay, Leh till next date.

14. Notice, waived by Mr. Jahangir Iqbal Ganai, learned Sr. Counsel for the respondent. He has raised a preliminary objection to the maintainability of the instant petition on the ground that the petitioners ought to have approached the trial Court with an application for modification, vacation of the order in the first instance and if at all the petitioners were interested to question the impugned order before a higher forum than they were required to file an appeal before the Court of Sessions as the order passed by the trial Court 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. In support of his submissions, learned senior counsel has referred to and relied upon the Judgments passed by this Court in case titled as *Aamir Hussain Teeli Vs. Samee Jan and Ors.* CM(M) No. 292/2023, *Syed Zubair Shah and Ors. Vs. Farhat Rashid Sheikh* , CRMC No. 105/2018 (O&M) as also by the Madras High Court passed in case titled as *Arul Daniel and Ors. Vs. Suganya* 2022 SCC Online Mad 5435.
15. At the very outset it needs to be observed that during the course of submissions the learned counsel for the petitioners stated that the petition may be treated to have been filed under Article 227 of the Constitution of India. The petition in hand do not, even in absence of the prayer made by the learned counsel for the petitioners, appear to attract the proceedings under Section 528 BNSS, but the provisions of Article 227 of the Constitution of India as the dispute in the instant petition is admittedly of civil nature. Therefore, the petition is treated to have been filed in terms of Article 227 of the Constitution of India.



16. The perusal of Section 29 of D.V. Act, reveals that any order passed by a Magistrate on an application filed under Section 12 of D.V. Act is appealable before the Court of Session within a period of 30 days from the date on which the order is passed by a Magistrate. Thus any order made by a Magistrate under Section 12 of D.V. Act is appealable under Section 29 of D.V. Act.
17. The petitioner without filing the appeal under Section 29 of the D.V. Act has straightway filed the instant petition under Article 227 of the Constitution. A similar view has been taken by this Court in case titled *Mrs. Syed Asma Balki Vs. Mudasir Shibzada*, bearing CrI No. 09/2023.
18. The remedy of appeal is available to the petitioners against the impugned order, which has admittedly not been availed and without having availed the said remedy, the petitioners could not have rushed to this Court to file proceedings either under Section 482 Cr.P.C or Article 227 of the Constitution. Even otherwise, the jurisdiction vested with this Court in terms of the Article 227 of the Constitution is supervisory in nature and is required to be exercised only when the action of the subordinate Court is shown to be coming within the ambit of the principles laid down by the Supreme Court in case titled *Shalini Shyam Shetty and Anr. vs. Rajendra Shankar Patil*, reported as (2010) 8 SCC 329.
19. The instant petition in the circumstances is held to be not maintainable and is **dismissed**, accordingly.

(MOKSHA KHAJURIA KAZMI)  
JUDGE

**SRINAGAR**

13.12.2024

“Mohammad Yasin Dar”

Whether the Judgment is reportable: Yes/No.

Whether the Judgment is speaking: Yes/No.