

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

CRM(M) 96/2024

AFROZ AHMAD MIR

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

Through: Mr. Adil Farooq, Advocate

Vs.

SHAHIDA PARVEEN AND ORS.

...Respondent(s)

Through: Mr. Zaffar Qadri, Advocate

CORAM:

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL-JUDGE

ORDER

02.06.2025

1. This petition has been filed as a petition styled under “Article 227 of Constitution of India as well as 482 Cr. P.C.”, challenging the order passed by the Trial court, viz. 2nd Additional Munsiff/Judicial Magistrate 1st Class, Srinagar, on 27.06.2022 in an Application preferred by petitioner herein before the Trial Court for clarification/modification of the order dated 16.11.2020, as well as the order passed by the Appellate Court, viz. 1st Additional Sessions Judge, Srinagar, in an Appeal filed by petitioner herein under and in terms of provisions of Section 29 of Protection of Women’s from Domestic Violence Act (“the Act” for short) and setting-aside the same.
2. Respondents herein have filed a petition under Section 12 of the Act. Alongside that, had also been filed an application by respondents seeking interim relief, in which the Trial Court passed order dated 16.11.2020, whereby respondents/accused persons, which includes

petitioner herein, to restrain from entering into the dwelling house of respondents. For modification/clarification of the said order, petitioner made an application, which came to be decided by order impugned dated 27.06.2022. The Trial Court held that order dated 16.11.2020 need not be modified as it being clear and unambiguous, did not need to be clarified. However, it was mentioned by the Trial Court that the modification to the extent of non-applicant being restrained from entering into the dwelling house shall be subject to the finding of the civil court in the civil suit, if it is pending and that order dated 16.11.2020 shall remain operative till final disposal of main petition.

3. The petitioner thereafter filed an Appeal against the Trial Court order under Section 29 of D. V. Act on 23.07.2023. Though it was initial order in respect of which appeal ought to have been filed within a period of 30 days, yet petitioner did not challenge the same in appeal, but sought its clarification/modification by filing an application on 21.02.2021, which was rejected on 27.06.2022. Instead of filing the said application for clarification/modification, he ought to have availed the remedy of appeal to be filed within a period of 30 days in terms of Section 29 of D. V. Act. Even application seeking clarification/modification has been filed when the period for filing the appeal had already expired and after rejection of the application seeking clarification/modification on 27.06.2022, petitioner challenged the orders before the Appellate Court on 23.07.2023, i.e. after the period of limitation of 30 days had already expired.
4. Appellate court taking into account the aforesaid facts into consideration, rejected the appeal and it is against the said order that

this petition under Article 227 of Constitution of India and Section 482 Cr.P.C. has been filed.

5. Section 29 of the D. V. Act provides for the remedy of appeal against the orders issued by the Magistrate to the court of Sessions within 30 days from the date on which the order made by the Magistrate is served on the aggrieved person or respondents, as case may be, whichever is later. Here in the instant case, the order of which petitioner was aggrieved was passed on 06.11.2020, therefore, he ought to have filed appeal against the said order within 30 days as provided under Section 29 of D. V. Act. Complete procedure is given in the Act. The limitation for filing appeal is provided under the Act which is 30 days and period would be governed by the Act.
6. Petitioner, as is by his own showing evident, instead of challenging the Trial Court order within a period of limitation as provided under Section 29 of the Act by filing an appeal, waited and filed an application for clarification/modification of the order of the Trial Court on 21.02.2021, i.e., after a period of about 90 days, which is when the limitation for filing the appeal had already expired. The said application came to be decided on 27.06.2022. It was after rejection of the said application, that petitioner approached the Appellate Court under Section 29 of the Act on 23.07.2023, though the period of limitation started from the date when the order was passed on 16.11.2022. However, in case the petitioners' contention is accepted and the date, viz. 27.06.2022, is taken to be the date of passing of the order, even then appeal ought to have been filed within one month, that has expired on 26.07.2022. Petitioner had further delayed and filed the appeal on

23.072023, with no explanation. Even otherwise, the provisions for appeal are governed by Section 29 D. V. Act and this section itself provides the limitation. The period could not be extended beyond that.

7. The Appellate court has in detail considered the submissions and taken into consideration the provisions of appeal and the limitation provided for that and has come to the conclusion:

“...On the other hand Id. Counsel for the respondent no. 1 has argued that the present appeal is not maintainable because of the facts that the order dated 27.06.2022 passed by trial impugned herein, is only clarification order of order dated 16.11.2020, but the factual matrix of case is that the actual order has been passed on 16.11.2020 whereby the appellant have been restrained to enter into dwellinghouse has been passed after objections were filed and arguments of both the counsels were heard by the trial court.

During argument the Id. Counsel for the respondents has stated that appellant has concealed the material fact that the order passed by civil court on 13.08.2020 has already been vacated by the Court of 3rd Additional Munsiff on 17.03.2023. further the relation between appellant and respondents has become so ugly and un-tolerable for the respondents as the respondents herein were brutally attacked by appellant and consequently a FIR under Section 354, 427 & 506 IPC vide FIR no, 216/2020 was registered in P/S Baghat Srinagar and subsequently chargesheet was produced before learned Judicial Magistrate 2nd Additional Munsiff, Srinagar and it is submitted that in case the appellant is allowed to enter the house that will made the life of the respondents miserable as the aggrieved person have threat of torture by the appellant which is continuing.

The Hon’ble High Court of Judicature of Madras R. R. P. (PD). No. 1824 of 2022 and C.M.P. No. 9350 of 2022 [V. Anusha VS B. Krisna] held as under:

From para 11 to para 15 of the judgment reads as follows:

“11. But it is a completely different scenario if one party unfurls unruly and aggressive attitude. In such an unreasonably adverse situation, the petitioner and her children cannot be compelled to live under constant fear and insecurity. In similar such circumstances, the courts have granted direction to remove the husband from the matrimonial home. In this context, it is worthwhile to refer the judgment of the Hon’ble Supreme Court rendered in the case of Samir Vidyasagar Bhardwaj Vs. Nandita Samir Bhardwaj reported in (2017) 14 SCC 583. In the said case, it is held in paragraph No. 10 as under:

“10. Section 19(1)(b) of the Protection of Women from Domestic Violence Act provides that the Court may direct the appellant husband to remove himself from the shared household. The order passed under Section 19 of the Act seeks to maintain continued and undisturbed residence of the aggrieved party within the shared

household and in pursuance of the same it directs the respondent to execute a bond with or without surety or secure an alternate accommodation for the aggrieved party and pay the rent for the same and restrains the respondent from or renouncing property rights or valuable security of the aggrieved party.”

12. If the removal of the husband from home alone is the only way to ensure domestic peace, the courts need to pass such orders irrespective of the fact whether the respondent has or has not another accommodation of his own. If the husband has got an alternate accommodation, it is fine that he can be asked to accommodate himself in that alternate premises. If he does not have any other accommodation, it is upto him to secure an alternate accommodation. In this case, the petitioner has filed a memo stating the details about the possibility of accommodating the respondent in the alternate accommodation possessed by him. But the same was not considered by the court below.

13. However, the learned District Judge has arrived at a conclusion that the wife should be given with the protection order. In that case, the order given by the learned trial judge should be a workable and practical one. Allowing the respondent to be at the same home, but directing him that he should not disturb the other inmates of the home is something impractical. A relief for a person who fears about an impending atom bomb, would be just to remove the bomb from his/her vicinity. The learned District Judge has made an observation that there is no cohabitation between the couple for five years. That means the marriage is nothing short of an utter failure. In such context of the facts, it will be very difficult to maintain peace in the family, if the respondent's unruly and violent attitude is not contained by any workable order.

14. The protection orders are normally given to ensure the peaceful movement of a woman within her domestic sphere when a woman fears the presence of her husband and screams, the Courts cannot be indifferent by just directing the husband that he should not harass the wife, but by allowing him to reside in the same house.

15. When a couple lives under one roof, the conduct of one party to the other is always vital in defining the respect and recognition the family would get from others. If the domestic peace is disturbed due to unruly act of one party, namely the husband, there need not be any hesitation in giving the practical enforcement for the protection order by removing the husband from the house. In such circumstances, I feel the order of the court below needs modification.”

11. It is admitted position that the order of the civil court relied upon by the appellant has already been vacated. The appeal in fact has been filed against the order dated 16.11.2020, as the appellants have sought clarification of this order which clarification application has been dismissed by the trial court and in the garb of challenging the clarification order passed on 27.07.2022. the appellants have in fact challenged the order dated 16.11.2020. The appeal has been filed beyond the period of limitation without there being any mention regarding the condonation of delay in filing the appeal and in order to

cover this delay the appellant has moved the application before the trial court for modification of the order which has not been allowed and in the garb of that application the applicant has challenged the order passed on 16.11.2020 and it appears that it has been done only to cover the limitation without explaining the reasons for delay.”

8. No illegality can be found in the order impugned passed by the Appellate court while rejecting the appeal. There is no question to interfere with the order so passed by the Appellate court.

9. **Dismissed** accordingly along with connected CrIM(s). Interim direction, if any, shall stand vacated.

SRINAGAR
02.06.2025
“Imtiyaz”

