S. No.43
Regular Cause List

INTHE HIGH COURT 0F JAMMU & KASHMIR AND LADAKH AT SRINAGAR

CrlM(2032/2026) IN
CRM(M) 895/2026
CrlM(2033/2026)

ASIF AHMAD MIR AND OTHERS

…Appellant(s)/Petitioner(s)

Through: Mr. Bilal A Khan, Advocate

Vs.

MEHVISH AJAZ AND ANOTHER

...Respondent(s)

Through:

CORAM:
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER
28.10.2026

1. Ld. counsel for the petitioners, while advancing his submissions, fairly conceded that the order impugned in the present petition has been passed by the Trial Court in exercise of powers under Section 23 of the Protection of Women from Domestic Violence Act, 2005 (for short, the *D.V. Act*), and is appealable under Section 29 thereof. He, however, sought to justify invocation of the extraordinary jurisdiction of this Court on the ground that an earlier order of similar nature, passed by the Trial Court, had already been set aside by the Appellate Court, with a direction to pass a fresh order in accordance with law.

2. The submission so advanced does not commend acceptance. Merely because an earlier order was set aside by the Appellate Court and the matter remitted to the Trial Court for fresh consideration, the petitioners cannot claim an indefeasible right to bypass the statutory remedy of appeal against the subsequent order. Any grievance

touching upon the legality, propriety or correctness of the impugned order, including the alleged non-compliance with the directions issued by the Appellate Court in the earlier round of litigation, can well be agitated before the competent Appellate Court. It is well settled that where the statute provides a specific and efficacious remedy, the extraordinary jurisdiction of this Court ought not ordinarily to be invoked in substitution thereof, unless exceptional circumstances warrant such interference. No such exceptional circumstance has been demonstrated in the present case.

3. When confronted with the aforesaid legal position, the counsel for the petitioners fairly submitted that the period prescribed for preferring an appeal may have already elapsed. He, accordingly, submitted that the petitioners would be willing to avail themselves of the statutory appellate remedy, provided appropriate protection is extended to them against the bar of limitation.

4. Having considered the submissions advanced and the statutory scheme governing the controversy, this Court is of the considered view that the petitioners ought to be relegated to the remedy of appeal available under Section 29 of the D.V. Act. The mere fact that the petitioners have approached this Court instead of the statutory Appellate Court would not, by itself, justify examination of the impugned order on merits in the present proceedings. At the same time, regard being had to the circumstances in which the present petition has been prosecuted and the concession made by the counsel at the Bar, the ends of justice would be adequately served by

permitting the petitioners to approach the competent Appellate Court with appropriate protection in the matter of limitation.

5. Accordingly, the present petition is **dismissed as not pressed**, with liberty to the petitioners to assail the impugned order by availing the statutory remedy of appeal under Section 29 of the D.V. Act. It is further directed that, in the event the petitioners prefer such appeal within a period of **fifteen days from the date of this order**, the question of limitation shall not stand in the way of its entertainment, and the Appellate Court shall consider and decide the appeal on its own merits, in accordance with law, after affording due opportunity of hearing to the parties.

6. It is made clear that this Court has not expressed any opinion on the merits of the controversy or the legality and correctness of the impugned order. All contentions available to the parties, including those arising out of the earlier appellate directions, are left open to be urged before the Appellate Court, which shall consider the same independently and uninfluenced by any observation made herein.

7. **Disposed of as dismissed not pressed**, along with all connected CrlM(s), if any, in the aforesaid terms.

(SANJAY PARIHAR)
JUDGE

Srinagar
28.10.2026
"Imtiyaz"

Imtiyaz Ul Gani
I attest to the accuracy and
authenticity of this document

30.10.2026 11:22