S. No. 17

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

CRM(M) No. 955/2026 CrlM No. 2171/2026

MOHAMMAD IQBAL BHAT …Petitioner/Appellant(s)

Through: Mr. Bilal Ahmad Khan, Advocate.

Vs.

SHAREEFA BANO ...Respondent(s)

Through:

CORAM:

HON'BLE MR JUSTICE SHAHZAD AZEEM, JUDGE

O R D E R

11.11.2026

01. The petitioner has questioned the order dated 29.02.2024 passed by the learned Special Mobile Magistrate, Budgam, ['for short 'the Magistrate'] in case titled *"Shareefa Bano and Ors., Vs. Mohammad Iqbal Bhat"* in File No.DV.Act/48/2023 in an application under Section 12 of Protection of Women from Domestic Violence Act, 2005 [for short 'the Act of 2005'] and further questioned the legality of order dated 05.02.2025 passed by the court of learned Additional District Judge, Budgam, [for short 'the Appellate Court'] in an appeal filed by the petitioner against the order dated 29.02.2024, whereby the application for condonation of delay in filing the appeal was dismissed for non-prosecution.

02. It appears that the respondent has approached the learned Magistrate under the provisions of the Act of 2005 seeking protection, accommodation and maintenance, on the allegations that the petitioner has subjected her to physical violence and also taken away shelter, inasmuch as failed to provide maintenance.

03. From the perusal of the impugned order dated 29.02.2024 passed by the learned Magistrate, it appears that though the petitioner was put to notice, but he did not appear, therefore, in view of the statement of the

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witnesses of the petitioner (wife), the learned Magistrate has directed the petitioner to provide safe and secure accommodation, besides the maintenance amount of ₹12,000/- to the applicant/respondent herein and ₹10,000/- and ₹5,000/- each to the children per month.

04. Aggrieved of the order dated 29.02.2024, the petitioner filed an application before the court of learned Additional District Judge Budgam seeking condonation of delay in filing the appeal, but again the petitioner found continuously absent and same was dismissed for non-prosecution.

05. Now, the petitioner has invoked the extraordinary jurisdiction of this Court under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) throwing challenge to the initial order passed by the learned Magistrate on 29.02.2024 and the order passed by the Appellate Court dated 05.02.2025.

06. The principal ground of challenge to the impugned order, is that the learned Magistrate has passed the order of protection, shelter and maintenance without providing an opportunity of being heard and further the learned counsel for the petitioner contended that the Appellate Court also passed the impugned order, whereby the appeal was dismissed without hearing the petitioner.

07. Indisputably, any order passed in violation of rules of natural justice does not sustain the scrutiny of law, but in the case on hand, it appears that the learned Magistrate has passed the impugned order of shelter, maintenance and protection after providing due opportunity to the petitioner, which he did not avail. Under these circumstances, the *ex parte* order came to be passed.

08. The conduct of the petitioner can further be gauged from the fact that though the appeal was preferred against the order passed by the trial Magistrate, but again the petitioner did not prosecute the same, which was dismissed in default for non-prosecution.

09. Once it is found from the reading of the impugned orders that though ample opportunities were given to the petitioner, but he failed to cause appearance before the Courts below continuously, in that event the

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extraordinary remedy cannot be invoked, rather it was expected of the petitioner to file an appropriate application before the Appellate Court for recall of the order dated 05.02.2025.

10. The conduct of the petitioner is clear and speaks of his dilly dally tactics and any indulgence from this Court would amount to granting approval of the same, thereby amounting to the abuse of the process of law.

11. For the foregoing reasons, no ground is made out for interference. Accordingly, the present petition is **dismissed.** However, in case, the petitioner chooses to file an application before the Appellate Court for recall of order dated 05.02.2025, this order shall not come in his way and the same shall be considered by the Appellate Court on its own merits in accordance with law. It is further provided that while considering the question of delay, if any, in preferring the application for recall of order dated 05.02.2025, the Appellate Court shall take into consideration the pendency of the proceedings before this Court also.

HIGH COURT
JAMMU & KASHMIR AND LADAKH

(SHAHZAD AZEEM)
JUDGE

SRINAGAR
11.11.2026
Ishaq

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