

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

Reserved on: 21.07.2025

Pronounced on: 25.07.2025

CM(M) No.287/2022

MUBASHIR AHMAD WANI

...PETITIONER(S)

Through: - Mr. Aswad Attar, Advocate.

Vs.

MEELAZ MUBASHIR & ANOTHER

...RESPONDENT(S)

Through: - Mr. Rizwan-ul-Zaman Bhat, Advocate.

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

JUDGMENT

1) The petitioner, through the medium of present petition, has challenged order dated 10.10.2022, passed by the learned Principal Sessions Judge, Anantnag, whereby, while exercising his appellate jurisdiction under Section 29 of the Protection of Women from Domestic Violence Act, 2005 [for short "the DV Act"], the learned Sessions Judge, has set aside order dated 02.02.2021 passed by the learned Special Mobile Magistrate, Anantnag (hereinafter referred to as "the trial Magistrate") dismissing the petition filed by the respondents under Section 26 of the DV Act.

2) It appears that respondent No.1, who happens to be the minor daughter and respondent No.2, who happens to be the wife of the petitioner, had filed a petition under Section 488 of the J&K Cr. P. C against the petitioner before the learned

trial Magistrate. The said petition came to be decided by the learned trial Magistrate in terms of order dated 02.06.2018, whereby the petitioner was directed to pay monthly maintenance to the tune of Rs.3000/ to respondent No.1 and Rs.5000/ to respondent No.2.

3) It appears that the respondents filed a petition for enforcement of the aforesaid order of maintenance before the learned trial Magistrate in accordance with the provisions contained in sub-section (3) of Section 488 of J&K Cr. P. C. During pendency of the said petition, the respondents filed an application invoking the provisions of Section 26 of the DV Act and sought order of residence in terms of Section 19 of the said Act. The said application came to be dismissed by the learned trial Magistrate in terms of order dated 02.02.2021 by holding that the provisions contained in Section 26 of the DV Act pre-suppose pendency of other proceedings and that an application under Section 19 of the DV Act would lie only if a petition under Section 12 of the said Act is pending before the Court.

4) The aforesaid order came to be challenged by the respondents by invoking the appellate jurisdiction of the learned Principal Sessions Judge, Anantnag, in terms of Section 29 of the DV Act. The learned Sessions Judge, while allowing the appeal of the respondents, passed impugned

order dated 10.10.2022 and set aside the order passed by the learned trial Magistrate by observing that the provisions contained in Section 26 of the DV Act give an option to an aggrieved person to seek relief in any other proceedings pending before a civil court, a family court or a criminal court affecting the parties.

5) The petitioner has challenged the impugned order passed by the learned Sessions Judge by urging two contentions. First, that Section 26 of the DV Act is only an enabling provision for grant of relief contemplated under Sections 18 to 22 of the DV Act and that the said provision does not vest power with the Court to grant the actual reliefs under the DV Act in a proceeding other than a proceeding under Section 12 of the DV Act. Second, that because order dated 02.02.2021 was passed by the learned trial Magistrate in proceedings under Section 488 of the J&K Cr. P. C, as such, the same is not appealable in nature in terms of Section 29 of the DV Act. Thus, the learned Sessions Judge was not within his jurisdiction to exercise his appellate power. It has further been contended that the execution proceedings cannot be interpreted to mean 'legal proceedings' within the meaning of Section 26 of the DV Act, as such, the petition of the respondents under Section 19 of the DV Act in execution proceedings is not maintainable.

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

7) The first question that is required to be answered is as to whether an application under Section 19 of the DV Act by taking aid of the provisions contained in Section 26 of the said Act is maintainable on behalf of an aggrieved person in a pending proceeding between the parties under Section 488 of the J&K Cr. P. C, which is in *pari-materia* with Section 125 of the Central Cr. P. C. In this regard, the provisions contained in Section 26 of the DV Act are required to be noticed which read as under:

26.Relief in other suits and legal proceedings. (1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

8) From a perusal of the aforesaid provision, it appears that an aggrieved person has the option of obtaining a relief available under Sections 18, 19, 20, 21 and 22 against the

respondents in any legal proceeding before a civil court, family court or a criminal court. It is also clear that such relief can be sought by the aggrieved person in addition to and along and other relief that the aggrieved person may seek in any such suit or legal proceeding before a civil or criminal court. Thus, if a legal proceeding before a civil court, family court or a criminal court affecting the aggrieved person and the respondent is pending, the aggrieved person, by taking aid of the provisions contained in Section 26(1) of the DV Act, has a right to seek relief as contemplated under Sections 18 to 22 of the DV Act and this relief shall be in addition to and along with other relief that such aggrieved person may be seeking in such legal proceedings.

9) The Supreme Court has, in the case of **Hiral P. Harsora v. Kusum Narottamdas Harsora**, (2016) 10 SCC 165, considered the ambit and scope of Section 26 of the DV Act. Para (25) of the said judgment is relevant to the context and the same is reproduced as under:

“25. When we come to Section 26 of the Act, the sweep of the Act is such that all the innovative reliefs available under Sections 18 to 22 may also be sought in any legal proceeding before a civil court, family court or criminal court affecting the aggrieved person and the respondent. The proceeding in the civil court, family court or criminal court may well include female members of a family, and reliefs sought in those legal proceedings would not be restricted by the definition of “respondent” in the 2005 Act. Thus, an invidious discrimination will result, depending

upon whether the aggrieved person chooses to institute proceedings under the 2005 Act or chooses to add to the reliefs available in either a pending proceeding or a later proceeding in a civil court, family court or criminal court. It is clear that there is no intelligible differentia between a proceeding initiated under the 2005 Act and proceeding initiated in other fora under other Acts, in which the self-same reliefs grantable under this Act, which are restricted to an adult male person, are grantable by the other fora also against female members of a family...”

10) In **Vaishali Abhimanyu Joshi vs. Nanasaheb Gopal Joshi**, (2017) 14 SCC 373, the Supreme Court has, while interpreting the provisions contained in Section 26 of the DV Act, held that the said provision has to be interpreted in a manner so as to effectuate the very purpose and object of the Act. The Court went on to hold that unless determination of claim by an aggrieved person seeking any order as contemplated by the DV Act is expressly barred from consideration by a civil court, the Court shall be loath to read in bar in consideration of any such claim in any legal proceeding before the civil court.

11) Again, in **Satish Chander Ahuja v. Sneha Ahuja**, (2021) 1 SCC 414, the Supreme Court, after noticing the provisions contained in Section 26 of the DV Act, observed as under:

“100. As per Section 26, any relief available under Sections 18, 19, 20, 21 and 22 of the 2005 Act may also be sought in any legal proceeding, before a civil court, family court or a criminal court being the aggrieved person. Thus, the defendant is entitled to claim relief under Section 19 in suit, which has been

filed by the plaintiff. Section 26 empowers the aggrieved person to claim above relief in civil courts also. In the present suit, it was the defence of the defendant that the house being the shared household, she is entitled to reside in the house as per Section 17(1) of the 2005 Act.”

12) In **Shaurabh Kumar Tripathi vs. Vidhi Rawal**, 2025 SCC OnLine SC 1158, the Supreme Court, while interpreting the provisions contained in Section 26 of the DV Act, held as under:

“24.1 Therefore, in a given case, in any legal proceedings pending before a Civil Court or Family Court affecting the aggrieved person, the reliefs under Sections 18 to 22 can be sought. Similarly, in a Criminal Court other than the Courts of Judicial Magistrate of the First Class and Metropolitan Magistrate, reliefs under Sections 18 to 22 can be sought. For example, in proceedings before a Court of Session, such reliefs can be sought provided the proceeding affects the aggrieved person. We must note here that Section 26 does not confer jurisdiction on Courts other than the Courts mentioned in Section 27 to entertain an application under Section 12 of the DV Act, 2005. It only enables the Courts mentioned therein to grant the reliefs under Sections 18 to 22 in the pending legal proceedings.”

13) In view of the foregoing analysis of law on the subject, it is clear that Section 26 of the DV Act is a special provision which vests power with a civil court, family court or a criminal court to grant relief under Sections 18 to 22 of the DV Act. While Section 18 empowers the court to pass protection orders of the categories enumerated therein, Section 19 empowers the court to pass residence orders in favour of an aggrieved person who is subjected to domestic

violence. Similarly, Section 20 empowers the court to grant monetary reliefs whereas Section 21 vests power with the Magistrate to pass custody orders and Section 22 gives power to the Magistrate to pass compensation orders. The reliefs, which fall under the aforesaid categories, can be granted in favour of an aggrieved person in any legal proceeding before a civil court, family court or a criminal court affecting the aggrieved person and the respondent by taking aid of the provisions contained in Section 26 of the DV Act.

14) The expression 'legal proceedings' has to be given a liberal interpretation so as to achieve the objective of the DV Act which is to protect the rights of the women who are victims of violence of any kind occurring within the family. Thus, even a proceeding in the nature of Section 488(3) of the J&K Cr. P. C would qualify to be a 'legal proceeding' as contemplated under Section 26 of the DV Act. Therefore, the petition under Section 19 of the DV Act filed by the respondents in the proceedings under Section 488(3) of the J&K Cr. P. C, that were pending before the learned trial Magistrate, would definitely fall within the scope of Section 26 of the DV Act and, as such, the same could not have been dismissed by the learned trial Magistrate. The learned Magistrate by dismissing the application of the respondents

has failed to exercise his jurisdiction and the order passed by him is grossly erroneous resulting in failure of justice.

15) The second question that comes up for determination is as to whether the order passed by the learned trial Magistrate declining to entertain the petition under Section 19 of the DV Act filed by the respondents could not have been assailed by the respondents under Section 29 of the DV Act. In this regard, the contention of learned counsel for the petitioner that such an order could not have been assailed in accordance with the procedure prescribed under the DV Act, appears to be well-founded. This is so, because the reliefs under Section 18 to 22 of the DV Act that are sought by an aggrieved person in pending 'legal proceedings' with the aid of Section 26 of the DV Act, align with the category 'pending proceedings'. Thus, if an aggrieved person files an application to seek relief of the nature as contemplated under Sections 18 to 22 of the DV Act in a pending proceeding under Section 488 of J&K Cr. P. C/125 of Central Cr. P. C, an order passed on such application by the Magistrate/Family court would be an adjunct to the relief under Section 488 of J&K Cr. P. C/125 Central Cr. P. C and, therefore, such an order can be assailed in the manner as provided under the Code of Criminal Procedure or the Family

Courts Act, as the case may be, and not in the manner as provided under the DV Act.

16) In view of the aforesaid legal analysis, it is clear that order dated 02.02.2021 passed by the learned trial Magistrate could have been assailed by the respondents by filing a revision petition in terms of Section 435 of the J&K Cr. P. C, which is in *peri-materia* with Section 397 of Central Cr. P. C, before the learned Sessions Judge and not by way of an appeal under Section 29 of the DV Act.

17) However, in the present case, the appellate forum under the DV Act and the revisional forum under the Criminal Procedure Code is one and the same viz. the Sessions Court. Setting aside the impugned order passed by the learned Sessions Judge, Anantnag, and remanding the case to him for a fresh decision for exercising his revisional jurisdiction, would be a superfluous formality because this Court has already reached a conclusion that the order passed by the learned trial Magistrate, dismissing the application of the respondents under Section 19 of the DV Act, is grossly erroneous which has resulted in failure of justice, as the learned trial Magistrate has failed to exercise the jurisdiction vested with him.

18) In the face of aforesaid peculiar facts and circumstances of the case, the ultimate conclusion arrived

at by the learned Principal Sessions Judge, Anantnag, in setting aside the order of the learned trial Magistrate, is required to be upheld with the observation that it is was not open to the learned Sessions Judge to entertain an appeal under Section 29 of the DV Act against the order of the learned trial Magistrate.

19) Accordingly, while holding that the Principal Sessions Judge, Anantnag, did not have jurisdiction to exercise its appellate power under Section 29 of the DV Act, order dated 02.02.2021 passed by the learned trial Magistrate is set aside and the learned Magistrate is directed to decide the application of the respondents under Section 19 of the DV Act in accordance with law.

20) Copies of this order be sent to both the courts below for information and compliance.

(Sanjay Dhar)
Judge

Srinagar,
25.07.2025
“Bhat Altaf”

Whether the JUDGMENT is reportable: YES