

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

CM(M) No.244/2024

TARIQ WALI

...PETITIONER(S)

Through: Mr. Javaid Ahmad Pararray, Advocate.

Vs.

BENISH AIJAZ AND ANR.

...RESPONDENT(S)

Through: Mr. Z. A. Shah, Sr. Advocate, with
Mr. Hanan, Advocate.

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

ORDER(ORAL)

16.05.2025

1. The petitioner, through the medium of present petition, has challenged award dated 17.04.2021 passed by the Lok Adalat, as also order dated 27.06.2024 passed in execution petition bearing No.45 of 2023, which is stated to be pending before the Court of Chief Judicial Magistrate, Shopian.

2. According to the petitioner, respondent No.1 happens to be his wife whereas respondent No.2 happens to be his minor daughter. It has been submitted that due to matrimonial discord between petitioner and respondent No.1, the respondents filed a petition under Section 12 of Protection of Women from Domestic Violence Act (hereinafter referred to as "the DV Act") as also a petition under Section

125 of the Cr. P. C, besides lodging police cases against the petitioner. During pendency of the aforesaid proceedings, a compromise was arrived at between the parties before the Lok Adalat and on the basis of said compromise, an award came to be passed by the Lok Adalat on 17.04.2021. The terms of the compromise are reproduced as under:

- I. That the respondent Tariq Wali shall henceforth treat the petitioner with all love and affection and will take all care of the petitioners. The respondent shall maintain them properly and shall not desert them in any way. The petitioner Benish Aijaz shall also act and behave like an obedient and faithful Muslim wife of the respondent and shall not leave the house of the respondent unnecessarily without seeking leave from the respondent.
- II. That the respondent shall maintain an account in the name of his minor daughter namely Aliza and at the 1st instance within a period of one week from today shall deposit an amount of Rs. 10.00 lacs in the name of minor Aliza, which cannot be withdrawn by any of the party, however, same shall be withdrawn by the said Aliza at the time when she attains majority. The respondent shall till then go on adding some amount in the said account of minor regularly.
- III. That the respondent shall pay an amount of Rs. 40,000/- per month to the petitioner, Benish Aijaz, against a proper receipt acknowledging the said payment, as their monthly expenses which the petitioners can enjoy in the manner she chooses from time to time.
- IV. That the parties shall in no case leave each other alone and shall enjoy a decent and justified married life together, while taking care of aspirations of each other. The respondent shall remain more cautious to fulfil the obligations of petitioners and shall spend good time with them, which they otherwise also deserve. The respondent shall also ensure taking of that job only which doesn't require late night shifts.
- V. That the respondent shall provide reasonable accommodation to the petitioners at Srinagar, where the petitioners along with respondent

can live decently and the respondent shall not force the petitioners to live at any other place.

- VI. That the respondent shall return all the belongings of petitioner within a period of one month from today. The respondent shall further take care of minor daughter Aliza and will bear the expenses of her education and other necessities properly.
- VII. That the sister of the respondent namely Farhat, her husband Mr. Parvaiz and mother of the respondent shall not in any manner interfere in the marital life of parties hereto.
- VIII. That without going into the merits of the case, the interim maintenance amount granted by the hon'ble Court of Addl. Special Mobile Magistrate at Shopian vide its order dated 30/09/2019. The respondent shall deposit arrears thereof in the account of minor Aliza within a period of two months positively from the date of the execution of the instant compromise. The amount so deposited in the name of minor shall be non-refundable and non-transferable till she attains the age of majority.
- IX. That the parties hereto shall not discuss past marital issues and create a vicious environment by quoting the legal battle which is pending in-between the parties nor will discuss the past issues in any manner.
- X. That all the cases which are pending in-between the parties under section 488 (125 New) of Cr.PC and another under Domestic Violence Act shall be deemed to have been settled as per present compromise. A copy of the instant compromise shall be annexed with another file under 488 (125 New) pending adjudication before the court of Special Mobile Magistrate, Shopian and as such the said file will also be decided in consideration with the compromise filed in case titled Benish Aijaz & another V/s Tariq Wali. Nothing shall remain pending adjudication before this hon'ble court, the parties are also bound to withdraw the transfer applications titled Tariq Wali Vs. Benish Aijaz & another pending adjudication before the Hon'ble High Court.
- XI. That the respondent shall not leave the jurisdiction of J&K UT for carrying on his employment and shall ensure doing a job within the UT.
- XII. That the parties have therefore resolved all disputes and settled all claims and shall

henceforth live together as husband and wife with love and affection. The petitioner will perform all her marital obligations towards respondent and so will he fulfil all his marital obligations towards him.

- XIII. That breach of any condition by a party shall be viewed seriously and the erring party shall be dealt severely.

3. According to the petitioner, initially respondent No.1 resumed her matrimonial ties with him pursuant to the aforesaid compromise but she left his company along with her minor daughter in the month of March, 2022. It has been submitted that thereafter respondent No.1 filed another petition under Section 12 of the DV Act and a petition under Section 125 of the Cr. P. C before the learned Additional Mobile Magistrate, Shopian. In the petition under Section 12 of the DV Act, the petitioner was directed to make a monthly payment of Rs.25,000/ to the respondents whereas in the petition under Section 125 of the Cr. P. C, he was directed to pay a monthly maintenance of Rs.20,000/ to the respondents. Initially, these cases are stated to have been transferred to the Court of Chief Judicial Magistrate, Srinagar, whereafter the petition under Section 125 of the Cr. P. C has been assigned to the 4th Additional Sessions Judge/Family Court, Srinagar, and the same is pending disposal before the said Court.

4. It has been submitted that besides aforesaid two petitions, the respondents have also filed an application for

execution of award dated 17.04.2021 passed by the Lok Adalat, before the Chief Judicial Magistrate, Shopian, alleging therein that the petitioner has committed breach of the terms and conditions of the compromise and have sought recovery of maintenance amount of Rs.40,000/ per month in terms of the award of the Lok Adalat. It has been submitted that the learned Executing Court has proceeded to take cognizance of the matter and has effected recovery of Rs.5.65 lacs from the petitioner. Besides this, vide impugned order dated 27.06.2024, the learned Chief Judicial Magistrate has issued levy warrant for an amount of Rs.2.40 lacs against the petitioner.

5. The petitioner has challenged the impugned order dated 27.06.2024 on the grounds that once the respondents have already filed petitions under Section 12 of the DV Act and Section 125 of the Cr. P. C, in which orders for payment of monthly maintenance amounting to Rs.45,000/ per month in all have been passed, the compromise and the award dated 17.04.2021 have been rendered redundant. It has been further contended that it was not open to the learned Executing Court to entertain the execution petition in respect of award dated 17.04.2021 once the respondents had alleged that there was breach of terms of the compromise.

6. The respondents have filed their reply to the petition, in which it has been submitted that under the award of the Lok Adalat, the petitioner is required to pay the amount mentioned therein and so far as Rs.25,000/ and Rs.20,000/ payable by the petitioner to the respondents is concerned, the order to pay the said amount has been passed in different set of proceedings which are not subject matter of the order passed by the Executing Court. It has been contended that once the petitioner had agreed to pay monthly maintenance of Rs.40,000/ to the respondents before the Lok Adalat, he has no choice but to make the payment of the said amount to the respondents. It has also been contended that the terms of the compromise have been violated by the petitioner. It has been further contended that while awarding interim compensation in favour of the respondents in DV Act proceedings and petition under Section 125 of the Cr. P. C, it has been clearly indicated by the concerned court that the same is subject to set off against the payment made under the execution proceedings.

7. I have heard learned counsel for the parties, perused record of the case.

8. As is clear from the pleadings of the parties, the respondents had filed proceedings under Section 12 of the DV Act and under Section 125 of the Cr. P. C in the first

instance before the Court Special Mobile Magistrate, Shopian. The said proceedings, it seems, were filed in the year 2019. A compromise was arrived at between the parties on 17.04.2021, pursuant where to award dated 17.04.2021 came to be passed by the Lok Adalat. Besides other terms and conditions agreed upon by the parties, the petitioner was required to pay monthly maintenance of Rs.40,000/ to respondent No.1.

9. The record further shows that in the year 2022, the respondents again moved the Court of learned Additional Special Mobile Magistrate, Shopian, by filing petitions under Section 12 of DV Act and under Section 125 of Cr. P. C. In both these proceedings, interim orders came to be passed by the said Court. Vide order dated 30.01.2023, interim monetary compensation of Rs.25,000/ per month was granted in favour of the respondents against the petitioner in DV Act proceedings and it was directed that the amount which is being received by the respondents in any execution petition shall be set off. In the petition under Section 125 of the Cr. P. C, again an order came to be passed on 30.01.2023 by the same Court awarding a monthly interim maintenance of Rs.20,000/ in favour of the respondents and it was provided that any amount which is being received by the respondents in any execution petition shall be set off.

10. It seems that both the aforesaid petitions filed by the respondents in the second round after the compromise of the earlier two petitions, were transferred to the Court of Chief Judicial Magistrate, Srinagar, whereafter the petition under Section 125 of the Cr. P. C was transferred to the Court of 4th Additional District Judge/Family Court, Srinagar. It also appears that the respondents have filed an execution petition on 25.11.2023 before the Court of Chief Judicial Magistrate, Shopian, seeking execution of the award of the Lok Adalat passed on 17.04.2021, in which the impugned order dated 27.06.2024 came to be passed by the said Court whereby levy warrant to the tune of Rs.2.40 lacs has been issued against the petitioner and the SHO concerned has been directed to produce the petitioner before the Court.

11. From the aforesaid sequence of events, it becomes clear that in the first round of litigation initiated by the respondents against the petitioner, a compromise was arrived at between the parties before the Lok Adalat which culminated in passing of award dated 17.04.2021, whereby, *inter alia*, the petitioner was required to pay Rs.40,000/ per month to the respondents. It seems that when the terms of the compromise could not be adhered to, the respondents filed a second round of petitions under the provisions of DV

Act and Cr. P. C against the petitioner in which fresh orders of maintenance came to be passed against the petitioner.

12. The question that arises for determination is as to whether award dated 17.04.2021, in the face of subsequent round of litigation, is executable. While the petitioner alleges that it is respondent No.1 who committed breach of the conditions of the compromise, on the other hand respondent No.1 alleges that it is the petitioner who committed breach of these conditions. Once respondent No.1 has taken resort to filing of fresh petitions under the provisions of DV Act and Cr. P. C against the petitioner and even obtained orders of interim maintenance in her favour, she cannot seek recovery of maintenance on the basis of compromise arrived at by the parties before the Lok Adalat in similar proceedings initiated in the first round of litigation. If respondent No.1 was interested in getting the award of the Lok Adalat executed as against the petitioner, then she should not have initiated a fresh round of litigation against the petitioner by filing petitions under Section 12 of the DV Act and Section 125 of the Cr. P. C.

13. If at all the petitioner had resiled from the terms of the compromise dated 17.04.2021, the option available with the respondents was either to get the award of the Lok Adalat executed or to seek revival of the earlier petitions filed by

them under Section 12 of the DV Act and Section 125 of the Cr. P. C. The respondents are not only seeking execution of the award passed by the Lok Adalat on the basis of the compromise arrived at by the parties in the earlier petitions but they have also resorted to fresh round of litigation against the petitioner by filing petitions under Section 12 of the DV Act and Section 125 of the Cr. P. C. Both these proceedings i.e. execution of the award passed by the Lok Adalat on the basis of the compromise, which, admittedly, has been observed in breach by the parties, as also the fresh petitions filed under Section 12 of the DV Act and Section 125 of the Cr. P. C cannot be continued by the respondents.

14. In view of the above, order dated 27.06.2024 passed by the learned Chief Judicial Magistrate, Shopian, and the execution proceedings initiated by the respondents against the petitioner before the said Court for executing award dated 17.04.2021 passed by the Lok Adalat, are quashed. However, the petitioner shall continue to pay the monthly maintenance as well as interim monetary compensation to the respondents in accordance with the orders dated 30.01.2023 passed by the Additional Special Mobile Magistrate, Shopian, in the proceedings under Section 12 of the DV Act and Section 125 of the Cr. P. C, including the

arears, if any, that may have accumulated against the petitioner.

15. Copies of this order be sent to the Courts of learned Chief Judicial Magistrate, Shopian, Chief Judicial Magistrate Srinagar and Family Court (4th Additional Sessions Judge) Srinagar, for information.

(Sanjay Dhar)
Judge

Srinagar
16.05.2025
“Bhat Altaf-Secy”

Whether the order is reportable: Yes/No

