

(2018) 11 J&K CK 0072

In the Jammu And Kashmir High Court

Case No : Misc Criminal Cases (CRMC) No. 417 Of 2018, 01 Of 2018

**?Yasir Yousuf Shalla And Others @APPELLANT@Hash Kulsum Jan And A
Nother**

Date of Decision : 03-11-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 202
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 406, 506
Jammu And Kashmir Protection Of Women From Domestic Violence Act, 2010 —
Section 12
Code Of Criminal Procedure, 1898 — Section 561, 561A

Citation : (2018) 11 J&K CK 0072

Hon'ble Judges : Rashid Ali Dar, J

Bench : Single Bench

Advocate : A.R. Dar

Final Decision : Dismissed

Judgement

1. In this petition, filed under Section 561-A of the Code of Criminal Procedure Code (Cr. P.C.), the petitioners are seeking quashment of the order dated 31.07.2018 and 09.10.2018, passed in complaint under J&K Protection of Women from Domestic Violence Act, 2010, alongwith all proceedings emanating therefrom, passed by the Court of learned Judicial Magistrate (1st Additional Munsiff), Srinagar, in case titled 'Kulsum Jan v. Yasir Shalla and Others'. He also seeks quashment of the order dated 17.09.2018 passed by the learned Judicial Magistrate (Sub Registrar), Srinagar, in complaint titled "Kulsum Jan v. Yasir Yousuf".

2. The facts, as these stem out from the instant case from the perusal of the petition are that the petitioner No. 1 was married to respondent No. 1 in the year October, 2016. The marriage could not run smoothly due to various reasons. Thereafter it was unanimously resolved that the parties will separate and marriage will be dissolved on agreement to this extent was also executed. Before this agreement could be implemented, the respondent No. 1 approached SHO Police Station, Women's Wing Rambagh, Srinagar, where the petitioner appeared

and presented the documents. However, the respondent No. 1 did not choose to appear before the Police Station and the complaint filed by her was dismissed. It is further submitted that respondent No. 1 filed a complaint before learned Magistrate (Sub Registrar), Srinagar, under Section 406 and 506 RPC and obtain an order under Section 202 Cr. PC, police concerned seized the articles from petitioner's house and released in favour of the respondent No. 1. The respondent No. 1 yet filed another compliant before the learned Judicial Magistrate (1st Additional Munsiff) Srinagar, under J&K Protection of Women's from Domestic Violence Act, 2010, against the petitioners and obtained orders dated 31.07.2018 and 09.10.2018.

3. Aggrieved by the aforesaid orders, the petitioners have filed the instant petition before this Court on the grounds, inter alia that in terms of provisions of Section 12 of J&K Protection of Women from Domestic Violence Act, 2010, the learned Magistrate cannot pass any order until he receives the report of domestic violence from protection officer or the service provider. The proviso to Section 12 of J&K Protection of Women from Domestic Violence Act, 2010, provides that "Before passing any order on such application, the Magistrate shall take into consideration any domestic incident/report received by him from the protection officer or the service provider", but the learned Magistrate passed the impugned order without obtaining any report regarding any incident of domestic violence. It has stated that the respondent No. 1 initially approached to SHO Police Station, Women's Wing, Rambagh, Srinagar, with different facts, when she did not succeed there, subsequently filed another complaint before the learned Magistrate (Sub Registrar), Srinagar, with different facts and obtained an order under Section 202 Cr. PC and received all the articles and other belongings. She again approached the learned Magistrate (1st Additional Munsiff), Srinagar, under J&K Protection of Women from Domestic Violence Act 2010, where she has pleaded false, fictitious and concocted allegations against the petitioners with malafide intentions only to drag the petitioners in the Court which amounts to abuse of the process of law and needs indulgence of this court.

4. The petitioners have annexed with the petition, copy of complaint filed by the respondent No. 1 herein, before the SHO Women's Police Station Rambagh, Srinagar; Copy of order dated 17.09.2018, passed by the Judicial Magistrate, 1st Class (Sub Registrar), Srinagar, whereby police concerned was directed to furnish the list of articles released in favour of the respondent No. 1 herein; Copy of order dated 31.07.2018, passed by the 1st Additional Munsiff, JMIC, Srinagar, whereby the petitioner No. 1 herein was directed to pay interim maintenance of Rs. 3000/- in favour of each respondent (total Rs. 6000/-) to the respondents herein from the date of application and copy of order dated 09.10.2018.

5. Ongoing through the order passed by the learned trial Magistrate on 31.07.2018 and 09.10.2018, it appears that the learned Magistrate has directed the petitioner No. 1 to pay interim maintenance of Rs. 3000/- each, in total, Rs. 6000/- to other side from date of application. The other side has been kept at

liberty to approach the Court for variance, alteration or modification in case he is aggrieved by the said order. The order dated 09.10.2018 recites petitioner herein being present before the said Court and has undertaken to produce all the respondents on the next date of hearing.

6. In the light of case as projected in the petition, it is clear that the learned Magistrate has not framed any final opinion regarding the entitlement of the respondents herein to the relief claimed in terms of Section 12 of J&K Protection of Women from Domestic Violence Act. He has left petitioners herein liberty to approach and to convince him in case ground was available for variance or discharge of this rule.

It need a mention that the power conferred on the High Court under Section 561 Cr. PC is to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid in the Section itself. By its very nature, exercise of powers under said section is the exception and not a rule. The High Court could not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in a complaint presented before the learned Criminal Court. The High Court has to be alive to situation that it has not to function as a Court appeal or revision in exercise of its powers under this Section. The learned trial Magistrate as noted above is yet to return his conclusive finding regarding the entitlement of the respondents to the relief claimed in complaint as the said Magistrate has to hear the other side, on an inquiry initiated in this regard contemplated the provision of the said Act. The facts put forth by the petitioners are half backed and it would be premature at this stage to frame an opinion as to the nature of the allegations as sounded in the petition, consequent upon which the inherent powers are prayed be exercised. The order passed by the Judicial Magistrate, 1st Class (Sub Registrar), Srinagar, in complaint filed by the respondent No. 1, whereby articles recited therein have been ordered to be given custody to respondent No. 1 on superdnama, is evidently an interlocutory one, which the said Magistrate may on being approached revisit, i.e., if ground is made out for the same.

7. Whatever has been stated by the learned counsel at Bar in the light of material placed before me, I, as such, do not find any ground made at this stage for entertaining the petition and or staying the proceedings before the learned 1st Additional Munsiff, Judicial Magistrate, Srinagar. The petition of the petitioners merits dismissal and is, accordingly, dismissed in limini.

8. The petitioners, however, would be at liberty to avail appropriate remedy in case on hearing before Magistrate they find there is scope for it.