

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

CRM(M) No. 376/2023

CrIM No. 904/2023

Aamir Javid Waza and ors.

...Petitioner(s)

Through: Mr. Mohammd Iqbal Jan, Advocate

**Vs.**

Gousia Jan and Ors.

...Respondent(s)

Through: None

**CORAM:**

**HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE**

**ORDER**

**02.08.2023**

**Oral**

1. Through the medium of the instant petition filed under Section 482 Cr.PC, the petitioners have thrown challenge to order dated 08.04.2023 passed by Judicial Magistrate Tral (hereinafter the Magistrate) and order dated 27.07.2023 passed by Principal Sessions Judge, Pulwama (hereinafter for short the Appellate Court)
2. According to the counsel for the petitioners, the respondents herein filed an application under the provisions of Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short the Act), before the Magistrate, seeking multiple reliefs against the present petitioners and that after the Magistrate summoned the respondents petitioners herein objections to the application came to be filed by them opposing the application interalia raising a preliminary objection as to the territorial jurisdiction of the Magistrate to entertain and try the application.

3. According to the counsel, the Magistrate after hearing the parties rejected the said objection qua territorial jurisdiction raised by the petitioners herein, aggrieved whereof the petitioners herein filed an appeal before the Appellate Court which Court dismissed the said appeal.
4. Counsel for the petitioners while making his submissions would refer to the provisions of Section 27 of the Act of 2005 and contend that the Judicial Magistrate assumes jurisdiction to entertain and adjudicate upon application filed under the Act only if the person aggrieved permanently or temporary resides within his local limits or carries on business or is employed. Learned counsel would submit that the complainant respondent herein is a permanent resident of Mattan Anantnag, and in order to harass the petitioners herein instituted the application under the Act of 2005 before the Judicial Magistrate Tral reflecting her residence therein at present at Tral. Learned counsel would further contend that there was no material before the Magistrate which could have weighed with him for rejecting the plea of jurisdiction raised by the petitioners herein. Learned counsel would further contend that the Appellate Court as well fell in error while upholding the order of the Magistrate.

**Heard learned counsel for the petitioners and perused the record.**

5. A bare perusal of the provisions of Section 27 of the Act would manifestly demonstrate that a petition under the Act of 2005 can be filed in a Court where “person aggrieved *permanently or temporary resides or carries on a business or is employed.*”. The said position of law has even been acknowledged, endorsed and settled by the Apex Court in case titled as **Shyamlal Devda Vs. Parimala reported in 2020 (3) SCC 14.**

6. Perusal of the order of the Appellate Court would reveal that it recorded the findings that the person of the respondent herein has been residing at the time of filing of the application with one Wali Mohammad Rather being her adopted father at Tral and that the said position stands recorded in the Domicile Certificate, Backward Class Certificate, Date of Birth Certificate and Aadhar Card of the respondent herein as also reflected in the selection list of the candidates engaged in the office of the District Development Commissioner, Pulwama as National Youth Corps, wherein the respondent No.1 herein has been figuring. Such finding of the Appellate Court cannot be said to be perverse to the evidence/material or factually incorrect, more so, in view of the fact that the petitioners herein in rebuttal to the aforesaid documentary material did not place on record any proof or material contradicting or rebutting the said material produced by the respondent herein. Thus, it can safely be said that both the Courts below have dealt with the issue of territorial jurisdiction validly and legally.

*A “temporary residence” as envisaged under the Act of 2005 can be such a residence wherein an aggrieved person is compelled to take shelter or compelled to take job or do some business in view of domestic violence perpetuated on her or she either been turned out of the matrimonial home or has to leave the matrimonial home.*

The judgments relied upon by the counsel for the petitioners in support of his contention that the Judicial Magistrate Tral had no jurisdiction to entertain the application, on a closer examination and perusal reveals that the same does not lend any support to the case of the petitioners.

7. For the forgoing reasons, no case in the instant petition for interference with the orders passed by the Magistrate and the Appellate Court is warranted. Resultantly, the petition fails and is dismissed.

**(JAVED IQBAL WANI)**  
**JUDGE**

**SRINAGAR**  
**02.08.2023**  
*Aadil*

