

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRM(M) No.94/2022
CrIM No.327/2022

Latief Ahmad Rather and OrsPetitioner(s)

Through: Mr. Hazim Qureshi, Advocate

V/s

Shafeeqa Bhat Respondent(s)

Through: None

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER

08.04.2022

1. The petitioners have challenged order dated 09.03.2022, passed by learned Chief Judicial Magistrate, Srinagar, whereby transfer application filed by the petitioners for transfer of case under Section 12 of the Protection of Women from Domestic Violence Act, titled *Lateef Ahmad Rather and Ors vs. Shafeeka Bhat*, from the Court of Judicial Magistrate 1st Class (2nd Additional Munsiff), Srinagar to any other Court of competent jurisdiction in District Srinagar, has been declined.
2. It is averred in the petition that the petition under Section 12 of the Protection of Women from Domestic Violence Act, filed by the respondent against the petitioners herein, is absolutely false and frivolous and when the petitioners approached the trial Magistrate for modification of the order passed by it, the said application was not decided despite a number of requests having been made by the petitioners to the learned trial Magistrate. It is further averred that the remarks of the trial Magistrate against the petitioners have not been in

good taste being abusive in nature, which compelled them to approach the Chief Judicial Magistrate Srinagar with an application for transfer of the case from the Court of trial Magistrate to any other court of competent jurisdiction. It is contended that learned Chief Judicial Magistrate Srinagar, vide the impugned order, rejected the prayer of the petitioners without understanding the gravity of the matter.

3. I have learned counsel for the petitioners and perused the impugned order and the documents annexed to the petition.
4. It appears that the main grouse of the petitioners is that their application for modification or vacation of order dated 08.11.2021, passed by the learned trial Magistrate in ex-parte against the petitioners, is not being considered on its merits expeditiously. It also appears that there has been some exchange of harsh words between the learned counsel for the petitioners and the learned Magistrate, which has forced the petitioners to approach the Chief Judicial Magistrate, Srinagar seeking transfer of proceedings from the Court of trial Magistrate. The Chief Judicial Magistrate, has vide the impugned order rightly declined to transfer the proceedings from the Court of learned trial Magistrate, but, while doing so, the learned Chief Judicial Magistrate has made certain sweeping remarks against the advocates by stating that the advocates level unnecessary allegations against the Judicial Officers in order to facilitate their personal convenience.
5. There can be no doubt, that the grounds urged by the petitioners, seeking transfer of their case from the Court of trial Magistrate to any

other Court of competent jurisdiction, are not cogent. Merely because the learned Magistrate has failed to dispose of the application of the petitioners, is not a ground to transfer the case. It is also not a ground for transfer of a case if there is exchange of some hot words between the Court and the counsel. Thus the decision of learned Chief Judicial Magistrate Srinagar to decline the transfer of the matter from the trial Magistrate, is legally correct and cannot be interfered with.

6. However, the sweeping remarks that have been made by the learned Chief Judicial Magistrate, were uncalled for and unnecessary for the decision of the case. There may be stray incidents where the advocates have resorted to levelling of allegations against the Judicial Officers in order to seek transfer of their cases from one Court to other to suit their convenience, but then this cannot be generalized. The advocates are the officers of the Court and deserve the same respect and dignity as is being given to the Judicial Officers and Presiding Officers of the Courts. Bench and Bar are two wheels of the chariot of justice. Both are equal and no one is superior to the other. The members of the Bar, as such, deserve the utmost respect and dignity. There may be some rotten apples in the profession, as is true of every profession, but to say that the advocates generally adopt these tactics is not the correct position. The remarks of the Chief Judicial Magistrate, as such, deserve to be expunged.
7. Accordingly, while upholding the order declining to transfer the case passed by learned Chief Judicial Magistrate Srinagar, the remarks made

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by the learned Magistrate against the advocates are expunged and it is directed that the same shall not form part of the impugned order. A further direction is issued to the learned trial Magistrate to dispose of the application of the petitioners for modification of order dated 08.11.2021 expeditiously, preferably within a period of 15 days from the date a copy of this order is made available to the said Court. Copies of this order be sent to learned Chief Judicial Magistrate, Srinagar and Judicial Magistrate (2nd Additional Munsiff) Srinagar.

(SANJAY DHAR)
JUDGE

SRINAGAR
08.04.2022
Sarveeda Nissar

