

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Reserved on: 04.08.2025
Pronounced on: 21.08.2025**

CRM(M) No.864/2023

Tilak Raj, Age 41years
S/O Pardeep Kumar
R/O Mukhyala, Tehsil Akhnoor
District Jammu

.....Petitioner

Through: Mr. C. M. Koul, Sr. Adv with
Mr. A R Bhat, Advocate

VS

Darshana Devi W/O Tilak Raj
R/O Chak Morh, Tehsil Akhnoor
District Jammu.

.....Respondent

Through: Mr. Ajay Bakshi, Advocate.

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

1. Petitioner, through the medium of this petition under Section 482 of CrPC seeks quashment of Complaint titled "*Darshana Devi V. Tilak Raj*" under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'the DV Act') being time barred, and in repugnance to Section 31 of the DV Act read with Section 468 CrPC. Besides the above complaint, petitioner also seeks setting aside of the application filed along with the above complaint under Section 23 of the DV Act, pending before the court of learned Judicial Magistrate (Munsiff), Akhnoor.

2. Brief facts which led to the filing of this petition, are that a complaint under Section 12 of the DV Act along with application under Section 23 of the DV Act came to be filed by the respondent Darshana Devi against Tilak Raj

(petitioner herein) before the court of learned Judicial Magistrate (Munsiff), Akhnoor, alleging, *inter alia*, that, she was allegedly assaulted by the petitioner, thrown out of her matrimonial house on 20.07.2019 and threatened of dire consequences if she comes back; that on 22.07.2019, the mother and brother of the respondent was asked for dowry by the petitioner; that the complainant and her minor son have no source of income and are left to fend for themselves; that the petitioner has committed domestic violence upon the complainant and made to suffer cruel acts of the petitioner; that the complainant has also filed petition under Section 488 CrPC, against the petitioner, which is pending before the Family Court.

3. Learned Sr. Counsel appearing for the petitioner argued that petitioner was falsely implicated by the respondent, in a complaint under Section 12 of the DV Act, as also in application filed in terms of Section 23 of the DV Act; that the said complaint is time barred in view of the law laid down by the Hon'ble Apex court in various pronouncements that limitation is applicable to cases/complaints under the provisions of the Protection of Women from Domestic Violence Act, 2005. In support of his contentions, he has placed reliance on the judgments passed by Hon'ble Apex Court in '*Japani Sahoo V. Chandra Sekhar Mohanty*' reported as **AIR 2007 SC 2762** and '*Inderjeet Singh Grewal V. State of Punjab*', reported as **(2011) 12 SCC 588**.

4. Learned counsel for the respondent, *ex adverso*, argued that limitation period under Section 468 CrPC is not applicable to application under Section 12 of DV Act. In support of his contentions, he placed reliance on judgments of Hon'ble the Apex Court in the case of '*Kamatchi v. Lakshmi Narayanan*'

reported as **(2022) 15 SCC 50** dated 13.04.2022 and of Hon'ble Patna High Court in the case of '**Punit Agarwal @ Puneet Agarwal Versus Ankita Jain**' dated 10.04.2024 passed in *Criminal Revision No.734/2021*.

5. Heard learned counsel for the parties at length, perused the file and considered.

6. The indisputable facts arising out of the pleadings of the parties are that the respondent filed a complaint under the DV Act against the petitioner on 12.02.2022 with the allegations that on 20.07.2019, the complainant was assaulted, thrown out from the matrimonial house/rented accommodation, threatened that if she will come back, the respondent would kill her and that on 22.07.2019, the respondent also demanded dowry from the mother and brother of the complainant with the threat if the same is not given, he would not allow the complainant to reside with him. The respondent has also sworn an affidavit with regard to 'assets and liabilities' stating that the couple has separated since 20.07.2019. The admitted facts of the case thus are that the allegations of subjecting the respondent to domestic violence were only up to 22.07.2019.

7. The Protection of Women from Domestic Violence Act, 2005 was enacted with the object of providing more effective protection to the rights of women granted under the Constitution who are the victims of violence of any kind occurring within the family. The DV Act, 2005 has been enacted to tackle the menace of domestic violence faced by women in our society. A very wide meaning has been assigned to the term 'domestic violence' as provided under Section 3 of the Act, such as physical abuse, sexual abuse, verbal and emotional abuse, humiliation, repeated threats to cause physical pain, economic abuse,

deprivation of all or any economic or financial resources, disposal of household effects, prohibition or restriction to continued access to resources or facilities.

8. The domestic relationship has been defined widely under clause (f) of Section (2) of DV Act, 2005 as relationship between the two groups who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage or through relationship in the nature of marriage, adoption or are family members living together as a joint family. An aggrieved person has been defined in clause (a) of Section 2 which reads any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.

9. Chapter IV of the DV Act, 2005 lays down what kind of reliefs can be granted to a person aggrieved who has been subjected to any act of domestic violence. There are different categories of reliefs which can be granted under the DV Act, 2005. These reliefs are broadly categorized as right to reside in a shared household, protection orders, residence orders, monetary reliefs, custody orders, and compensation orders. These reliefs can be sought either by making an application under Section 12 of the DV Act, 2005 or by making an application in pending legal proceedings affecting aggrieved person before a Civil Court, Family Court or a Criminal Court.

10. As can be seen from the scheme of DV Act, 2005 and, in particular, Section 12, it is not a complaint under Section 200 of CrPC or Section 223 of the BNSS. An application under Section 12 of the DV Act, 2005, cannot be equated with a complaint within the meaning of Section 200 of the CrPC

(Section 223 of the BNSS). As provided in Sub-section (4) of Section 12, read with Sub-section (1) of Section 13, the normal rule is that a notice of hearing must be issued on the application. The scheme of Section 12 is, therefore, completely different from Section 200 of the CrPC or Section 223 of the BNSS.

11. It is true as contended by the learned Sr. Counsel for the petitioner that as per Section 28 of the DV Act, 2005, the proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and offences under Section 31 shall be governed by the provisions of the Code of Criminal Procedure with the further stipulation that this will not prevent the Court for laying down its own procedure for disposal of an application under Section 12 or under Sub-section (2) of Section 23. There is no doubt that, notwithstanding, the penal provisions in the form of Sections 31 and 33 of Chapter V the proceedings before the Magistrate under the DV Act, 2005 are predominantly of a civil nature. A breach of protection order, or of an interim order by the respondent, is a punishable offence, under Section 31 of DV Act, which is cognizable and non-bailable U/S 32 of the DV Act, whereas, if a protection officer fails or refuses to discharge his duties as directed by the Magistrate in the protection order, without any sufficient cause, it shall be also be a punishable offence, under Section 33 of DV Act.

12. On examination of the areas, where the DV Act or DV Rules have specifically set out the procedure, thereby excluding the operation of the CrPC as contemplated under Section 28(1) of the Act, the application under Section 12 not being a complaint as defined under Section 2(d) of the CrPC. The procedure for taking cognizance set out under Section 190(1) of the Code followed by the procedure set out in Chapter XV of the Code for taking cognizance will have no

application to the proceedings under the DV Act. To reiterate Section 190(1)(a) of the Code and the procedure set out in the subsequent Chapter XV of the Code will apply only in cases of complaints under Section 2(d) of CrPC given to a Magistrate and not to an application under Section 12 of the Act. It is, thus, clear that the contention made on behalf of the petitioner wrongly equated filing of an application under Section 12 of the Act to lodging of a complaint or initiation of a prosecution, so as to hold that the application under Section 12 of the Act, ought to have been filed within a period of one year of the alleged acts of domestic violence.

13. In **Japani Sahoo V. Chandra Sekhar Mohanty**, reported as **AIR 2007 SC 2762**, and relied upon by the learned counsel for the petitioner, key issue before Hon'ble Supreme Court was whether criminal proceedings could be quashed as being barred under Section 468 CrPC when there was a delay in taking cognizance by the Magistrate, even though the complaint was filed within the prescribed limitation period, the Supreme Court ruled that the crucial date for calculating the limitation period under Section 468 CrPC is the date of filing of the complaint or initiation of proceedings-not the date on which the Magistrate takes cognizance. In '**Inderjit Singh Grewal v. State of Punjab & Anr**' reported as **(2011) 12 SCC 588**, hon'ble the Apex Court has held the following:

"24. Submissions made by Shri Ranjit Kumar on the issue of limitation, in view of the provisions of [Section 468](#) Cr.P.C., that the complaint could be filed only within a period of one year from the date of the incident seem to be preponderous in view of the provisions of [Sections 28](#) and [32](#) of the Act 2005 read with Rule 15(6) of The Protection of Women from Domestic Violence Rules, 2006 which

*make the provisions of Cr.P.C. applicable and **stand fortified** by the judgments of this court in Japani Sahoo v. Chandra Sekhar Mohanty, AIR 2007 SC 2762; and Noida Entrepreneurs Association v. Noida & Ors., (2011) 6 SCC 508.”*

14. The contention made on behalf of the petitioner with regard to the bar to take cognizance as contained under Section 468 CrPC is that the respondent was allegedly subjected to the domestic violence on 20.07.2019 or 22.07.2019, whereafter the parties have separated as per the affidavit sworn in by the respondent and, therefore, in view of the applicability of the CrPC provisions, the cognizance in the complaint cannot be taken. The short controversy involved in this petition is as to whether limitation prescribed and provided under the Code of Criminal Procedure, is applicable to the applications/complaints filed under the Protection of Women from Domestic Violence Act, 2005. In the considered opinion of this court, the bar of the period of limitation will be applicable only to the penal proceedings under Section 31 of the Act seeking punishment for the breach of the protection order or an interim protection order which shall be punishable with either description of imprisonment for a term which may extend to one year or fine which may extend to Rs.20,000/- or with both. Such penal proceedings cannot be initiated, if the same are not brought up within the period of limitation as contained in Section 468 CrPC or its corresponding provision under the new Penal Code, U/S 514 of BNSS 2023. However, there cannot be any bar to maintaining an application under other provisions including Sections 12 and 23 of the DV Act. Since respondent's case was not with regard to breach of any protection order or of an interim protection order so as to attract the bar of limitation. The impugned applications are thus maintainable before the Court below.

15. This court, in the aforesaid opinion, finds support from the judgment of the Hon'ble the Supreme Court, in the case titled '**Kamatchi v. Lakshmi Narayan**' reported as (2022) 15 SCC 50, wherein the Apex Court has been pleased to hold that the limitation period under Section 468 of the Code of Criminal Procedure does not apply to applications made under Section 12 of the Protection of Women from Domestic Violence Act, 2005. The Supreme Court further held that limitation under Section 468 CrPC only applies to actual offences i.e. breaches of protection orders under Section 31. It further held that Section 12 is not akin to a criminal complaint, and procedural safeguards or limitation rules applicable to criminal proceedings (like cognizance under CrPC) do not apply at that stage.

16. The Apex Court in the case of '**Shaurabh Kumar Tripathi V. Vidhi Rawal**' reported at 2025 INSC 734, held that a petition under Section 482 CrPC for challenging the proceedings emanating from Section 12(1) of the DV Act, 2005 despite those proceedings being predominantly civil in nature is maintainable with the caution that the High Court should exercise such power considering the object of the DV Act, 2005 with circumspection while dealing with an application under Section 12(1) of the DV Act and that normally interference under Section 482 is warranted only, in the case of gross illegality or injustice.

17. In such a situation of the matter, when the bar of limitation is not applicable to a complaint/application under Section 12 or under Section 23 of the DV Act, the plea raised with regard to limitation is not tenable in the case, as the provision under Section 468 CrPC regarding limitation can be made

applicable to a complaint under penal provisions of Sections 31 and 33 of the DV Act, and not to any other application under the DV Act.

18. Viewed thus, the petition is found to be misconceived, devoid of any merit and substance and is liable to be dismissed. As a result, the petition is ***dismissed***, along with connected application(s). Interim direction, if any, shall stand vacated.

19. Copy of this order be forwarded to the Trial Court, with direction to proceed further in the matter, expeditiously.

(M A Chowdhary)
Judge

Jammu
21.08.2025
Raj Kumar

Whether order is speaking? Yes.
Whether order is speaking? Yes.