



2026:AHC-LKO:43629

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

APPLICATION U/S 482 No. - 6580 of 2025

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.....Applicant(s)

Versus

State Of U.P. Thru. Prin. Secy. Home Lko. And
Another

.....Opposite
Party(s)

Counsel for Applicant(s)	: Soma Pandey, Mukul Sudhir Pandey, Shashank Dwivedi, Shashi Dwivedi
Counsel for Opposite Party(s)	: G.A., Gaurav Kumar Hasani, Katyayan Mishra, Lovekush Pandey, Santosh Kumar Pandey

Reserved: 26.05.2026

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HON'BLE BRIJ RAJ SINGH, J.

1. This application has been filed with the following main relief:

“WHEREFORE, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to quash and set aside the complaint filed under Complaint case no.107/2019, Titled as Pratima Rastogi vs Puneet Rastogi and Others, pertaining to complaint case under Section 12 of Domestic Violence Act, 2005, Police Station: PGI, District: Lucknow pending before the Learned Civil Judge (J.D)/FTC (Crime Against Women) contained as Annexure No.1, on the grounds of abuse of process of law and maintainability.”

2. It has been submitted by learned counsel for the applicant that on 18.04.2017, the marriage between applicant and opposite party no.2 was solemnized at Lucknow without any demands or dowry. After rituals, parties went to Ghaziabad to start their matrimonial life. On 09.11.2017, the father of the applicant passed away after prolonged illness. During this time, Opposite party no.2 and her brother were trying to bring inheritance issues and created scene over the dead body of the father of the applicant. The entire family and relatives of the applicant were shocked. The Opposite party no.2 was cruel, disrespectful, and highly uncooperative during the Applicant's father illness and even after his death. It has been submitted that from 08.04.2018 to 22.04.2018, the applicant was in Germany for his official trip. During this time, the Opposite party no.2 was in her brother's house. Even after repeated request of applicant to be with his widow mother, the Opposite party no.2 did not go to her place.

The younger brother of the applicant, on applicant's request went to the house of the Opposite party no.2 with cake and had him on video call on 18.04.2018 to celebrate their marriage anniversary.

3. The suit for divorce was filed by the husband and in the written statement to divorce proceedings application, the Opposite party no.2 alleged that the applicant had beaten her and thrown her out of the house at Lucknow on 14.04.2018 when the applicant was not even in India. This fact was observed by the trial court while allowing the divorce petition of the applicant. On 05.01.2019, after effortlessly trying to bring the Opposite party no.2 back for more than nine (9) months, when the Opposite party no.2 refused to talk to the applicant and shut all the channels of communications and left the applicant no other choice than approaching the District Legal Services Authority, Lucknow for pre-litigation application for mediation to resolve the issue and save the marriage. However, the Opposite party no.2 did not cooperate in the mediation process and it failed.

4. It has been further submitted that on 01-02-2019, as a counterblast, Opposite party no.2 filed an application under section 12 of Domestic Violence Act, 2005 before the Chief judicial Magistrate, Lucknow on the basis of completely false and frivolous facts and grounds. On 20.04.2019, the applicant filed a petition under Section 13 of Hindu Marriage Act, 1955 before the Principal Judge, Family Court, Lucknow, on the ground of cruelty which was allowed on 01.03.2025. The Opposite party no.2 on 18.09.2021 filed a written statement with delay of almost three years which was just a reproduction of contents and grounds she had taken in her application under the Domestic Violence Act. On 01.03.2025, the divorce petition under Section 13 of Hindu Marriage Act, 1955 of the applicant was allowed on the grounds of cruelty committed on him by the Opposite party no.2. In the same order, the petition of Section 9 Hindu Marriage Act, 1955 of the Opposite party no.2 filed in 2025 along with section 27 of the Hindu Marriage Act, 1955 filed in 2025 for return of Stridhan were also dismissed.

5. Further, it has been submitted by learned counsel for the applicant that the allegations and grounds taken under Section 9 of the Hindu Marriage Act, 1955 and Section 12 of the Protection of Women from Domestic

Violence Act, 2005 are identical and were duly adjudicated by the Additional Principal Judge-8, Family Court, Lucknow. The Domestic Violence Act, 2005 is a welfare legislation, and it's not meant to be an instrument of harassment or to re-litigate issues decided by a competent court. It has also been submitted that the grounds and allegations taken in the Domestic Violence Act, 2005 by Opposite party no.2 is identical to that of her application under section 9 of Hindu Marriage Act, 1955 and Section 27 of Hindu Marriage Act, 1955 which were dismissed vide order dated 01.03.2025 by the Additional Principal Judge-8, Family Court, Lucknow, the same grounds cannot be allowed to be re-litigated in the application under Domestic Violence Act, 2005 by the Opposite party no.2.

6. Learned counsel for the applicant has further submitted that the Additional Principal Judge-8, Family Court, Lucknow categorically recorded the evidences and the divorce petition of the applicant was allowed after he was able to prove that it was the Opposite party no.2 who treated him with cruelty. Hence the contradictory claim of wife in Domestic Violence Act, 2005 application cannot be allowed. The petition of Opposite party no.2 under Section 9 of the Hindu Marriage Act, 1955 was dismissed by the same court, further affirming that the wife had no legitimate claim to restitution and she herself was the wrongdoer in their matrimonial relationship.

7. It has been submitted that the opposite party no.2 dragged the applicant's mother even when she never had any domestic relationship with them. The causal visits to the house of the applicant's mother do not fall within the definition of domestic relationship as provided in the statute. Learned counsel further submits that because the allegations raised in the complaint under Section 12 of the Domestic Violence Act, 2005 are vague, general, self-contradictory and based on the same facts that have already been adjudicated and rejected by a competent court. It has been submitted that there is no subsisting domestic relationship between the parties after the dissolution of marriage by a final and conclusive order, and hence no cause of action survives under the Protection of Women Under Domestic Violence Act, 2005.

8. Learned counsel for the applicant has placed reliance upon the

judgment of the Supreme Court in the cases of ***Inderjit Singh Grewal vs. State of Punjab and another (2011) 10 SCR 557***, and ***Shaurabh Kumar Tripathi vs. Vidhi Rawal, 2025 INSC 734***.

9. Submission on behalf of opposite party no.2 is that the applicant is working in MNC i.e HCL Ltd. and was posted in Delhi/NCR and was always found in objectionable condition with her female co-worker and when deponent made objection, she was mentally and physically tortured by the applicant. When the deponent made an alarm to the incident which has taken place before her to in laws, they also supported the applicant and said that there is no need to look into the same. Seeing these peculiar conditions, the deponent went into depression and anxiety and she got medical ailment for that and she suffered a lot but any how she is surviving now. It has been further submitted that the applicant and his family members are having all the jewellery in their custody since marriage and list of jewellery received by them is maintained by the applicant himself which is also evident from the handwriting of the applicant, which never returned by the applicant to opposite party no.2 during any mediation nor even discussed by the applicant which results in failure of mediation.

10. Further submission of learned counsel for opposite party no.2 is that the applicant is working in MNC (HCL Ltd) and having salary of around Rs.40 lacs annually, which can also be verified from his salary slip but due to his greedy nature, he never agreed to accept without dowry and involved in extra-marital affair with female co-worker, which leads to spoil the married life of opposite party no.2. It has been submitted that in the proceeding of Section 13 of Hindu marriage Act, in which judgment is arbitral and one sided which is also evident from the order in which neither of the parties cross examined and the appeal is pending due to lack of money availability to the applicant. It has been further submitted that the contents of Para 11 of the application are false, incorrect, misleading and misconceived, as stated, hence denied in reply thereto. It is submitted that the applicant and opposite party no.2 are in domestic relationship as per the definition of Section 2(f) of Protection of Women From Domestic Violence Act, 2005 and the applicant has done domestic violence as per definition of Section 3 of the Act of 2005 and in effect the opposite party

no.2 is aggrieved person which is clearly evident from the act of the applicant.

11. Learned counsel for opposite party no.2 has placed reliance upon the judgment in the cases of ***Prabha Tyagi vs. Kamlesh Devi, 2022(2) ABR (CRI) 484, Juveria Abdul Majid Patni vs. Atif Iqbal Mansoori, AIRONLINE 2014 SC 224, and Shashank Pandey and others vs. State of U.P. and others, 2024:AHC-LKO:14720.***

12. I have heard Ms. Soma Pandey, learned counsel for the applicant, Sri Katyayan Mishra, learned counsel for opposite party no.2, learned AGA for the State and perused the record.

13. The Supreme Court in the case of ***Inderjit Singh Grewal*** (supra) has held that undoubtedly, for quashing a complaint, the court has to take its contents on its face value and in case the same discloses an offence, the court generally does not interfere with the same, but considering the factual backdrop of the said case, the Court passed an order observing that it would not be permissible to proceed in the case of domestic violence on the ground that there is decree of divorce between the parties. The Supreme Court in Para 25 held as under:

“25. In view of the above, we are of the considered opinion that permitting the Magistrate to proceed further with the complaint under the provisions of the Act 2005 is not compatible and in consonance with the decree of divorce which still subsists and thus, the process amounts to abuse of the process of the court. Undoubtedly, for quashing a complaint, the court has to take its contents on its face value and in case the same discloses an offence, the court generally does not interfere with the same. However, in the backdrop of the factual matrix of this case, permitting the court to proceed with the complaint would be travesty of justice. Thus, interest of justice warrants quashing of the same.”

14. In the case of ***Shaurabh Kumar Tripathi*** (supra), the case of maintainability under Section 482 Cr.P.C. in respect of Domestic Violence Act, 2005 has been considered by the Supreme Court and the Supreme Court has held that the application under Section 482 Cr.P.C. is maintainable for quashing the proceedings instituted under the Domestic Violence Act, 2005. In Para-39, the Supreme Court held:

“39. To conclude, the view taken in the impugned order of the High Court that a petition under Section 482 of the CrPC for challenging the proceedings emanating from Section 12(1) of the DV Act. 2005 is not

maintainable, is not the correct view. We hold that High Courts can exercise power under Section 482 of CrPC (Section 528 of the BNSS) for quashing the proceedings emanating from the application under Section 12(1) of the DV Act, 2005. pending before the Court of the learned Magistrate. However, considering the object of the DV Act, 2005, the High Courts should exercise caution and circumspection when dealing with an application under Section 12(1). Normally, interference under Section 482 is warranted only in the case of gross illegality or injustice.”

15. In the case of **Prabha Tyagi** (supra), the Supreme Court has been pleased to observe that even if there is judicial separation ordered by a court of law, that does not put an end to marriage and therefore, the domestic relationship continues between the spouses even though they may not be actually living together. The impression “domestic relationship” has also been considered by the Supreme Court and it has been observed that the relationship means a relationship between two persons who live or have at any point of time lived together in a shared household when they are related by marriage. In Paras 43 and 44, the Supreme Court observed:

“43. Further, the expression 'family members living together as a joint family' is not relatable only to relationship through consanguinity, marriage or adoption. As observed above, the expression 'joint family' does not mean a joint family as understood in Hindu Law. It would mean persons living together jointly as a family. It would include not only family members living together when they are related by consanguinity, marriage or adoption but also those persons who are living together or jointly as a joint family such as foster children who live with other members who are related by consanguinity, marriage or by adoption. Therefore, when any woman is in a domestic relationship as discussed above, is subjected to any act of domestic violence and becomes an aggrieved person, she is entitled to avail the remedies under the D.V. Act.

The further question is, whether, such a domestic relationship should be subsisting between the aggrieved person and the respondent against whom relief is claimed at the time of claiming the relief. Before answering the same, it would be useful to analyse the relationships noted in the D.V. Act as under:

(a) Any relationship by consanguinity is a lifelong relationship.

(b) Marriage is also a lifelong relationship unless a separation by a decree of divorce is ordered by a competent authority of law.

(i) If there is judicial separation ordered by a court of law, that does not put an end to marriage and hence the domestic relationship continues between the spouses even though they may not be actually living together.

(ii) In the event of a divorce, marriage would be no longer be subsisting, but if a woman (wife) is subjected to any domestic violence either during

marriage or even subsequent to a divorce decree being passed but relatable to the period of domestic relationship, the provisions of this D.V. Act would come to the rescue of such a divorced woman also.

(iii) That is why, the expression 'domestic relationship' has been defined in an expansive manner to mean a relationship between two persons who live or have at any point of time lived together in a shared household when they are related by marriage. We have also interpreted the word 'live' or 'lived' in the context of right to reside in Sub-Section (1) of Section 17. The right to live in the shared household, even when the domestic relationship may have been severed for instance when a woman has been widowed owing to the death of her husband, entitles her to have remedies under the D.V. Act.

(iv) Therefore, even when the marital ties cease and there is no subsisting domestic relationship between the aggrieved woman and the respondent against whom relief is claimed but the acts of domestic violence are related to the period of domestic relationship, even in such circumstances, the aggrieved woman who was subjected to domestic violence has remedies under the D.V. Act.

(c) Even in the case of relationship in the nature of marriage, during which period the woman suffered domestic violence and is thus an aggrieved person can seek remedies subsequent to the cessation of the relationship, the only pre-condition is that the allegation of domestic violence must relate to the period of the subsistence of relationship in the nature of marriage.

(d) In the same way, when a girl child is fostered by family members living together as a joint family as interpreted above and lives or at any point of time has lived together in a shared household or has the right to reside in the shared household being a member living together as a joint family and has been ousted in any way or has been a victim of domestic violence has remedies under the D.V. Act.

In our view, the question raised about a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed must be interpreted in a broad and expansive way, so as to encompass not only a subsisting domestic relationship in presentia but also a past domestic relationship. Therefore, the Parliament has intentionally used the expression 'domestic relationship' to mean a relationship between two persons who not only live together in the shared household but also between two persons who have at any point of time lived together in a shared household.

44. Applying the aforesaid discussion to the facts of the case at hand, the appellant was married to the respondent's son Kuldeep Tyagi on 18 June, 2005 and shortly thereafter, on 15th July, 2005, he died in car accident. According to the appellant, the respondent and her family members started harassing the appellant and forced her to leave the matrimonial home. She started working as a teacher at Dehradun in order to support herself. That Stridhana was given at the time of her wedding and that was used by the respondent and her family and the legal noting dated 22nd November, 2006 demanding return of the articles of Stridhana did not receive any response from the respondent and her family. Even though as

on the date of filing of the application before the Magistrate under Section 12 of the D.V. Act the appellant was not actually living in the shared household; she nevertheless lived in a domestic relationship with her husband and further had the right to reside in a shared household as a daughter-in-law. The appellant-aggrieved person had to leave the shared household on account of harassment and mental torture given to her by respondent - mother-in-law and her family. She had to leave the same and fend for herself. Thus, as an aggrieved person, the appellant could not have been excluded from the shared household as there was no valid reason to do so. As the appellant had a right to reside in the shared household as she was in a domestic relationship with her husband till he died in the accident and had lived together with him therefore she also had a right to reside in the shared household despite the death of her husband in a road accident. The aggrieved person continued to have a subsisting domestic relationship owing to her marriage and she being the daughter-in-law had the right to reside in the shared household.”

16. Similar view, as has been taken in the case of **Prabha Tyagi** (supra), has been taken in the case of **Juveria Abdul Majid Patni** (supra) by the Supreme Court, wherein in Para 31, the Supreme Court held:

“31. An act of domestic violence once committed, subsequent decree of divorce will not absolve the liability of the respondent from the offence committed or to deny the benefit to which the aggrieved person is entitled under the Domestic Violence Act, 2005 including monetary relief under Section 20, child custody under Section 21, compensation under Section 22 and interim or ex parte order under Section 23 of the Domestic Violence Act, 2005.”

17. A coordinate Bench of this Court in the case of **Shashank Pandey** (supra) has also considered various aspects of the proceedings under the Domestic Violence Act, 2005 and in Para 30, the Court has held that even though the marriage has subsequently been declared to be null and void, when the relationship between the applicant and opposite party no.2 subsisted, it was a relationship in the nature of marriage. Therefore, opposite party no.2 is an aggrieved person within the meaning of the Act and she has a right to present an application under Section 12 of the D.V. Act. In Para 30, the Court held as under:

“30. The applicant does not dispute that he got married to the opposite party no. 2 and having been married to the applicant, the opposite party no. 2 had lived in a domestic relationship with the applicant, before they started living separately. They had been related by marriage till the marriage was declared to be null and void. Even though the marriage has subsequently been declared to be null and void, when the relationship between the applicant and the opposite party no. 2 subsisted, it was a relationship in the nature of marriage. Therefore, the opposite party no. 2 is an aggrieved person within the meaning of the Act she has a right to present an application under Section 12 of the DV Act.”

18. After going through the submissions made on behalf of the parties and perusing the record, it is not in dispute that the applicant and opposite party no.2 were married together and they had shared a house at the time to marriage. An act of domestic violence once committed, subsequent decree of divorce will not absolve the liability of the husband from the offence committed or to deny the benefit to which the aggrieved person is entitled under the Domestic Violence Act, 2005. There is provision of monetary relief under Section 20, child custody under Section 21, compensation under Section 22 and interim or ex-parte order under Section 23 of the Domestic Violence Act, 2005. All these issues can be decided after adducing the evidence on record but at this stage, this Court cannot do mini trial and quash the entire proceedings on the ground that suit for divorce has been decreed in favour of the applicant. The wife is eligible to claim protection under the Domestic Violence Act because the definition of domestic relationship as provided under Section 2(s) of the Domestic Violence Act includes not only a relationship between two persons who presently live together in a shared household, but also extends to persons who have, at any point of time lived together in a shared household. The judicial separation ordered by a court of law does not put an end to marriage and, hence, the domestic relationship continues between the wife and husband even though they may not be actually living together.

19. In view of the aforesaid discussion, present application is devoid of merit. It is accordingly ***dismissed***. No order as to costs.

(Brij Raj Singh,J.)

July 7, 2026
Sachin