

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
	<u>30.10.2023</u>		C482 No. 2087 of 2023 <u>Hon'ble Sharad Kumar Sharma, J.</u> Mr. Eshan Sachdeva, Advocate, for the applicants through video conferencing. Mr. Bhaskar Chandra Joshi, AGA, for the State. The challenge in the present C482 Application, by the applicants, is to the summoning order, as it has been issued by the Court of Additional Chief Judicial Magistrate, Roorkee, District Haridwar, in Miscellaneous Case No. 107 of 2023, Smt. Sandhya Gupta Vs. Amit Pathak and others, whereby the applicants have been summoned under Section 12 of the Protection of Women from Domestic Violence Act, 2005. While putting a challenge to the aforesaid summoning order, the learned counsel for the applicants has extended his argument from the following perspectives: (i) That they had not been in a matrimonial relationship or domestic relationship since 2020. (ii) That the applicants are more concern about the daughter, who has born out of the matrimony on 26.12.2018, hence, they justify a challenge to the summoning order. (iii) That there already happens to be a proceeding under Section 125, which is pending.

			The domestic relationship has been defined under sub Section (f) Section 2 of the Act, which reads as under:- (f) “domestic 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 consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family; For the purpose to satisfy the existence of the ingredients of domestic relationship, there are certain factual determinations, which are required to be made and established by evidence, as argued by the learned counsel for the applicants as they are not living together since 2020. The aspect of living together since 2020 requires an appreciation of evidence and not exclusively based on the pleadings and hence that may not be the scope under Section 482 of CrPC. Secondly, a fictitious ground has been raised that the parties have resolved to dissolve their marriage way back in 2020, by invoking the provisions contained under Section 13B of the Hindu Marriage Act, but no judicial note of that could be taken by this Court in the absence of the actual proceedings being drawn by the applicants under Section 13B of the Hindu Marriage Act and being placed on record. Thirdly, the so-called and elaborated fiction of the keenness of the present applicants to get the daughter, who is presently residing with the complainant, is yet again a fiction because there is no proceedings drawn by them under the
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			Guardians and Wards Act, to procure the custody of the child. Fiction cannot be a basis of C482 Application and particularly when all these aspects require an appreciation of facts to be established, as to whether there was a domestic relationship or not. Thus, at this stage when the applicants have been summoned under Section 12 of the Protection of Women from Domestic Violence Act, 2005 and no action has been taken as such, which could have been a reason to invoke Section 482 of CrPC, I don't see any logical reason to exercise my inherent powers under Section 482 of CrPC to enter into this C482 Application. The same lacks merit and is, accordingly, dismissed. (Sharad Kumar Sharma, J.) 30.10.2023 Mahinder/
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