

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

CRM(M) No.764/2025
CrIMNo.1927/2025

ZAKIR HUSSAIN BHAT AND ORS.

.....Petitioner(s)/Appellant(s)

Through: Mr.Tahir Ahmad Bhat, Advocate

V/s

RAHINA SHAFI

... ..Respondent(s)

Through : None

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER
08.12.2025

1. The petitioners through the medium of present petition have challenged proceedings emanating from petition filed by the respondent against them under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter for short "the D.V.Act"), which is stated to be pending before the Court of learned Special Mobile Magistrate, Anantnag (hereinafter referred to as 'the trial Magistrate'). Challenge has also been thrown to order dated 24.10.2025, whereby the learned trial Magistrate has issued process against the petitioners.
2. Heard learned counsel for the petitioners and perused the record of the case.

3. The respondent claiming herself to be the wife of petitioner No.1 has filed petition under Section 12 of the D.V.Act before learned trial Magistrate in which petitioners No.2 and 3, who happen to be brother and father of petitioner No.1 have also been arrayed as respondents. In the application under Section 12 of the D.V.Act, the respondent has alleged that she is a victim of domestic violence, continuous harassment and torture at the hands of the petitioners, particularly petitioner No.1. She has pleaded that she has entered into a wedlock with petitioner No.1 on 02.08.2025 at District Court premises Anantnag. It has been further pleaded that after solemnization of marriage the respondent has joined the company of petitioner No.1 as his legally wedded wife, but the petitioners No. 2 and 3 started interfering in their married life. It has been pleaded by the respondent that petitioner No.1 is already married having two male children from the said wedlock but he concealed this fact from the respondent. It has been pleaded that petitioner No.1 has now abandoned the respondent and she has been forced to stay with her relatives.
4. The petitioners have challenged the impugned petition and the order whereby process has been issued against the petitioners on the grounds that the Nikahnama on which the respondent is placing reliance, has been executed by petitioner No.1 under force and coercion. It has been claimed that there is no

relationship of husband and wife between the respondent and petitioner No.1. It has also been pleaded that there are no allegations with regard to domestic violence in the impugned petition and there was no domestic relationship between the parties.

5. So far as the proceedings under Section 12 of the D.V Act are concerned, the same cannot be equated with lodging of a criminal complaint or initiation of prosecution. So, the trial Magistrate, after obtaining the response from the husband and his relatives, is well within his jurisdiction to revoke his order of issuing summons to them or he can even drop the proceedings. The Magistrate is also competent to drop the proceedings against all or any of the relatives of the husband if he, upon going through their response, finds that they have been unnecessarily roped in. Since the proceedings under Section 12 of the D.V Act are not, in strict sense, criminal in nature, as such, bar to alter/revoke an order by a Magistrate is not attracted to these proceedings.

6. In my aforesaid view, I am supported by the judgment of the Supreme Court in the case of *Kamatchi vs. Lakshmi Narayanan*, 2022 SCC OnLine SC 446. The Supreme Court in the said case has observed that scope of notice under Section 12 of the D.V Act is to call for a response from the respondent in terms of the Statute so that after considering rival

submissions, appropriate order can be issued. The Court further held that the matter stands on a different footing and the dictum in Adalat Prasad's case ((2004) 7 SCC 338) would not get attracted at a stage when a notice is issued under Section 12 of the Act.

7. From the above discussion, it is clear that a Magistrate if, after receiving the version of the husband and his relatives in a proceeding under Section 12 of the D.V Act, comes to a conclusion that no case for proceeding against either all of them or some of them is made out, he can drop the proceedings and he can even re-call his order of interim monetary compensation granted in favour of the aggrieved person. In view of this legal position, it would be open to the petitioners to file an application before the learned trial Magistrate seeking an order for dropping of proceedings against them on the grounds which have been urged by them in the present petition.

8. Accordingly, without going into merits of the contentions raised by learned counsel for the petitioners, it is provided that the petitioners may file an application before the learned trial Magistrate for dropping of the proceedings against them. In case the same is done by the petitioners, the learned Magistrate shall, after hearing the parties, pass appropriate orders in accordance with law expeditiously, preferably within

a period of one month from the date such application is made by the petitioners before the learned Magistrate.

9. Having regard to the fact that in the impugned petition not only the husband (petitioner No.1 herein) but even his brother and father (petitioners No.2 & 3 herein), have been impleaded as party/respondents by the respondent herein, it is provided that in case the petitioners make an application for dropping of proceedings before the trial Magistrate within ten days from today, till such time the said application is decided by the learned trial Magistrate, further proceedings in the impugned complaint as against the petitioners No.2 and 3 shall remained stayed.

10. The petition is disposed of in the above terms along with connected CrIM(s).

11. A copy of this order be sent to the learned trial Magistrate for information and compliance.

(SANJAY DHAR)
JUDGE

SRINAGAR

08.12.2025

Sarveeda Nissar

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No