

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

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CRM(M) No. 1015/2026

CrIM No. 1858/2026

Mohd Waseem Khan and others

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

Through: - Mr. Syed Hejab Ul Nisa, Advocate
Mr. Syed Majid Shah, Advocate

Vs.

Azra Bibi and others

...Respondent(S)

Through: - None

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER (ORAL)

28.09.2026

1. By way of instant petition, the petitioners have challenged the application filed by respondent No. 1 under Section 12 of the Jammu and Kashmir Protection of Women from Domestic Violence Act, 2010 (hereinafter referred to as the "DV Act"), stated to be pending before the Court of the learned Chief Judicial Magistrate, Kathua.
2. The case of the petitioners is that marriage of respondent No. 1 was solemnized with petitioner No. 1 on 30.12.2020. Respondent Nos. 2 and 3 are their daughters, whereas petitioner Nos. 2 and 3 are the father-in-law and mother-in-law of respondent No. 1. It is submitted that, initially, the parties had a peaceful and harmonious matrimonial life. However, subsequently, respondent No. 1 started residing

separately at Billawar with her parents, who, according to the petitioners, have been interfering in their matrimonial affairs.

3. It is contended that the dispute between the parties is essentially matrimonial and property-related in nature and has arisen on account of persistent pressure exerted by respondent No. 1 at the instance of her parents. The petitioners further submit that they made efforts to resolve the dispute between respondent No. 1 and her husband, but could not succeed. It is also contended that the application filed by respondent No. 1 against the petitioners amounts to an abuse of the process of law, as there are no specific allegations against them. According to the petitioners, the allegations contained in the application are false and frivolous and they have been unnecessarily implicated in the proceedings. It is further contended that the respondent No. 1 is residing separately from the family of petitioners and, therefore, she does not share any domestic relationship with respondent No. 1.
4. I have heard learned counsel for the petitioners and perused record of the case.
5. The grievance of the petitioners appears to be that they are living separately and that no specific allegations have been levelled against them in the application filed by respondent No. 1. So far as proceedings under Section 12 of the DV Act are concerned, the same cannot be equated with the lodging of a criminal complaint or the initiation of criminal prosecution. The learned Magistrate, after obtaining the response of the husband and his relatives, would be well within his jurisdiction to reconsider the matter and, if warranted, recall the order

whereby the petitioners have been called upon to respond or drop the proceedings against them. The Magistrate would also be competent to modify or cancel any interim order granting monetary relief, if, upon consideration of the response filed by the husband and his relatives, it is found that the petitioners have been unnecessarily impleaded or that no case for grant of interim monetary relief is made out.

6. Since proceedings under Section 12 of the DV Act are not, in the strict sense, criminal proceedings, the bar against alteration or recall of an order by a Magistrate is not attracted in the same manner as it would be in a criminal prosecution. In arriving at the aforesaid view, this Court is fortified by the judgment of the Supreme Court in **Kamatchi v. Lakshmi Narayanan, 2022 SCC OnLine SC 446**. The Hon'ble Supreme Court, while considering the scope of proceedings under Section 12 of the DV Act, observed that the purpose of issuance of notice under Section 12 is to call for a response from the respondent in terms of the statute so that, upon consideration of the rival submissions, an appropriate order may be passed. The Supreme Court further held that the matter stands on a different footing and that the dictum laid down in **Adalat Prasad v. Rooplal Jindal & Ors., (2004) 7 SCC 338**, would not get attracted at the stage when notice is issued under Section 12 of the DV Act.
7. In the instant case, the learned Magistrate has issued notice to the petitioners on the basis of the application filed by respondent No. 1. The petitioners have also been directed to stay away from respondent

No. 1 and have been restrained from causing any injury to, or endangering, her health, safety, life or well-being.

8. In view of the aforesaid legal position, it would be open to the petitioners to file their response to the main petition and, if so advised, to file an appropriate application seeking dropping of the proceedings against them. The grounds urged in the instant petition may also be raised before the learned Magistrate. In the event such a response and/or application is filed, the learned Magistrate shall consider all the submissions raised by the petitioners in accordance with law. If, upon consideration of the material on record and the submissions of the parties, the learned Magistrate finds that no case for proceeding against the petitioners is made out, it shall be open to him to recall the order calling upon the petitioners to participate in the proceedings and to drop the proceedings against them, in accordance with law.
9. In the aforesaid backdrop, and without expressing any opinion on the merits of the rival contentions, the present petition is **disposed of** with liberty to the petitioners to file their reply to the application under Section 12 of the DV Act, raising all the pleas available to them in law. The petitioners shall also be at liberty to file an appropriate application seeking dropping of the proceedings against them.
10. In the event such an application is filed, the learned Magistrate shall, after affording an opportunity of hearing to the parties, pass an appropriate order in accordance with law, as expeditiously as possible, preferably within a period of one month from the date of filing of such application.

- 11. The petition stands disposed of in the above terms.
- 12. A copy of this order be sent to the learned trial Magistrate for information and compliance.

(SANJAY DHAR)
JUDGE

Jammu
28.09.2026
Karam Chand/Secy.

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