

CNR No. DLSH01-007116-2024
8 CA 263/2024

PS

14.08.2026

Present: Mr. Abhimanyu Kumar and Ms. Akriti Anand, Ld. Counsel for
appellant (through VC).
Respondent in person.

Vide separate judgment passed today, the present appeal is disposed
of.

Copy of the judgment alongwith Trial Court Record be sent to Ld.
Trial Court for information and compliance.

Appeal file be consigned to Record Room.

SUMEDH
KUMAR
SETHI

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KUMAR SETHI
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(Dr. Sumedh Kumar Sethi)
ASJ-05/SHD/KKD Courts
Delhi/14.08.2026

IN THE COURT OF Dr. SUMEDH KUMAR SETHI,
ADDITIONAL SESSIONS JUDGE-05,
SHAHDARA, KARKARDOOMA COURTS, DELHI



CA No.263/2024
CNR No.DLSH01-007116-2024

1. Ms. [REDACTED]
W/o [REDACTED]
D/o [REDACTED]
2. Mr. [REDACTED]
S/o [REDACTED]
[REDACTED]

.....APPELLANTS

VERSUS

Smt. [REDACTED]
W/o [REDACTED]
D/o [REDACTED]
[REDACTED]

..... RESPONDENT

Date of registration of appeal:	21.11.2024
Date of conclusion of arguments:	11.08.2026
Date of pronouncement of Judgment:	14.08.2026

JUDGMENT

1) The present appeal has been filed by the sister in law and the brother in law of the respondent herein whereby they have challenged the order dated 03.09.2024 passed by the Ld. JMFC (Mahila Court-01), Shahdara, Karkardooma Courts, Delhi,

dismissing their application seeking deletion of their names and dropping of proceedings against them initiated by the respondent under various provisions of Protection of Women from Domestic Violence Act.

BRIEF FACTS

2) The brief facts as mentioned in the appeal are that the appellant no. 1 is the Nanad/Sister-in-Law and appellant No. 2 is the Nandoi/Brother-in-law of the respondent/complainant and living separately from the matrimonial/shared household of the respondent and her Late husband. It is further averred that the appellants got married with each other in the year 1994 and since then, they have been residing at the address mentioned in the array of parties, whereas the complainant got married to the brother of the appellant no.1 in the year 2004. It is further averred that respondent/ complainant has been living separately from the appellants at various addresses and most recently, she had resided with her late husband at their shared household located at property number [REDACTED] It is further averred that it was second marriage of both the respondent and the brother of the appellant no.1 and the same was performed in the simplest manner. It is further averred that the respondent has made multiple false and fabricated complaints dated 15.11.2021, 18.05.2022, including the complaint under section 12 PWDV act, and in all the complaints, the respondent has not mentioned even single allegation against the appellant no.1 and only mentioned a single allegation against the appellant no. 2 of giving threat. Further, the appellants had filed an application before the Ld. Trial Court requesting the removal of their names from the list of parties involved in the case as the continuation of the proceedings against them will cause mental

agony and suffering to the appellants. Thereafter, the Ld. Trial Court vide order dated 03.09.2024 dismissed the application of the appellants and being aggrieved from the said order, the appellants have preferred the present appeal before this Court.

GROUND OF APPEAL

3) The grounds on which the present appeal has been filed are as follows:-

i) That the impugned order has caused grave miscarriage and failure of justice to the appellants and the same has caused grave inconvenience and hardship to the appellants herein.

ii) That the Ld. Trial Court has failed to appreciate the fact that the averment of the complaint and documentary evidence does not satisfy the conditions and ingredients for invoking the applicability of section 2(f), (s) and section 3 of Domestic Violence Act i.e. existence of domestic relationship and shared household.

iii) That the Ld. Trial Court while passing the impugned order wrongly applied the observations made by the Hon'ble Apex Court in the case titled as '*Prabha Tyagi Vs. Kamlesh Devi*', which are completely different from the facts, circumstances and nature of the petition.

iv) That the Ld. Trial Court failed to consider the fact that the respondent/complainant lastly resided with her husband and shared household at property bearing no. [REDACTED] Delhi, whereas the appellants are living separately since their marriage at the address mentioned in the memo of parties and thus have no interference in the matrimonial life of the respondent and her husband.

v) That the Ld. Trial Court erred in failing to recognize that the complainant had been married to the brother of appellant

No.1 in the year 2004. Despite this long duration of marriage, the numerous complaints filed by the respondent do not contain any allegations of cruelty or ill-treatment by the appellants from 2004 up until the filing of the complaint under Section 12 of the PWDV Act. The only exception noted in the complaints is a single instance where the appellant allegedly threatened the respondent.

vi) That the Ld. Trial Court erroneously observed that there are categorical allegations against the all the respondents w.r.t inflicting cruelty upon the complainant/ respondent, whereas the complaint contains absolutely no allegations against the appellant no.1 and a single fabricated allegation against the appellant no.2.

vii) That the Ld. Trial Court failed to consider the fact that admittedly, the complainant/ respondent herein herself averred in her complaint at Para no. 4 that the address mentioned in memo of parties is the residential address of respondent no.2 and 3 i.e. appellants herein.

viii) That the Ld. Trial Court failed to consider the fact that the averments made in the Complaint and documentary evidence annexed therewith does not disclose any act of Domestic Violence against the Respondent No. 2 and 3/Appellants herein.

ix) That the Ld. Trial Court has not given any thoughtful consideration and appreciation to the application of the appellants in which they sought relief of deletion of their names and the Ld. Trial Court while acting in a mechanical manner dismissed the application of the appellants.

REPLY

4) Reply was filed by respondent to the present appeal.

i) It is averred in reply that the present appeal is a gross abuse and misuse of process of law and legal machinery, hence

the appeal is liable to be dismissed with costs.

ii) It is averred that there is no cause of action in favour of the appellants and against the respondent for filing the present appeal.

iii) It is further averred that the appellants have not come to this court with clean hands and have concealed the true and correct material facts from this Court.

iv) It is further averred that the appellants have filed the present appeal with malafide intention and ulterior motive to harass and humiliate the respondent and to mislead and misrepresent this Court.

v) The respondent has denied the contents of the appeal point-wise and prayed that the appeal may be dismissed with heavy costs in the interest of justice.

LIMITATION

5) Arguments on the point of limitation have been heard. Material on record perused. Submissions considered.

6) No application for condonation of delay has been filed on behalf of appellants on the ground that appellants had applied for certified copy of the impugned order which was supplied to them on 24.10.2024 and they filed the appeal on 14.11.2024. However, they were unable to place the acknowledgment for applying for such certified copy. Be that as it may, the stamp on the certified copies filed alongwith the appeal show that the certified copy is dated 14.10.2024. The respondent has not pressed the aspect of limitation during arguments. Moreover, there is no reason to disbelieve the version of the appellants regarding supply of certified copies. Even a report was called from CA Branch but the official concerned also could not inform the Court about when such certified copies were applied for by the appellant and

the print out of the e-filing dashboard shows that the appeal was filed on 14.11.2024. Therefore, the appeal appears to be within limitation.

ARGUMENTS ON APPEAL

7) Arguments on the appeal have been heard. Material on record perused. Submissions considered.

8) Ld. Counsel for the appellant has primarily relied upon the case of '**Dr. P. Padmanathan & Ors. Vs. Tmt. V. Monika and another, 2021 SCC Online Mad 8731 : (2021) 1 Mad LJ (Crl) 311**', passed by Hon'ble Madras High Court wherein it has been held as under:

'62. While it is no doubt true that the Court of Magistrate is invested with a great deal of flexibility under Section 28(2) of the Act to devise its own procedure for disposal of an application under Section 12 of the Act, the twin principles of consistency and clarity dictate that this Court must now lay down some broad guidelines, in exercise of its power of superintendence under Article 227 of the Constitution & in respect of Judicial Magistrates under Section 483 of the Cr.P.C, for the proper disposal of applications under Section 12 of the DV Act. A corrective mechanism is available in the DV Act itself for aggrieved parties to agitate their grievances and obtain redress.

vii. As there is no issuance of process as contemplated under Section 204, Cr.P.C. in a proceeding under the D.V. Act, the principle laid down in Adalat Prasad v. Rooplal Jindal ((2004) 7 SCC 338) that a process, under Section 204, Cr.P.C, once issued cannot be reviewed or recalled, will not apply to a proceeding under the D.V. Act. Consequently, it would be open to an aggrieved respondent(s) to approach the

Magistrate and raise the issue of maintainability and other preliminary issues. Issues like the existence of a shared household/domestic relationship etc., which form the jurisdictional basis for entertaining determined as a preliminary Issue, in appropriate cases. Any person aggrieved by such an order may also take recourse to can be an appeal under Section 29 of the D.V. Act for effective redress an application under Section 12, (See V.K. Vijayalekshmi Amma v. Bindu V., (2010) 87 AIC 367). This would stem the deluge of petitions challenging the maintainability of an application under Section 12 of the D.V. Act, at the threshold before this Court under Article 227 of the Constitution.

ix. In Kunapareddy (cited supra), the Hon'ble Supreme Court upheld the order of a Magistrate purportedly exercising powers under Order VI, Rule 17 of The Civil Procedure Code, 1908 (hereinafter referred to as "C.P.C."), to permit the amendment of an application under Section 12 of the D.V. Act. Taking a cue therefrom, it would be open to any of the respondent(s), at any stage of the proceeding, to apply to the Magistrate to have their names deleted from the array of respondents if they have been improperly joined as parties. For this purpose, the Magistrate can draw sustenance from the power under Order I Rule 10(2) of the C.P.C. A judicious use of this power would ensure that the proceedings under the D.V. Act do not generate into a weapon of harassment and would prevent the process of Court from being abused by joining all and sundry as parties to the lis'.

9) He has also placed reliance upon the case of '**Kamatchi Vs. Lakshmi Narayanan (2022) 15 Supreme Court Cases 50 : 2022 SCC Online SC 446**' decided by the Hon'ble Supreme Court wherein the judgment of the Madras High Court has been

referred and it has been held as under:

"27. The special features with regard to an application under Section 12 of the Act were noticed by a Single Judge of the High Court in P. Pathmanathan as under. (SCC OnLine Mad paras 19-20).

"19. In the first instance, it is, therefore, necessary to examine the areas where the DV Act or the DV Rules have specifically set out the procedure thereby excluding the operation of CrPC as contemplated under Section 28(1) of the Act. This takes us to the DV Rules. At the outset, it may be noticed that a "complaint" as contemplated under the DV. Act and the DV Rules is not the same as a "complaint" under CrPC. A complaint under Rule 2(b) of the DV Rules is defined as an allegation made orally or in writing by any person to a Protection Officer. On the other hand, a complaint, under Section 2(d) CrPC is any allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code, that some person, whether known or unknown has committed an offence. However, the Magistrate dealing with an application under Section 12 of the Act is not called upon to take action for the commission of an offence. Hence, what is contemplated is not a complaint but an application to a Magistrate as set out in Rule 6(1) of the DV Rules. A complaint under the DV Rules is made only to a Protection Officer as contemplated under Rule 4(1) of the DV Rules.

20. Rule 6(1) sets out that an application under Section 12 of the Act shall be as per Form II appended to the Act. Thus, an application under Section 12 not being a complaint as defined under Section 2 (d) CrPC, the procedure for cognizance set out under Section 190(1)(a) of the Code followed by the procedure set out

in Chapter XV of the Code for taking cognizance will have no application to a proceeding 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) CrPC, given to a Magistrate and not to an application under Section 12 of the Act.'

10) He has further relied upon the case of **'Swati Mishra vs. Leena Gupta' & Anr. CRL.REV.P. 553/2015'** decided by the Hon'ble High Court of Delhi on 03.12.2015 and **'Shilpa Aggarwal Vs. Ruchika Gupta 2019 SCC Online Del 10239'** decided by Hon'ble High Court of Delhi on 16.09.2019, whereby the Hon'ble High Court had allowed deletion of parties in a petition under the provisions of Domestic Violence Act.

11) It is argued that the appellants were impleaded as R2 and R3 before the Ld. Trial Court by respondent herein being Nand and Nandoi of the respondent herein who was married to the brother of R2 in 1994 but has been residing separately in Gandhi Nagar since long. It is argued that Ld. Trial Court has erred in dismissing the application of the appellants by wrongly placing reliance upon the case of **'Prabha Tyagi Vs. Kamlesh Devi (2022) 8 SCC 90'** as that judgment pertains to a victim of Domestic Violence seeking a right of residence by impleading relatives of her husband who were earlier residing with her but on account of circumstances she had to start residing separately. Whereas, in the present case, the appellants had never resided with the respondent herein and no domestic relationship ever existed. It is submitted that the father in law and the husband of the respondent herein had expired during Covid in 2021 and after that the respondent herein was not taking care of her mother in

law. Thus, the appellant no.1/respondent no.2 being the daughter of respondent no.1 before the Trial Court had no option but to take her mother with her. It is contended that even if the allegations regarding possession of the house, earlier occupied by the mother in law, by the appellants are believed to be true for a moment, then also, the respondent herein has other remedies available in law that she can avail against this but not under the provisions of PWDV Act.

12) On the other hand, it has been argued on behalf of the respondent herein that the house in question is her matrimonial home where she was residing initially but then quarantined herself in another house during Covid. Her husband and her father in law expired subsequently. Thereafter, the appellants took control of the 70 year old mother in law and had also taken the possession of the matrimonial home. It is contended that the appellants have come within the ambit of provisions of PWDV Act on account of their constant interference in the matrimonial home of the respondent herein and the merits of the allegations are a matter of trial.

ANALYSIS AND FINDINGS

13) This Court finds that in the impugned order dated 03.09.2024, the Ld. Trial Court has relied upon the case of '**Prabha Tyagi Vs. Kamlesh Devi (2022) 8 SCC 90**', to observe that it is not essential for the respondents to actually reside with the complainant if allegations have been leveled against them regarding commission of Domestic Violence. The judgment in '**Prabha Tyagi**' (*supra*) deals with the aspect of 'Domestic Relationship'. In the said case, it has been held as under:

'60. 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 praesenti but also a past domestic relationship. Therefore, Parliament expression "domestic relationship" to mean a relationship between two has intentionally used the 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'.

75.2. "(//) Whether it is mandatory for the aggrieved person to reside with those persons against whom the allegations have been levied at the point of commission of violence?"

It is held that it is not mandatory for the aggrieved person, when she is related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family, to actually reside with those persons against whom the allegations have been levelled at the time of commission of domestic violence. If a woman has the right to reside in the shared household under Section 17 of the DV Act and such a woman becomes an aggrieved person or victim of domestic violence, she can seek reliefs under the provisions of the DV Act including enforcement of her right to live in a shared household.

75.3. "(iii) Whether there should be a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed?"

It is held that there should be a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed vis-à-vis allegation of domestic violence. However, it is not necessary that at the time of filing of an application by an aggrieved person, the domestic relationship should be subsisting. In other words, even if an aggrieved person is not in a domestic

relationship with the respondent in a shared household at the time of filing of an application under Section 12 of the DV Act but has at any point of time lived so or had the right to live and has been subjected to domestic violence or is later subjected to domestic violence on account of the domestic relationship, is entitled to file an application under Section 12 of the DV Act’.

14) The perusal of the law laid down by the Hon’ble Supreme Court, read as a whole would show that the Ld. Trial Court has only focused on the part of the observations where the Hon’ble Supreme Court clarifies that it is not necessary for a case under the PWDV Act that the aggrieved person should be residing with those persons against whom allegations have been leveled. However, the other part of the observations also clarifies this aspect further to the effect that it is not necessary for the Domestic Relationship to be subsistent at the time of the allegations being leveled and the provisions of the Act would be attracted even if the aggrieved person has lived in the shared household with the respondents at any point of time. The difference in the present case is that even as per her own allegations, the respondent herein has never entered into a Domestic Relationship with the appellants or lived with them in the shared household at any point of time; as it is the case of the respondent herein herself that her mother in law and father in law were staying at the flat in question i.e. her matrimonial home while she had been residing in another flat in the same complex alongwith her daughters for three years before the death of her husband and father in law. It is the case of the respondent herein herself that it is only her husband who used to sleep in the matrimonial home to take care of his father. Thus, till the time the husband of the respondent herein was alive, the appellants

apparently never resided in the said house. It is not even the case of the respondent herein that they have started residing or are residing in the said flat now as in the petition before the Ld. Trial Court their residential address is that of [REDACTED]

[REDACTED] The only allegations are that the appellants have taken the mother of appellant [REDACTED] i.e. the mother in law of respondent herein with them and locked the matrimonial house. For this and for recovery of her jewellery articles, the respondent herein has other remedies available in law that she can avail. However, so far as the provisions of PWDV Act are concerned, it is apparent that the respondent herein was only in a Domestic Relationship with her mother in law who she has impleaded before the Ld. Trial Court but not with the appellants.

15) Therefore, for the reasons given above, the appeal is allowed and the impugned order dated 03.09.2024 passed by the Ld. Trial Court stands set aside/reversed. As a corollary, the appellants stand deleted from the array of parties before the Ld. Trial Court.

16) Copy of this judgment be sent to Ld. Trial Court for information and compliance alongwith TCR.

17) Appeal file be consigned to Record Room.

**ANNOUNCED IN THE OPEN
COURT ON 14th AUGUST, 2026**

SUMEDH
KUMAR
SETHI

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**(Dr. SUMEDH KUMAR SETHI)
ADDITIONAL SESSIONS JUDGE-05
SHAHDARA DISTRICT, KARKARDOOMA
COURTS, DELHI**