

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

CRIMINAL PETITION NO.7018 OF 2019

R

BETWEEN:

1. SABUJ PAUL
S/O SATISH CHANDRA PAUL
AGED ABOUT 45 YEARS
RESIDING AT 803-2960
DON MILLS ROAD
TORONTO M 2J 3B8

...PETITIONER

(BY SRI. S.P.SHANKAR, SENIOR COUNSEL FOR
SMT. MAMATA G. KULKARNI, ADVOCATE)

AND:

1. SMT. ARPITA DASGUPTA
W/O MR. SABUJI PAUL
AGED ABOUT 36 YEARS
ILLEGALLY OCCUPYING
B3 # 10-05
ELITA PROMENADE # 101
18TH MAIN, J.P.NAGAR 7TH PHASE
OPP. RBI WATER TANK
BENGALURU-560078
BELONGING TO RESPONDENT-2.
2. SATISH CHANDRA PAUL
AGED ABOUT 80 YEARS
3. MRS. JHARNA PAUL
W/O MR. SATISH CHANDRA PAUL
AGED ABOUT 76 YEARS

BOTH RESPONDENTS 2 AND 3 ARE
R/O RPOHAN VASANTHA APARTMENT

Digitally signed
by DEVIKA M
Location: HIGH
COURT OF
KARNATAKA

SPICE GARDEN LAYOUT
MARATHHALLI BRIDGE SERVICE ROAD
AECS LAYOUT, MARATHALLI
BENGALURU-560037.

...RESPONDENTS

(BY SMT. SHREYA S. KUMAR, ADVOCATE FOR
SRI. SIJI MALAYIL, ADVOCATE FOR R1;
NOTICE TO R2 AND R3 DISPENSED WITH
[VIDE ORDER DATED 23.06.2022])

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C PRAYING TO QUASH THE ENTIRE PROCEEDINGS MADE UNDER SECTION 12 OF PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT (PWDV ACT) 2005 BY ALLOWING THIS PETITION WITH COSTS THROUGHOUT IN THE V MMTC., BENGALURU IN C.MIS.148/2017.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 08.10.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

CAV ORDER

Heard learned Senior counsel for petitioner and learned counsel for respondent No.1.

2. The prayer sought in this petition is to quash the proceedings initiated against the petitioner in C.Misc.No.148/2017 filed under Section 12 of the Domestic Violence Act, 2005 ('DV Act' for short) seeking for certain relief's under the DV Act.

3. The factual matrix of case of the respondent No.1-wife while seeking the relief against the petitioner in the said petition invoking Section 12 of the DV Act is that her marriage took place with her husband on 06.12.2013 and she had joined matrimonial home thereafter and stayed in Toronto along with her husband. Thereafter, she came back to India and she was not taken back and hence, she filed the petition seeking several reliefs to pass Protection Order under Section 18 and Residence Order under Section 19 and direct the respondent No.1-petitioner herein to pay monetary relief under Section 20 and so also, grant compensation and damages under Section 22. While filing the petition, the respondent No.1-wife also made allegations against each of the respondents about their role and though petition was filed against respondent Nos.1 to 5 before the MMTC, but subsequently, respondent Nos.4 and 5 were deleted and only respondent Nos.2 and 3 remain for consideration.

4. Learned Senior counsel appearing for petitioner in his argument would vehemently contend that it is not in dispute that marriage has taken place on 06.12.2013 and petitioner, who is the respondent No.1 before the MMTC is a permanent resident working in Toronto and marriage between this

petitioner and respondent No.1-wife was held through Shaadi.com and marriage was solemnized in Kolkata. After the marriage, till arrangements were made for securing permanent Resident Certificate, respondent No.1 lived with respondent Nos.2 and 3 for a very short period in Bangalore and continued her job which she was doing before the marriage and after making arrangement, petitioner took his wife along with him and they led married life in their matrimonial home at Toronto. It is also stated that after spending almost a year with her husband in her matrimonial home at Toronto, the respondent No.1-wife returned to Kolkata only to visit her parents and returned back to Toronto. But, without any reason, respondent No.1 stayed back in India with her parents and did not join her husband in Toronto. But, after a lapse of 1 year and 4 months after returning from Toronto, all of a sudden, she filed the present petition. It is also contented that after filing the present petition, she also filed a petition in M.C.No.4543/2017 under Section 9 of Hindu Marriage Act, 1955. The petitioner having come to know about the same, came down to India and before issuing notice, appeared and expressed his willingness to take her back and prayed for decree and accordingly, the same was decreed on 03.11.2018 and the Court also taken note of

readiness of the petitioner. That on 29.11.2018, the petitioner appeared through his advocate before the Court and produced copy of the order passed by Principal Judge, Family Court, Bengaluru in M.C.No.4543/2017 and requested for dismissal of the complaint. But, the same was rejected and no direction is issued to dismiss the complaint. Thereafter, an application was filed under Order 1 Rule 10(2) read with Section 64 of Cr.P.C. for deletion of aged and ailing parents of petitioner, sister and brother-in-law, since they were arrayed as parties. But, respondent Nos.4 and 5 were deleted in view of the order, but rejected in respect of others are concerned.

5. Learned Senior counsel appearing for the petitioner during his argument would vehemently contend that the very filing of the complaint under DV Act is only with an intention to harass the petitioner. The respondent No.1-wife kept quiet for 1 year and 4 months and proceedings under DV Act was filed in the month of August 2017 and the same was not filed within 1 year after she coming back in the month of April 2016. The counsel also would contend that limitation attracts under Section 468 of Cr.P.C. and so also, no application is filed for delay under Section 473 of Cr.P.C. The Counsel would contend that petition is barred by limitation and DV petition filed by the

respondent No.1-wife not contains any details as to subjecting her for domestic violence. The counsel also would contend that when the husband is in Toronto, question of domestic violence does not arise. The counsel would further contend that when the petition was filed under Section 9 of Hindu Marriage Act, 1955, the same was allowed and even made arrangements to travel after allowing the petition, she did not travel.

6. Learned Senior counsel appearing for the petitioner, in support of his argument relied upon judgment of the Apex Court in **HIGH COURT BAR ASSOCIATION, ALLAHABAD vs. STATE OF U.P. AND ORS.** reported in **AIR ONLINE 2024 SC 143**, wherein the Apex Court held that there cannot be any passing of blanket orders for vacating, without hearing the contesting parties.

7. The counsel also relied upon order passed by this Court in **PUNDALIK AND OTHERS vs. THE STATE OF KARNATAKA AND ANOTHER** in **CRL.P.NO.200907/2023** dated **19.03.2025** and brought to notice of this Court paragraph No.13, wherein while quashing the criminal action which was initiated, made an the observation that no specific role or allegation is levelled against the petitioner therein.

8. The counsel also relied upon judgment of Bombay High Court in **SEJAL DHARMESH VED vs. STATE OF MAHARASHTRA** reported in **LAWS (BOM) 2013 3 253**, wherein also discussion was made with regard to Section 2(f) of DV Act that there cannot be any domestic violence and the Court observed that a wife who has returned from the USA and consequently from the domestic relationship and lived in India for one year cannot file an application with regard to that relationship after such time. Such wife cannot be taken to be in any domestic relationship.

9. The counsel also relied upon judgment of the Apex Court in **MRS. SARAH MATHEW vs. INSTITUTE OF CARDIO VASCULAR DISEASES AND ORS** reported in **AIR 2014 SUPREME COURT 448**, wherein the Apex Court discussed with regard to taking cognizance, if it is beyond limitation and also discussed Section 473 of the Code enjoins Courts not only to see whether delay has been explained but in addition to see whether it is requirement of justice to ignore delay.

10. The counsel also relied upon judgment of the Apex Court in **CRL.A.NO.515/2019** dated **15.03.2019** and brought to notice of this Court paragraph No.8, wherein discussion was

made that it is a fit case where charges against the appellants i.e., father-in-law and mother-in-law of respondent No.2-complainant, can be quashed.

11. The counsel also relied upon order passed by this Court in **MAREPPA AND OTHERS vs. PUSHAPANJALI** in **CRL.P.NO.200009/2021** dated **10.12.2021** and the counsel brought to notice of this Court discussion made in paragraph No.17, wherein the Court considered definition under Section 2(q) of DV Act and observation is made that if such relief cannot be granted against these petitioners, there cannot be any petition under DV Act against these petitioners and Court can exercise the power under Section 482 of Cr.P.C.

12. Per contra, learned counsel for respondent No.1 in her argument would vehemently contend that not dispute regarding marriage and also respondent No.1 lived along with in-laws for a period of 5 months in Bangalore and thereafter, she had joined the husband and stayed in Toronto for some time. The counsel would contend that wife did not deserted her husband, but the respondents before MMTC made her to live separately and to join her parental house. The counsel brought to notice of this Court averments made in paragraph No.18 of

C.Misc.No.148/2017, wherein DV Act allegations are made against each of the respondents therein and when there are specific domestic violence allegations against the petitioner, there cannot be any order for quashing.

13. The counsel also would contend that when the petition was filed under Section 9 of Hindu Marriage Act, 1955, her husband did not appear through Video Conference. Though contention was taken that tickets were given and handed over, but those tickets are given just prior to two days i.e., on 15.11.2018, but travel date was fixed on 17.11.2018. Hence, she could not travel, consequent upon the order passed under Section 9 of Hindu Marriage Act, 1955. The petitioner has not made any effort to take her back in view of directions of the Court, since she needs Visa also to travel abroad. The counsel contend that Section 468 of Cr.P.C. cannot be invoked, since the same relates to criminal prosecution and in the present case, relief is sought only under DV Act under Sections 18, 19, 20 and 22. Hence, the contention of learned Senior counsel for the petitioner that 468 of Cr.P.C. attracts cannot be accepted.

14. Learned counsel for respondent No.1 in support of her argument relied upon judgment of the Apex Court in

SHAURABH KUMAR TRIPATHI vs. VIDHI RAWAL delivered in **CRL.A.NO.2668/2025** dated **19.03.2025** and brought to notice of this Court paragraph Nos.32 and 33, wherein discussion was made with regard to scope of interference under Section 482 with the proceedings under DV, Act 2005 and relief to be sought under the DV Act which is discussed in paragraph No.34 with regard to the provisions made under Sections 18 to 23. The counsel also brought to notice of this Court the discussion made by the Apex Court with regard to scope of Section 482 of Cr.P.C., wherein held that the High Court should keep in mind the fact that DV Act, 2005 is a welfare legislation, specially enacted to give justice to those women who suffer from domestic violence and for preventing acts of domestic violence and the High Court should not venture to invoke Section 482 and also brought to notice of this Court discussion made in paragraph No.39, wherein held that normally interference under Section 482 is warranted only in the case of gross illegality or injustice or otherwise there cannot be any quashing.

15. Having considered the grounds urged in the petition as well as grounds urged during the course of argument by learned Senior Counsel appearing for the petitioner and learned

counsel for respondent No.1 and also the principles laid down in the judgments referred supra by respective counsels, the points that would arise for consideration of this Court are:

- (1) Whether this Court can exercise the power under Section 482 of Cr.P.C. to quash the proceedings initiated under Section 12 of DV Act as contended by learned Senior counsel appearing for the petitioner?
- (2) What order?

Point No.(1)

16. Having considered the material on record and also the grounds which have been urged in the petition as well as during the course of argument, it is not in dispute that marriage of the petitioner and respondent No.1 was solemnized in the year 2013 and also, no dispute that subsequently, the wife had stayed along with respondent Nos.2 and 3 till arrangement was made at Toronto with in-laws. So also, it is not in dispute that thereafter, she had joined her husband and she came back in 2016. But, specific allegations are made against all the respondents in MMTC in the Crl.Misc.No.148/2017 that she was forced to file a present petition as well as the petition under Section 9 of the Hindu

Marriage Act, 1955. It is also not in dispute that petition filed under Section 9 is also allowed. However, learned Senior counsel appearing for the petitioner would contend that tickets were arranged, but it is the contention of learned counsel appearing for respondent No.1-wife that tickets were handed over only on 15.11.2018 and travel date was fixed on 17.11.2018 and hence, she could not travel and the petitioner has not made any effort to take her back. But, the Court has to take note that these are the issues which cannot be considered in a petition under Section 482 of Cr.P.C. Learned Senior counsel appearing for the petitioner also contend that petition filed under Section 12 of DV Act is barred by limitation and the said contention also cannot be considered in a petition under Section 482 of Cr.P.C. and whether it is barred by limitation is also a mixed question of fact and law.

17. The other contention of learned Senior counsel for the petitioner is that there is no specific allegation of domestic violence having considered the averments of petition. The said contention that no pleading regarding domestic violence cannot be accepted, since learned counsel appearing for respondent No.1-wife brought to notice of this Court specific allegations made in paragraph No.18 of Crl.Misc.No.148/2017. No doubt,

this Court quashed the proceedings initiated under Section 482 of Cr.P.C. in Criminal Petition No.200009/2021, wherein this Court while exercising the powers taken note of Section 2(q) of DV Act and also the allegations, wherein only omnibus allegations are made and in the present case, specific allegations are made against the petitioner. Hence, the said judgment will not come to the aid of petitioner. So also, the other judgments which have been relied upon with regard to the limitation will also not come to the aid of the petitioner, since this Court has already held that the same is a matter of trial.

18. However, learned counsel appearing for respondent No.1 brought the notice of this Court scope of Section 482 of Cr.P.C. in **CRL.A.NO.2688/2025** referring the scope of Section 482 of Cr.P.C., particularly paragraph Nos.33, 34, 35 and so also 39, wherein the Apex Court discussed with regard to scope of Section 12(1) of DV Act, wherein it is held that prayer has to be considered under Sections 18 to 23 and it is also observed that the High Court should be very slow and circumspect while invoking Section 482 of Cr.P.C and there cannot be a casual exercising of jurisdiction under Section 482 of Cr.P.C. and also made it clear in paragraph No.39 that

normally interference under Section 482 is warranted only in the case of gross illegality or injustice or otherwise under Section 482 of Cr.P.C for challenging the proceedings emanating from Section 12(1) of DV Act, 2005 is not maintainable, is not the correct view. But, holds that High Court can exercise the power under Section 482, if any injustice is caused and illegality is found. But, the same is not found in the present case on hand. The scope of 482 of Cr.P.C. is very clear, when the relief is sought under Section 12 and other provisions under Sections 18 to 23 and such reliefs to be considered, having considered the domestic violence. In the case on hand, whether there exists such domestic violence or not is a matter of trial.

19. This Court would like to rely upon judgment of High Court of Madras in **ARUL DANIEL AND OTHERS vs. SUGANYA** reported in **2022 SCC ONLINE MAD 5435**, wherein the Apex Court in paragraph No.86(a) held that a petition under Section 482 Cr.P.C. challenging a proceeding under Section 12 of the D.V. Act is not maintainable. A petition under Article 227 of the Constitution is maintainable on a limited ground of patent lack of jurisdiction. The Apex Court also in paragraph No.87(i) held that "an application under

Section 12 of the D.V. Act, is not a complaint under Section 2(d) of the Cr.P.C. Consequently, the procedure set out in Section 190(1)(a) & 200 to 204, Cr.P.C. as regards cases instituted on a complaint has no application to a proceeding under the D.V. Act. The Magistrate cannot, therefore, treat an application under the D.V. Act as though it is a complaint case under the Cr.P.C.

20. This Court also would like to rely upon order passed by Co-ordinate Bench of this Court in **MR. OLIVER MENEZES vs. MRS. SERITA THERESE MATHIAS** in **CRIMINAL PETITION NO.356/2019** dated **20.05.2021**, wherein at paragraph No.17, this Court relied upon Division Bench judgment of Madras High Court in **RAJAMANICKAM vs. STATE OF TAMIL NADU** reported in **2015 (3) MWN CRI 379**, wherein the Court relied upon paragraph No.41 of the judgment in **P. PATHMANATHAN AND OTHERS vs. MONICA AND OTHERS** reported in **2021 (2) CTC 57** which reads as follows:

"41 As pointed out by a Division Bench of this Court in Rajamanickam v State of Tamil Nadu, 2015 (3) MWN Cri 379, Section 482 Cr.P.C. preserves only the inherent criminal jurisdiction of

the High Court. Thus, a petition under Section 482, Cr.P.C. would be maintainable only if the order complained of is passed by a criminal Court or by a Court in exercise of powers under the Cr.P.C. An application under Section 12 of the D.V. Act does not fall in either category, as what the Court is called upon to do at that stage is to interdict the exercise of civil jurisdiction by the Magistrate at the threshold. As indicated supra, since the Magistrate is exercising only a civil jurisdiction in granting relief's under Chapter IV of the Act, it follows that a Magistrate is not a criminal Court for the purposes of proceedings under Chapter IV of the Act. It follows that an application under Section 482, Crl.P.C. does not lie to quash an application under Section 12 of the D.V. Act".

(Emphasis supplied)

21. Hence, the petitioner has not made out any ground to exercise the power under Section 482 of Cr.P.C. to quash the proceedings as contended by learned Senior counsel appearing for petitioner. Accordingly, I answer point No.(1) as 'negative'.

Point No.(2)

22. In view of the discussion made above, I pass the following:

ORDER

The criminal petition is ***dismissed.***

**Sd/-
(H.P.SANDESH)
JUDGE**

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