

IN THE COURT OF SH SANJAY SHARMA-I
PRINCIPAL DISTRICT & SESSIONS JUDGE,
NORTH EAST, KARKARDOOMA COURTS, DELHI

Crl. Appeal 12/2025

CNR No. DLNE01-000366-2025

Samreen Khan
W/o Mr. Azhar Iqbal Khan @ Faizi Iqbal
D/o Late Mr. Izhar
R/o House No. S-68, 4th Floor, Front Side,
Gali No. 23, Brahampuri,
New Delhi-110053.

...Appellant

VERSUS

Mohd. Azhar Iqbal Khan @ Faizi Iqbal
S/o Late Mohd. Iqbal Ahmed
R/o House No. S-61/2, First Floor,
Gali No. 23, Brahampuri
New Delhi-110053.

...Respondent

<i>Date of Institution</i>	:	<i>04.02.2025</i>
<i>Date of hearing arguments</i>	:	<i>10.02.2026</i>
<i>Date of Decision</i>	:	<i>06.03.2026</i>

JUDGMENT

1. Appellant Samreen Khan has filed the present criminal appeal against impugned order dated 27.01.2025, passed by Ms. Sonika, Ld. JMFC (Mahila Court)-02, North East District, Karkardooma Courts, Delhi in Complaint Case bearing no. 885/2023 titled as Smt. Samreen Khan vs. Mohd. Azhar Iqbal Khan & Ors. under Section 12 of Protection of Women from Domestic Violence Act, whereby interim application for maintenance filed by the appellant was dismissed.

2. Notice of appeal was issued to the respondent Mohd. Azhar Iqbal Khan @ Faizi Iqbal. Respondent appeared and filed reply to the present appeal.

3. Facts leading to filing of present appeal are that complainant/appellant/wife had filed a complaint under Section 12 of Protection of Women from Domestic Violence Act (hereinafter referred to as **DV Act**) against Mohd. Azhar Iqbal Khan @ Faizi Iqbal - husband (respondent no. 1 before Ld. Trial Court) and Ms. Heena - mother-in-law (respondent no. 2 before Ld. Trial Court). She also filed an application u/s 23 of DV Act for grant of ex-parte ad-interim maintenance alleging that the marriage of appellant was solemnized with respondent no. 1 on 20.03.2022 with great pomp and show as per Muslim rites and ceremonies and no child was born out of the said wedlock. It is alleged that after marriage, respondent no. 1 had committed various acts of violence against the appellant including sexual violence, raising demands of dowry articles etc. Since 10.07.2023, she claims to be residing separately. Vide order dated 27.01.2025, Ld. Trial Court had dismissed the application u/s 23 of DV Act and being aggrieved with the same, the appellant/wife has filed the present appeal.

4. It is argued by the Ld. Counsel for the appellant that Ld. Trial Court has passed the impugned order with a prejudicial mind resulting into miscarriage of justice; Ld. Trial Court had not considered the income and assets affidavit of the parties; Ld. Trial Court has committed grave error while observing that the present complaint was filed after the registration of FIR by the

mother of the respondent, whereas prior to registration of aforesaid FIR, appellant had lodged the complaint before CAW Cell on 17.07.2023. It was argued that respondent had not filed any reply to the interim maintenance application and non-filing of reply to the application tantamount to admission of facts stated therein. Ld. Trial Court failed to appreciate that respondent has no other liability except to maintain appellant/complainant and respondent is legally bound to maintain the appellant, who is 12th pass, unemployed having no source to maintain herself. It was also argued that appellant is residing in a rented accommodation owned by her brother. It was also argued that respondent no. 1 is earning Rs.1,00,000/- per month and he is running business of export and having other sources of income. It has been prayed that the impugned order may be set-aside or modified and ad-interim maintenance be granted to the appellant.

5. On the other hand, it was argued by the Ld. Counsel for the respondent that the impugned order, passed by Ld. Trial Court is justified and passed after considering all the relevant facts; Ld. Trial Court had duly considered the complaints given to the DCP and CAW Cell; respondent had joined the proceedings before CAW Cell as and when he was called; presently, respondent is not in possession of his house and residing in a rented accommodated; that on 20.07.2023, appellant came to residence of respondent alongwith her 20 family members and illegally occupied the same by throwing him and his mother out of it and FIR No. 560/2023 PS New Usmanpur u/s 452/323/34 IPC was registered in this regard; now respondent

has no source of income and he has the liability of his old aged mother. It has been prayed that the impugned order was rightly passed by the Ld. Trial Court and therefore, the present appeal is liable to be dismissed with heavy cost.

6. I have heard Ld. Counsels for the parties, perused the written submissions filed by the appellant and have carefully gone through the records of the present appeal.

7. A woman can claim various reliefs under the DV Act, such as compensation, damages, maintenance, residence order, protection order etc. However, in order to avail the said reliefs, she should fall within the definition of ‘aggrieved person’. The term or phrase ‘aggrieved person’ has been defined under Section 2 (a) of the DV Act as under: -

“Any woman who is or has been in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent”

8. Domestic violence can be broadly categorized as physical abuse, sexual abuse, verbal and emotional abuse or economic abuse.

9. The Ld. Trial Court while disposing of the application of the appellant for interim maintenance vide the impugned order, categorically held that the appellant/petitioner has not prima facie established that she is an aggrieved person. The basis of such observation was that the appellant failed to file any document on record to prima facie show that she was

subjected to domestic violence during her stay at the matrimonial house.

10. A perusal of the application filed before the Ld. Trial Court under Section 12 of the DV Act shows that the appellant had alleged forcible and unnatural sexual intercourse by the respondent no. 1 with her against her wishes, retaining all her jewellery by respondent no. 2 on the plea of safe custody and thereafter, allegedly mortgaging the same, demand of car from the brothers of the appellant, calling her with bad names and alleging that respondent no. 1 and 2 are running a brothel house with a broad networking. In support of her allegations, she relied only upon copy of a complaint made to DCP, CAW Cell dated 14.07.2023.

11. In reply to the said complaint, the respondent herein denied all the allegations and submitted that before marriage, he had purchased a flat bearing no. S-68/B, Fourth Floor, Front side in Gali No. 23, Brahampuri, Delhi, for a consideration of Rs.29,50,000/-. However, after marriage, in the absence of respondent no. 1/husband, about 20 family members and relatives of the appellant forcibly took possession of the said flat after throwing out respondent no. 2, his mother from there and retained all the articles, clothing, jewellery etc. lying in the house. On the complaint of the respondents, FIR No. 560/2023 was registered against the complainant and her family members under Section 452/323/34 IPC at PS New Usmanpur. Subsequently, it was revealed that the appellant along with her family members in collusion with the seller of the said flat,

prepared another set of same documents of transfer in favour of the brother of the appellant dated 15.10.2022. Accordingly, the respondent got registered another FIR against the seller of the flat namely Sh. Irfan Mir and the family members of the appellant, vide FIR No. 788/23 under Section 420/406/467/471/120B IPC. The respondents also relied upon the CCTV footage of the incident dated 22.07.23.

12. On merits, it was submitted that the respondent no. 1 is now jobless and has the liability of his aged mother, whereas the appellant is earning between Rs. 20,000/- to Rs.30,000/- per month.

13. As far as the facts are concerned, they have been repeated in the present appeal by both the parties. The respondents in addition to the above facts, has also stated that the appellant is working as a gym trainer in a gym named 'Gym Studio' and is earning handsomely. They have relied upon her photographs showing her working there as well as hard copy of the reviews about the appellant from various customers from the relevant website. No rejoinder to the reply was filed by the appellant countering or refuting the said allegations.

14. The contention of the Ld. Counsel for the appellant that no reply to the application under Section 23 DV Act was filed before the Ld. Trial Court by the respondents and therefore, they admitted all the facts stated in the said application, does not find any favour of this court since the respondents have already filed reply to the main petition and in the said reply, they have also included reply to the said application which is mentioned in

the title of the reply. Thus, the said reply would also be considered as a reply to the interim maintenance application.

15. The marriage between the parties lasted for about one year and four months. It has rightly been observed by the Ld. Trial Court that the appellant had not filed any documentary evidence to substantiate the allegations before the Ld. Trial Court except copy of a CAW complaint which was later on converted into an FIR No. 112/2024 under Section 498A/406/376/377 IPC.

16. It is to be appreciated that the incident which is the subject matter of the FIR No. 560/2023 lodged by the respondents against the complainant and her family members for the offence under Section 452/323 IPC of their having forcibly occupying the house of the respondent, is dated 20.07.2023. The said FIR was registered on 22.07.2023. Similarly, the second FIR No. 788/2023 under Section 420/406 IPC was registered on 04.11.2023. The appellant made the first complaint to CAW Cell on 14.07.2023 and her FIR was registered only on 13.02.2024. The said FIR is not a complaint simplicitor for harassment due to dowry demands, but in that FIR, she has implicated 13 members of the family of the respondents with allegations not only of dowry demand, but for rape and unnatural intercourse. These allegations in itself, amount to cruelty against the respondent. The other facts, as mentioned above of the complainant and her family members committing cheating and forgery and forcibly dispossessing the respondents from her own house are no less depreciable. In such circumstances and by committing such acts, she cannot claim herself to be an 'aggrieved person'. The FIR

lodged by the complainant is not only later in time than the FIRs of the respondent, but the possibility of its having got registered as a counter-blast by implicating all the distant family members of the respondent, cannot be ruled out. It prima facie appears to be an after-thought with exaggerated facts.

17. In the complaint under Section 12 of the DV Act, the appellant claimed all the reliefs which are permissible under the said Act. When she is already residing in the house of the respondent after taking its forcible possession, she is not entitled for any residence order. Though she claims that the said house was given to her by her brother on rent, but that becomes a triable issue in view of the peculiar facts stated above. Since she is already residing separately from the respondent, no protection order or any such relief as claimed by her is also warranted.

18. As far as the monetary relief under Section 20 is claimed, she has sought Rs.25,000/- per month from the respondent alongwith compensation of Rs.3 lakh. In her income affidavit filed before the Ld. Trial Court, she has stated her monthly expenses to be Rs.27,000/- and has not disclosed any source of income therein. There is no explanation as to how she is meeting the said expenses. The respondent no. 1 has also not disclosed any income in his income affidavit. None of the parties provided any documentary evidence regarding the income of the opposite party before the Ld. Trial court. The appellant failed to provide any information or evidence about the income of the respondent no. 1 in the present appeal. However, the respondent alleged that the appellant is working as a gym trainer and relied

upon her photographs and reviews on a website. Out of the many such reviews, I quote one from Saliha Alamin as under: -

“I’ve had an amazing experience at Gym Studio! Its not just a place to work out, it’s a complete fitness journey. Coach Samreen is truly the best. She is passionate,”

19. There are various other such reviews where the name of the appellant appears. Ld. Predecessor of this court, on the request of the respondent, summoned the owner of the Gym Studio and one Mohd. Waseem claiming himself to be the owner of the said gym appeared in person and filed his affidavit wherein he affirmed that appellant is working in his gym at a salary of Rs.19,000/- and she also imparts personal training to students for which she charges Rs.1,000/- to Rs.2,000/- per student. Though his identity was disputed by the Ld. Counsel for the appellant, but since he appeared as a court witness and this court has only to form a prima facie view and further since he filed an affidavit on oath to this effect, his identity cannot be disputed at least at this stage, of course subject to the final adjudication by the Ld. Trial Court.

20. Thus, the respondent has gainfully *prima facie* proved the employment and earnings of the appellant whereas the appellant has still been unable to prove any earning of the respondent no. 1.

21. Keeping in view the totality of facts and circumstances, as enumerated herein above, this court is of the opinion that the Ld. Trial court has not committed any illegality

in dismissing the application for interim maintenance filed by the appellant.

22. Hence, I find no ground to interfere in the impugned order and accordingly, the present appeal is dismissed with liberty to the appellant to lead evidence before the Ld. Trial Court to prove the charges and allegations made in her complaint.

23. It is also clarified that at any stage of the trial, if the circumstances warrant, the Ld. Trial Court can consider fresh application for grant of interim maintenance, if preferred by the appellant.

Appeal file be consigned to Record Room.

A copy of this order be sent to Ld. Trial Court alongwith the TCR.

***Announced in the open court
today on 6th March, 2026***

**(SANJAY SHARMA-I)
Principal District & Sessions Judge
North East, Karkardooma Courts, Delhi**