

**(2011) 12 UK CK 0028**

**In the Uttarakhand High Court**

**Case No :** Criminal Miscellaneous Application (C-482) No. 1147 of 2011 with  
Stay Application No. 1527 of 2011

Smt Monika Rathor

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

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**Date of Decision :** 19-12-2011

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482  
Protection of Women From Domestic Violence Act, 2005 — Section 29

**Citation :** (2012) 2 DMC 444

**Hon'ble Judges :** Prafulla C. Pant, J

**Bench :** Single Bench

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**Judgement**

Prafulla C. Pant, J.—Heard.

2. By means of this petition, moved u/s 482 of Code of Criminal Procedure, 1973, the petitioner has sought quashing of the order dated 5.12.2011, passed by Sessions Judge, Dehradun, in Criminal Appeal No. 110 of 2011, Jagdish Singh vs. State of Uttarakhand.

3. Brief facts of the case, are that, the present petitioner Smt. Monika Rathor appears to have moved a petition under Protection of Women from Domestic Violence Act, 2005, before Additional Judicial Magistrate, Rishikesh. In said case the order was passed by the Magistrate not only for interim maintenance to be paid by the husband, but also the petitioner shall not be dispossessed from the shared house. It further appears from the papers on record that Jagdish Singh (father in law of the petitioner) filed Criminal Appeal No. 110 of 2011 u/s 29 of the Act, challenging the order of the Magistrate. The appellate court while admitting the appeal, stayed operation of the order dated 21.11.2011, in its entirety, passed by the Magistrate.

4. Learned counsel for the petitioner pleaded before this court that interim stay order granted by the appellate court is erroneous in law. On going through the papers on records, this court finds that husband of the petitioner had not filed

any appeal against order dated 21.11.2011, as such by staying the entire order on the appeal of the father in law, the appellate court appears to have erred in law. However, as far as the direction not to dispossess is concerned, if the present petitioner is aggrieved by the interim order passed by the Sessions Judge, she can move stay application before the appellate court. This court is not inclined to interfere with the interim order regarding which the petitioner can move application for vacation of the stay order before Sessions Judge.

5. In the circumstances, this petition is summarily disposed of with the direction that the impugned order dated 05.12.2011, passed by Sessions Judge, Derhadun, in Criminal Appeal No. 110 of 2011 shall not operate as against the persons who are not the appellant before it. However, for the further relief i.e. vacation of the stay order, the petitioner is at liberty to move the application before the appellate court.