

AFR
(Reserved)

Case :- CRIMINAL REVISION No. - 879 of 2015

Revisionist :- Chiranjeev Kumar Arya

Opposite Party :- State Of U.P. & Another

Counsel for Revisionist :- Ranjana Srivastava, Ratnakar Rao, Vinay Tripathi

Counsel for Opposite Party :- Govt. Advocate, Pankaj Tiwari, Shri Pal Singh Yadav

Hon'ble Sudhir Kumar Saxena, J.

1. This revision has been filed by husband aggrieved with the order dated 02.09.2015 passed by Additional District & Sessions Judge, court No. 17, Lucknow under Section 29 of Protection of Women from Domestic Violence Act, 2005 (in short 'the Act').

2. It appears that Prathama Singh claiming to be the wife of present revisionist filed an application under Section 12 of the Act before learned Magistrate, Lucknow. Application was allowed by learned Magistrate ordering Rs. 1000/- per month as interim maintenance. An appeal was filed against said order by the wife of revisionist claiming maintenance @ Rs. 30,000/- per month. Said appeal has been allowed by Additional Sessions Judge, Court No. 17, Lucknow on 02.09.2015. This very order has been challenged in revision.

3. I have heard Smt. Ranjana Srivastava, learned counsel for revisionist and Sri Pankaj Tiwari, learned counsel appearing for respondent.

4. A preliminary objection has been raised by Sri Pankaj Tiwari that revision against the order passed in appeal under Section 29 of the Act would not be maintainable. He has relied upon the judgment of Hon'ble Apex court given in **Criminal Appeal No. 2070 of 2014,**

Shalu Ojha vs. Prashant Ojha in which Hon'ble Apex Court while discussing the scheme of D.V. Act in para-27 has been pleased to observe as under:

"It can be seen from the DV Act that no further appeal or revision is provided to the High Court or any other Court against the order of the Sessions Court under Section 29."

5. Under Section 12 of the Act, application is filed before Magistrate. Magistrate has power to pass protection order under section 18, residence order under section 19, monetary relief order under Section 20, custody order under section 21 and compensation order under Section 22 of this Act. Under Section 23 of the Act, Magistrate can pass ex-parte interim order as it deems fit and proper. Appeal is provided under Section 29 of the Act. Section 28 provides that proceedings under Sections 12, 18, 19, 20, 21, 22, 23 and offence made under section 31 shall be governed by the Code of Criminal Procedure. Section 31 provides for penalty for breach of orders. Such offences have been made non-cognizable and non-bailable under Section 32 of the Act. Section 29 of the Act is being reproduced below:

"Section 29: There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be whichever is later."

6. From the above it is apparent that orders passed by Magistrate are to be governed by the procedure prescribed under Cr.P.C. and said order can be challenged in appeal before the court of session. Court of session is admittedly an inferior/subordinate criminal court to High Court. Section 397 of Cr.P.C. enables High Court or session court to call for record of any proceeding from any inferior criminal court.

7. Section 397 Cr.P.C. is being reproduced below:-

“Calling for records to exercise of powers of revision;- (1) *The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.*

Explanation- All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of Section 398.

(2) *The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.*

(3) *If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.”*

8. Hon'ble Apex Court in the case of **Thakur Das (Dead) by Lrs. vs. State of Madhya Pradesh and another (AIR (1978) 1 SCC 27)** while interpreting the provisions of section 6 of Essential Commodities Act, 1955, has held in para-11, as under:

*“We are accordingly of the opinion that even though the State Government is authorized to appoint an appellate authority under Section 6C, the legislature clearly indicated that such appellate authority must of necessity be a judicial authority. Since under the Constitution the courts being the repository of the judicial power and the officer presiding over the court derives his designation from the nomenclature of the court, even if the the appointment is made by the designation of the judicial officer the appellate indicated is the court over which he presides discharging functions under the relevant Code and placed in the hierarchy of courts for the purposes of appeal and revision. Viewed from this angle, the Sessions Judge, though appointed an appellate authority by the notification, what the State Government did was to constitute an appellate authority in the Sessions court over which the Sessions Judge presides. **The Sessions Court is constituted under the Code of Criminal Procedure and indisputably it is an inferior criminal court in relation to High Court.** Therefore, against the order made in exercise of powers conferred by S. 6C. a revision application would lie to the High Court and the*

High Court would be entitled to entertain a revision application under Sections 435 and 439 of the Code of Criminal Procedure 1898 which was in force at the relevant time and such revision application would be competent."

(Emphasis Supplied)

9. It is true that there is no provision in the Act providing further appeal or revision before the High Court against the order passed by the Court of session in appeal under Section 29 of the Act. However, no finality has been attached to the order passed under Section 29.

10. Breach of the order passed by the Magistrate or Sessions Judge is punishable under Section 31 of the Act and procedure prescribed in the Cr.P.C. has been made applicable by virtue of section 28 of the Act. Moreover, proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 of the Act are also governed by the Cr.P.C. Nothing otherwise has been provided in the Act like attaching finality to the order passed by the Magistrate or Sessions Judge or excluding further recourse. Courts of Session are established under Section 9 of Cr.P.C. Presiding Officer of Sessions court is appointed by the High Court. High court has also been empowered to appoint Additional Sessions Judge and Assistant Sessions Judge.

11. Sections 397 and section 401 Cr.P.C. prescribe revisional powers of High Court. Section 397 Cr.P.C. contemplates that revisional power can be exercised by the High Court not only on the application of aggrieved person but also *suo moto*.

12. Section 4 (2) of Cr.P.C. provides that all offences under any other law (other than I.P.C.) shall be investigated, inquired into, tried and otherwise dealt with according to provisions of Cr.P.C. Section

4 of Cr.P.C. is being reproduced below:

"4. Trial of offences under the Indian Penal Code and other laws

(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences."

13. It is thus, apparent that the supervisory power or revisional jurisdiction of the High Court has not been excluded by any provisions of the D.V. Act expressly or impliedly.

14. Thus, revisional power of the High Court is not dependent upon any other statute providing for offences unless there is a specific exclusion of Cr.P.C.

15. A Division Bench of Allahabad High Court in case of **Shafaat Ahmad vs. Smt. Fahmida Sardar, AIR 1990 All 182**, while considering the provisions of Muslim Women (Protection of Rights on Divorce) Act, 1986, has laid down that this Act is silent so far as revisional power is concerned but it is of no consequence as Act does not exclude the application of Cr.P.C. Para-2 of the judgment is being reproduced below:

"A preliminary objection has been raised on behalf of the wife that the revision is not maintainable and the learned counsel for the wife has referred to the case of A.A. Abdullah. AIR 1988 Guj 141. In this case some other point was under consideration and casually to support the argument that the matter should be disposed of expeditiously the single Judge of Gujarat High Court observed that it would be worthwhile to note that no appeal or revision is provided against the order passed by the Magistrate under Section 3 or 4 of the Act. The learned Judge was not deciding the point whether revision

is maintainable or not. This stray observation was made casually while considering other point. Hence, it appears that this point was not properly debated and this stray observation cannot be of much help. The simple thing is that under the Act this order is passed and was passed by the Magistrate. Section 397 of the Code of Criminal Procedure provides that the High court may call and examine the record of any proceedings before any inferior criminal court and the Court of the Magistrate is an inferior criminal court. Hence, there is no reason why the order should not be revisable by the High court. **The fact that it has not been said in the Act that the order is revisable, is of no consequence. A provision need not be made in every Act and it is sufficient if it is provided in one Act. The Act provides that the order is to be passed by the Magistrate and the Cr.P.C. provides that the order of the Magistrate can be revised by the High Court. The Act does not exclude the application of the Cr.P.C. So, Cr.P.C. has to be given effect and the order passed by the Magistrate under Section 3 of the Act becomes revisable in view of the provisions in the Cr.P.C.. Therefore, the preliminary objection is rejected.**

(Emphasis Supplied)

16. Similar question was raised before Hon'ble Kerala High Court in **Crl. M.C. No. 969 of 2010 (Baiju and another vs. Latha and others)** wherein Hon'ble Thomas P. Joseph (J) has held in Para-16 of the Judgment as under:

*"The next question is whether the judgment of the Court of Sessions in an appeal under Section 29 of the Act is amenable to the revisional jurisdiction of the High Court under Section 397(1) and 401 of the Code. I stated that the appeal is governed by the provisions of the Code though right of appeal is provided by Section 29 of the Act. The Act does not say that judgment of the Court of Sessions is subject to challenge before any other court. Under Section 397(1) of the Code, High Court may call for and examine the records of any proceeding before any inferior criminal court. **A Court of Sessions is a criminal court inferior to the High Court for the purpose of exercise of revisional power under Section 397(1) and 401 of the Code.** Section 397 (1) of the Code empowers the courts specified therein to call for records of the inferior criminal court and examine them for the purpose of satisfying themselves as to whether a sentence, finding or order of such inferior court is legal, correct or proper or whether the proceedings of such inferior court is regular. The object of conferring revisional power is to give the superior criminal courts supervisory jurisdiction in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions or apparent harshness of treatment which has resulted on the one*

hand in some injury in the due maintenance of law and order, or on the other hand in some undeserved hardship to individuals. The power of revision is supervisory in character enabling the superior courts to call for records of the inferior criminal courts and examine them for the purpose of satisfying themselves that the sentence, finding, order or proceeding of such inferior court is legal, correct or proper. The Allahabad High Court in Shafaat Ahmad vs. Smt. Fahmida Sardar (AIR 1990 All. 182) considered whether an order under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act is revisable under Section 397(1) of the Code."

17. Hon'ble Kerala High Court relied upon the judgment of Division Bench of Allahabad High Court in **Saman Ismail vs. Rafiq Ahmad and another (2002 Cr.L.J. 3648)** in which, it was held that even if, Act does not provide any procedure of the revision Magistrate being criminal court, his order is amenable to revisional jurisdiction.

18. Brother Hon'ble Manoj Misra, J. in ***Crl. Misc. Writ Petition No. 15337 of 2012 (Prabhunath Tiwari & another vs. State of U.P. and another)*** has held that order passed in appeal under Section 29 of the Act is amenable to revisional jurisdiction. Relevant para is being quoted below:

"Having considered the preliminary objection raised by learned A.G.A. as also on perusal of the provisions of Section 28, 29 and 31 of the Protection of Women from Domestic Violence Act, 2005, I do not find any provision under the said Act, which may provide finality to an order passed in exercise of powers under Section 29 of the Act.

Moreover, as the proceedings under Section 31 of the Protection of Women from Domestic Violence Act, 2005 are governed by the provisions of the Code of Criminal Procedure, 1973 as revision would be maintainable before the High Court against the appellate order passed by a Court of Session in exercise of power under Section 29 of the Act."

19. Madurai Bench of Madras High Court in ***Crl. R.C. (MD) No.287 of 2012of (Arivazhagan vs. M. Uma and others)*** has held that a criminal revision against the order passed by Magistrate was not maintainable as he has an alternative viable remedy of an appeal as per

Section 29 of the Act. This decision, therefore, does not deal with relevant point.

20. In the case of **Shalu Ojha vs. Prashant Ojha (supra)** there was a protection order passed by Magistrate awarding Rs. 2.5 lacs towards monthly maintenance, an appeal was preferred under Section 29 of the Act. In appeal an interim order was passed by Additional Sessions Judge. Appeal was dismissed for non compliance of the interim order. Matter was taken to High Court and ultimately to Apex Court. No question whether order passed in appeal was revisable under Section 397 Cr.P.C. was before the Court. It has been stated in the above case that in D.V. Act no further appeal or revision has been provided to the High Court. Relying upon these observations this Court (Hon'ble Mahendra Dayal, J.) has held that no further appeal or revision is maintainable. Relevant paragraph of the judgment passed in **Writ Petition (M/S) No. 7926 of 2015 (Mrs. Manju Sree Robinson & 2 others vs. State of U.P. and others)** is reproduced below:

"Having heard learned counsel for the parties and having gone through the case laws relied upon by the parties, I find that the latest pronouncement of the Hon'ble Supreme Court is that against the order passed by the Session Judge in appeal, no further appeal or revision is maintainable. In these circumstances, the only remedy available is to file writ petition or an application under Section 482 Cr.P.C. Since the jurisdiction of this Court under Article 226 of the Constitution of India is an extraordinary jurisdiction, the aggrieved party has a right to seek remedy under section 482 Cr.P.C. would be maintainable. At this stage, Mr. Lalit Shukla submits that the writ petition may be treated as an application under Section 482 Cr.P.C., to which learned counsel for the opposite party no. 2 submits that this writ petition should be dismissed and liberty be given to the petitioners to file application under section 482 Cr.P.C. Since this exercise would amount to further delay in the matter therefore, in the interest of justice, the petitioners are permitted to convert this writ petition into application under Section 482 Cr.P.C."

21. Hon'ble Apex Court has only said that in D.V. Act no

further appeal or revision has been provided.

22. Code of Criminal Procedure has not been excluded in the D.V. Act. Since, High court's supervisory power of revision which it can exercise *suo moto* against the order passed by subordinate criminal courts i.e. Magistrate or Sessions Judge has not been taken away, this court is of the view that observation made by Apex Court has been wrongly interpreted and the view taken by Hon'ble Manoj Misra, J. in the case of Prabhu Nath Tiwari (*supra*) appears to be a correct law. Division Bench of this court referred above was not placed before Hon'ble M. Dayal, J. Consequently, this Court is of the opinion that Sessions Judge being subordinate/inferior criminal court to the High court and there being no specific exclusion of the Cr.P.C., the revisional power of the High Court, against the order passed under Section 29 of the D.V. Act are intact and unaffected. In view of above, preliminary objection raised by Sri Pankaj Tiwari is overruled.

23. So far as merits are concerned, it has been alleged in the application filed under Section 12 of D.V. Act that applicant Prathama Singh was married to Chiranjeev Kumar Arya on 28.02.2009. She was serving as teacher on contract basis in Kasturba Gandhi Residential Girls School, Nindura, Barabanki, which job she left on 19.08.2010. She came to know on 21.03.2011 that her husband has established illicit relations with other lady. She was turned out on 21.03.2011 from her husband's house and thereafter she took admission in Narvadeshwar Mahavidhyalaya, Lucknow. Her father has retired while husband is earning nearly Rs. 3,64,000/- per annum. She is residing in rented house and preparing for judicial service etc. She claimed Rs. 30,000/- per month apart from Rs. 5,00,000/- (five lacs) as lump sum amount. It was also stated in para-22 of the affidavit that

against the husband petition under Section 125 Cr.P.C. and petition under Section 24 of Hindu Marriage Act have been filed, while husband has filed case under Section 13 of Hindu Marriage Act.

24. Learned Magistrate in its order dated 25.06.2014 has observed that Family court has already ordered payment of Rs. 2000/- per month as interim maintenance. A sum of Rs. 1000/- per month was ordered by the Magistrate under D.V. Act.

25. An appeal was filed by wife against the order passed by Magistrate, which has been allowed on 02.09.2015 by Additional Sessions Judge, Lucknow.

26. Appellate Court was of the view that income of the husband comes to Rs. 30,000/- per month while wife is staying in rented house as such amount of Rs. 5000/- per month would be just and proper towards maintenance.

27. In the revision filed in this court, it is alleged that parents of wife are residing in Barabanki while in-laws at Hardoi, as such, there is no justification for her to live in Lucknow. Copy of the order whereby service of Prathama Singh was terminated shows that she was found to be indisciplined, negligent and mischievous (Upadravi). It is further submitted that despite repeated request she did not stay in Hardoi, as such, husband had to file a petition for divorce on 22.04.2011 before Family Court, Hardoi, which was transferred to Family court, Lucknow. It is stated in para-14 that she is a Science teacher, runs a coaching from which she earns Rs. 25,000/- per month. She is an advocate and has willingly deserted her husband (para-15). In para-16 it is specifically mentioned that wife has strong financial

position. She has six accounts in different banks namely UCO bank, Lalbhag, Aliganj, United Bank of India etc. Details of the account number and amount lying in the said accounts, have also been given, which shows that there is a one recurring deposit account, two fixed deposit account and rest are saving account.

28. A short counter affidavit has been filed by Smt. Pathama Singh. In short counter affidavit, it is stated that income of husband is more than Rs. 40,000/- per month. The order for terminating her services was subject matter of writ petition No. 6076 (S/S) of 2010, said writ petition was disposed of directing District Magistrate to decide the matter within one month after giving opportunity to the petitioner.

29. Smt. Prathama Singh however, has not denied the allegation made in para- 15 & 16 to the effect that she is an advocate having number of accounts in various banks.

30. Rejoinder affidavit has been filed by husband, in which it is stated that petition was filed concealing the fact that she is an Advocate and she is an earning member. Moreover, she was terminated because of her character and conduct, as is apparent from the termination order and not because of domestic violence as alleged by her. It is further stated that the transfer application seeking transfer of the matter from Family Court, Hardoi to Lucknow was filed by Pal Singh Yadav (Enrolment No. UP-6850 of 2007) and Awadhesh Kumar Yadav. Enrolment number shown by Pal Singh Yadav belongs to Sri Shiv Pal Singh, Advocate, as such, Pal Singh Yadav has used the enrolment number of another counsel i.e. Sri Shiv Pal Singh. Actual enrolment number of Pal Singh Yadav is U.P.-04987 of 2014. It is apparent from

papers filed alongwith supplementary affidavit by Chiranjeev Kumar Arya-revisionist, that Prathama Singh, Shiv Pal Singh & Pal Singh Yadav were Advocates for petitioner, and petition was dismissed on 29.05.2015. In writ petition No. 1065 (M/B) of 2015, it has been shown that Prathama Singh and Pal Singh Yadav were counsel for petitioner.

31. Submission of learned counsel is that Prathama Singh an Advocate has been appearing regularly before the Courts, thus petition under section 12 of the D.V. Act was filed by concealment of facts. She is not unable to maintain herself. Allegation made in para-10 of the affidavit as well as in petition filed under Section 12 of D.V. Act that she is studying and dependent solely upon father, is incorrect. In para-15 of the petition, it is stated that she does not earn anything and is dependent fully upon her parents. This petition has been filed by concealing the fact that she is a regular practicing Advocate. Courts below should not have ordered any maintenance under the D.V. Act. Had she disclosed the facts of her income, courts below would not have passed impugned order. Apart from six accounts mentioned in revision, two more accounts have been detailed in supplementary affidavit (one FD and one saving in SBI Barabanki).

32. In any case it has come on record that wife has become Advocate and she has number of accounts (approx eight), as such, matter requires reconsideration. Amount has to be fixed, keeping in view the income of the husband as well as income of the aggrieved person requiring her to live with the standard of living to which person is accustomed.

33. It is apparent that Prathama Singh is appearing as counsel in number of cases. She is a regularly practicing Advocate,

consequently, courts below are required to consider the matter afresh in the light of documents, which have been placed before the Court. Revision thus deserves to be allowed.

34. It has been brought to the notice of this court that Pankaj Tiwari and Pal Singh Yadav appeared on behalf of Prathama Singh by using different enrolment numbers. In the case at hand Vakalatnama has been filed by Pankaj Tiwari and Pal Singh Yadav. Enrolment number shown in Vakalatnama of Pankaj Kumar Tiwari is UP-1514 of 1996 and that of Pal Singh Yadav is UP-6850 of 2007. In the court of District Judge, Lucknow, Vakalatnama was filed by Pal Singh Yadav and Pankaj Kumar Tiwari with enrolment numbers shown above. Further enrolment number 6850 of 2007 belongs to Shri Shiv Pal Singh as is apparent from Annexure RA-5. Enrolment number of Prathama Singh is UP-4988 of 2014. Enrolment number of Pal Singh Yadav is UP-4987 of 2014. Shocked by these revelations, this court called for report from the District Judge, Lucknow, who reported that in seven courts below Pal Singh Yadav, Shiv Pal Singh, Prathama Singh, Awadesh Kumar, Pankaj Kumar Tiwari have filed their Vakalatnama using different enrolment numbers.

35. Problem is compounded further by Shri Shiv Pal Singh, who filed an affidavit through Sri Ravi Shanker Tiwari. Shiv Pal Singh in his affidavit states that he was shocked to know that his name and enrolment number was used by lawyers. He states in para-5 of the affidavit that he does not know either Prathama Singh or Pal Singh Yadav, who have used his enrolment number. In para-6 of affidavit, it is stated that Pal Singh Yadav has not only used the enrolment number but has also used the name of counsel in different cases. In para-7 of the affidavit, it is stated that he never appeared before the Family

court. Paras- **5, 6, 7 & 8** of the affidavit filed by Sri Shiv Pal Singh, Advocate, are being reproduced below:

5. *That it was orally informed to the Hon'ble Court that the deponent do not know Prathama Singh, who is one of the opposite party No. 2 in the instant case nor does he knows Sri Pal Singh Yadav, who from the record has been shown to use the registration number of the deponent as his own.*

6. *That it has also come to the fore through the counsel for the petitioner that Sri Pal Singh Yadav has not only used the enrolment number of the deponent but in a few cases he has also used the name of the deponent as counsel for his different clients, which was without any authority or any knowledge of the deponent and as such the such act of Pal Singh Yadav is not only Mischievous but against the ethics of the legal practice which needs to be dealt with by stern hands.*

7. *That at the very outset the deponent craves leave of this Hon'ble court to state that he has not visited the family curt even once not to say that he has formed any such caucus or racket. It is further reiterated that the deponent has not signed any vakalatnama with these persons nor has he authorized any of them to use his name as he even does not know them personally.*

8. *That the action of Pal Singh Yadav is so grave and unethical that he deserves to be taken out of the roll of the registered practitioner not only from the Bar Council of U.P. but if it all he is member of any of the Associations he is liable to be expelled from the same as well. Such act of Pal Singh Yadav or any of his associate amounts to polluting the purest stream of justice as a lawyer is not only the officer of the court but he is indispensable in our judicial system and as such his duty towards the society as well as the Hon'ble Courts is to remain honest and put the truth as far as possible and his knowledge before the Hon'ble court but the action of the erring lawyer is such that it further erodes the already lost faith from the fraternity by the respective clients.*

36. He prayed that matter be referred to Bar council so that they are stripped of their registration at the Bar.

37. Pankaj Tiwari states that Pal Singh Yadav is his junior. One Vakalatnama filed by Sri Pankaj Tiwari alongwith Pal Singh Yadav in case of Navneet Kaur vs. Kamaljeet, before this court shows that enrolment number of Pankaj Tiwari is 1514 of 2006 and Pal Singh Yadav's continues to by 6850/2007. It is apparent that Pankaj Tiwari, Pal Singh Yadav, Prathama Singh have been jointly practicing, as is

apparent from the names appearing in cases filed before this Court. Pal Singh Yadav is using the enrolment No. 6850 of 2007, which belongs to Shiv Pal Singh, who is a member of Oudh Bar having enrolment No. UP06850/2007. It is also apparent from the affidavit that Shiv Pal Singh's name in addition to enrolment number has also been used by these persons, as is apparent from the name of the Advocates (alongwith Pankaj Tewari, Prathama Singh and Pal Singh Yadav) (SA-1) appearing in 407 Cr.P.C. petition No. 38 of 2008. It further appears that Pal Singh Yadav has filed a petition as Proprietor of Vidhya Travel Agency, as such, he appears to be engaged in travel business. In this case Pankaj Tewari & Prathama Singh are his advocates (SA-2). Sri Pal Singh Yadav appeared and stated that under some mistaken belief he had used the enrolment number of Shiv Pal Singh. Such an explanation from a law graduate well-versed with the procedure of the court is not acceptable at all and is rejected.

38. Pal Singh Yadav himself is party in Case No. 130 of 2012 pending before A.C.J.M. Court No. 20, Lucknow. Pal Singh Yadav has also been shown as accused in Crime Nos. 312 of 2009 & 168 of 2009, under Sections 384, 506, 420 & 406 I.P.C. respectively, Police Station Naka Hindola, Lucknow. These cases are pending before A.C.J.M. Court No. 32, Lucknow. It is also apparent from the record that Pal Singh Yadav, Prathama Singh were enrolled by Bar Council on the same day i.e. on 28th August, 2014 and their enrolment numbers are UP-4987 of 2014 and UP-4988 of 2014 respectively.

39. It appears that Pankaj Tewari too has used two different enrolment numbers (A) U.P.1514 of 1996 filed in this case (B) UP-1514 of 2006 filed in case No. 270 of 2013 (984 of 2013) under Section 12 of D.V. Act P.S. Alambagh filed before Additional Civil Judge (Junior Division/JM-II) (Navneet Kaur vs. Kamaljeet Sachdeva and

others).

40. Moreover enrolment number of other Advocates are being used brazenly with impunity not only before this Court but other courts of district Lucknow.

41. Prima facie, it appears to be a case of impersonation using somebody else's name and identity. A fraud has been done, which is apparent from the record.

42. In case of **K.D. Sharma vs. Steel Authority of India Limited, (2008) 12 SCC 481** Hon'ble Apex Court has held that High Court will be failing in its duty if it does not reject the petition on the same ground. It was a case where fraud was made upon court. Concealment in filing case also amounts to fraud. Relevant paragraph of the case is being reproduced hereinbelow :-

*"26. It is well settled that "fraud avoids all judicial acts, ecclesiastical or temporal" proclaimed Chief Justice Edward Coke of England about three centuries before. Reference was made by the counsel to a leading decision of this Court in **S.P. Chengalvaraya Naidu vs. Jagannath** wherein quoting the above observations, this Court held that a judgment/decree obtained by fraud has to be treated as a nullity by every court.*

*27. Reference was also made to a recent decision of this Court in A.V. **Papayya Sastry vs. Govt. of A.P.** Considering English and Indian cases, one of us (C.K.Thakker, J.) (SCC p.231, para 22)*

'22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order-by the first court or by the final court-has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings.'

The court defined "fraud" as an act of deliberate deception with the design of securing something by taking unfair advantage of another. In Fraud one gains at the loss and cost of another. Even the most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam."

43. In case of **A. Shanmugam vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam and others, (2012) 6 SCC 430**, Hon'ble Apex Court has held as under:

"2.15. *The adversarial system lacks dynamism because it has no lofty ideal to inspire. It has not been entrusted with a positive duty to discover truth as in the inquisitorial system. When the investigation is perfunctory or ineffective, Judges seldom take any initiative to remedy the situation. During the trial, the Judges do not bother if relevant evidence is not produced and plays a passive role as he has no duty to search for truth."*

44. Relying upon these decisions, it is urged by learned counsel for revisionist that entire proceedings are liable to be quashed, as fraud vitiates everything. Submission has force, but material that wife is practising advocate having sufficient income reflected from various Bank accounts has been placed before this court for the first time, it is but proper that matter is remanded to learned Magistrate to take a holistic view of the matter while deciding the application under Section 12 of D.V. Act.

45. In view of discussions made above, this revision is **allowed**.

46. Since fraud appears to have been played while filing petition under Section 12 of D.V. Act by concealing material facts in the ends of justice exercising power under Sections 397/401 & 482/483

Cr.P.C., order dated 02.09.2015 passed by Additional Sessions Judge, Court No. 17, Lucknow as well as order dated 25.06.2014 passed by learned Additional Chief Judicial Magistrate-II, District Lucknow are set-aside. Concerned Magistrate is directed to decide the application under Section 12 of D.V. Act considering the entire matrix of the case, in the light of observations made in the judgment, expeditiously, if possible within two months from today.

47. An Advocate has an independent identity and personality. It takes years to shape the personality and build an image. This image works althrough his life. Lot of dedication, commitment, sincerity and impeccable integrity is required to generate and sustain an image. Using somebody else's identity and name is most sacrilegious act as such outrage and annoyance of Sri Shiv Pal Singh is not unfounded and is fully justified.

48. So far as prayer of Sri Shiv Pal Singh, Advocate seeking action against Pal Singh Yadav, Advocate is concerned, matter is referred to Bar Council of Uttar Pradesh and Oudh Bar Association. Till a final decision is taken by State Bar Council, Pal Singh Yadav, Advocate is restrained from entering the premises of High Court, Lucknow Bench, Family Court, the court of District Judge, Lucknow and other courts subordinate to him.

49. Senior Registrar will get the Vakalatnama available in this file sealed and an F.I.R. lodged against Pal Singh Yadav for impersonation, stealing and using the identity of other Advocate by using his name and enrolment number.

50. Investigating Officer will also investigate the role of

other Advocates/personnel who were also party to the fraud played with the court.

51. Copy of the order along with affidavit of Sri Sheo Pal Singh, Advocate will be sent to District Judge Lucknow, Secretary, Bar Council of Uttar Pradesh as well as President Oudh Bar Association for taking action against erring Advocates in accordance with law.

52. Senior Registrar will also issue instruction to computer section to ensure that enrolment number and other details of counsels are properly verified before approving the case.

Order Date : 29.06.2016

Reena/-