

A.F.R.

Neutral Citation No. - 2025:AHC-LKO:7572

Reserved on 30.01.2025

Delivered on 06.02.2025

Court No. - 30

Case :- APPLICATION U/S 482 No. - 8107 of 2022

Applicant :- Ram Lotan Vishwakarma And Others

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home U.P. Civil
Secrett. Lko. And Another

Counsel for Applicant :- Sachin Chaturvedi

Counsel for Opposite Party :- G.A.,Amit Kumar Singh

Hon'ble Om Prakash Shukla,J.

- (1) Heard Shri Sachin Chaturvedi, learned Counsel for the applicants, Shri S.N. Tilhari, learned Additional Government Advocate for respondent no.1/State, Shri Amit Kumar Singh, learned Counsel for the respondent no.2.
- (2) This application/petition was taken up for hearing on the preliminary objection of maintainability in view of the conflicting decisions of Co-ordinate Benches of this Court.
- (3) Inherent power of this Court is sought to be invoked under Section 528 of Bharatiya Nagarik Suraksha Sanhita (B.N.S.S.), 2023 (corresponding Section 482 of the Code of Criminal Procedure, 1973), to assail the proceedings initiated against the applicants under the provisions of Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as '*D.V. Act*').

- (4) Conflicting decisions of the Co-ordinate Benches have been brought to the notice of this Court on the issue of maintainability of a petition under Section 482 Cr.P.C for quashing an order passed on notice issued under Section 12 of D.V. Act. On the one hand are the decisions of this Court (Coram: Hon'ble Om Prakash Shukla, J.) dated 31.07.2024 passed in Application U/S 482 No. 6975 of 2013: *Smt. Suman Mishra Vs. The State of U.P.* and a decision of a Co-ordinate Bench of this Court (Coram : Hon'ble Anish Kumar Gupta, J.) dated 09.08.2024 passed in Application U/s No. 11130 of 2024 : *Sandeep Kishore and another Vs. State of U.P. and another*, whereas on the other hand is the decision of another Co-ordinate Bench of this Court (Coram: Hon'ble Arun Kumar Singh Deshwal J.) dated 27.11.2024 taking a divergent view in a bunch of applications/petitions filed under Section 482 Cr.P.C., leading Application U/S 482 No.18994 of 2024 : *Devendra Agarwal & 3 Others Vs. the State of U.P. and another*. Whereas the decisions passed by this Court i.e. in *Smt. Suman Mishra's* (supra) and decision passed by a Co-ordinate Bench of this Court i.e. in *Sandeep Kishore* (supra), hold that application filed under Section 482 of Cr.P.C. challenging the notice issued by the Protection Officer for the purpose of inquiry in pursuance of the order of the Magistrate passed on an application under Section 12 of the D.V. Act is not maintainable, the later decision passed by another Co-ordinate

Bench of this Court (Coram : Hon'ble Arun Kumar Singh Deshwal J.) i.e. in Devendra Agarwal's case (supra) has decided in favour of the maintainability of the application filed under Section 482 Cr.P.C. seeking to quash the proceeding under Section 12 of the D.V. Act.

- (5) In **Smt. Suman Mishra Vs the State of U.P. and another (supra)**, this Court was dealing with a situation wherein the Magistrate on an application filed by the victim under D.V. Act had directed to register it as miscellaneous case and also directed the Protection Officer to submit a domestic incident report after conducting a preliminary enquiry. The Protection Officer in turn, while conducting the said enquiry in compliance to the said order of the Magistrate, issued notice to the applicant/petitioner requiring her to submit reply, however, instead of participating in the preliminary inquiry, applicant/petitioner had approached the Magistrate, seeking to quash the said notice/proceedings and delete her name, which was rejected by the Magistrate. Feeling aggrieved, applicant/petitioner had filed revision, which too was rejected by the revisional Court. In the aforesaid background, the applicant interdicted both the aforesaid orders before this Court in Application U/s. 482 Cr.P.C. No. 6975 of 2013 and this Court after hearing the parties regarding maintainability of the application filed under Section 482 Cr.P.C, noted the ratio laid

down by the Hon'ble Madras High Court in a batch of matters, leading being **P. Pathamanathan Vs Monica** : (2021) SCC Online Mad 8731, wherein the Madras High court extensively dealt with the object & various provisions of the Domestic Violence Act, 2005 and had also relied on the authoritative judgment of the Apex Court in **Kunapareddy v. Kunapareddy Swarna Kumari** : (2016) 11 SCC 774, to hold that all the reliefs contemplated under Chapter-VI of the D.V. Act were civil in nature.

- (6) Further, this Court in the said Suman Mishra's case (Supra) also relied on the judgment of the Hon'ble Apex Court in the case of **Kamatchi Vs. Laxmi Narayanan**: (2022) 15 SCC 50, and expressed its agreement with decision of the learned Single Judge of Hon'ble Madras High Court in **P. Pathamanathan's case** and decision of the Apex Court rendered in **Kamatchi's case (supra)**. This Court had also taken note of decision of Full Bench in **Dinesh Kumar Yadav v. State of U.P**: 2016 SCC OnLine All 3848. In the said backdrop, this Court in **Smt. Suman Mishra's case (Supra)**, while examining the issue of maintainability of an application preferred under Section 482 Cr.P.C challenging the issuance of a notice by the Magistrate leading to initiation of proceedings by a Protection Officer under Section 12 of the D.V. Act, held the application to be not maintainable in the facts of the said case and rejected it.

- (7) In **Sandeep Kishor and another Vs. State of U.P. and another** (Supra), relying on **Smt. Suman Mishra (Supra)**, **Dinesh Kumar Yadav (Supra)**, **Dr. P. Pathmanathan (Supra)** another Co-ordinate Bench has also held that application filed under Section 482 Cr.P.C. would not lie against an order passed under Section 12 of the D.V. Act.
- (8) However, in **Devendra Agarwal and 3 others Vs. the State of U.P. (supra)**, another Co-ordinate Bench of this Court (Coram: Hon'ble Arun Kumar Singh Deshwal, J.), has held after considering the judgment in **Smt. Suman Mishra (Supra)** as *per incuriam* being contrary to the Full Bench of this Court in **Dinesh Kumar Yadav (Supra)**, incorrectly relying upon the judgment of the Apex Court in **Kamatchi (Supra)** and as a corollary, an Application under Section 482 Cr.P.C. (now Section 528 of BNSS) has been held to be maintainable against an order passed in or the entire proceeding under D.V. Act, 2005.
- (9) Learned Counsel for the respondent No.2 has submitted that in **Kamatchi (Supra)**, the Apex Court has noted with approval the decision rendered by the learned Single Judge in **Dr. P. Padmanathan Vs. Tmt. V. Monica (Supra)**. According to the learned Counsel, at the stage of issuance of notice, the provisions of Cr.P.C. will not apply as the application under

Section 12 of the DV Act is not a complaint. According to him, the Single Judge in Dr. P. Padmanathan (Supra) relying on the Supreme Court judgment in Kunapareddy (Supra), held that such an application was not maintainable under section 482 Cr.P.C and in that regard also issued a slew of observations and directions in that batch of cases, which also makes for an interesting enumeration, as herein below :-

“The following directions are, therefore, issued:

- i. 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.*
- ii. An application under Section 12 of the Act shall be as set out in Form II of the D.V. Rules, 2006, or as nearly as possible thereto. In case interim ex-parte orders are sought for by the aggrieved person under Section 23(2) of the Act, an affidavit, as contemplated under Form III, shall be sworn to.*
- iii. The Magistrate shall not issue a summon under Section 61, Cr.P.C. to a respondent(s) in a proceeding under Chapter IV of the D.V. Act. Instead, the Magistrate shall issue a notice for appearance which shall be as set out in Form VII appended to the D.V. Rules, 2006. Service of such notice shall be in the manner prescribed under Section 13 of the Act and Rule 12(2) of the D.V. Rules, and shall be accompanied by a copy of the petition and affidavit, if any.*
- iv. Personal appearance of the respondent(s) shall not be ordinarily insisted upon, if the parties are effectively represented through a counsel. Form VII of the D.V. Rules, 2006, makes it clear that the parties can appear before the Magistrate either in person or*

through a duly authorized counsel. In all cases, the personal appearance of relatives and other third parties to the domestic relationship shall be insisted only upon compelling reasons being shown. (See Siladitya Basak v. State of West Bengal (2009 SCC OnLine Cal 1903).

- v. *If the respondent(s) does not appear either in person or through a counsel in answer to a notice under Section 13, the Magistrate may proceed to determine the application exparte.*
- vi. *It is not mandatory for the Magistrate to issue notices to all parties arrayed as respondents in an application under Section 12 of the Act. As pointed out by this Court in Vijaya Baskar (cited supra), there should be some application of mind on the part of the Magistrate in deciding the respondents upon whom notices should be issued. In all cases involving relatives and other third parties to the matrimonial relationship, the Magistrate must set out reasons that have impelled them to issue notice to such parties. To a large extent, this would curtail the pernicious practice of roping in all and sundry into the proceedings before the Magistrate.*
- 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 an application under Section 12, can be determined as a preliminary issue, in appropriate cases. Any person aggrieved by such an order may also take recourse to an appeal under Section 29 of the D.V. Act for effective redress (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.

- viii. Similarly, any party aggrieved may also take recourse to Section 25 which expressly authorises the Magistrate to alter, modify or revoke any order under the Act upon showing change of circumstances.
- 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.
- x. The Magistrates must take note that the practice of mechanically issuing notices to the respondents named in the application has been deprecated by this Court nearly a decade ago in *Vijaya Baskar (cited supra)*. Precedents are meant to be followed and not forgotten, and the Magistrates would, therefore, do well to examine the applications at the threshold and confine the inquiry only to those persons whose presence before it is proper and necessary for the grant of reliefs under Chapter IV of the D.V. Act.
- xi. In *Satish Chandra Ahuja (cited supra)*, the Hon'ble Supreme Court has pointed out the importance of the enabling provisions under Section 26 of the D.V. Act to avoid multiplicity of proceedings. Hence, the reliefs under Chapter IV of the D.V. can also be claimed in a pending proceeding before a civil, criminal or family court as a counter claim.

- xii. *While recording evidence, the Magistrate may resort to chief examination of the witnesses to be furnished by affidavit (See Lakshman v. Sangeetha, (2009) 3 MWN (Cri) 257. The Magistrate shall generally follow the procedure set out in Section 254, Cr.P.C. while recording evidence.*
- xiii. *Section 28(2) of the Act is an enabling provision permitting the Magistrate to deviate from the procedure prescribed under Section 28(1), if the facts and circumstances of the case warrants such a course, keeping in mind that in the realm of procedure, everything is taken to be permitted unless prohibited (See Muhammad Sulaiman Khan v. Muhammad Yar Khan, ILR (1888) 11 All 267).*
- xiv. *A petition under Article 227 of the Constitution may still be maintainable if it is shown that the proceedings before the Magistrate suffer from a patent lack of jurisdiction. The jurisdiction under Article 227 is one of superintendence and is visitorial in nature and will not be exercised unless there exists a clear jurisdictional error and that manifest or substantial injustice would be caused if the power is not exercised in favour of the petitioner. (See Abdul Razak v. Mangesh Rajaram Wagle, (2010) 2 SCC 432, Virudhunagar Hindu Nadargal Dharma Paribalana Sabai v. Tuticorin Educational Society, (2019) 9 SCC 538). In normal circumstances, the power under Article 227 will not be exercised, as a measure of self-imposed restriction, in view of the corrective mechanism available to the aggrieved parties before the Magistrate, and then by way of an appeal under Section 29 of the Act.”*

(10) According to the learned Counsel for the respondent no.2, in the present case, the learned Magistrate, on presentation of application filed under Section 12 of D.V. Act. has registered the case and directed the Protection Officer to make an inquiry and submit his report, therefore, in the facts and circumstances

of the case, the present application under Section 482 Cr.P.C., is not maintainable and referred to paragraph 19, 20 and 21 of the **Smt. Suman's case (Supra)** in this regard, which are being quoted herein below:

"19. Having noted the judgment passed by the Hon'ble Madras High Court in Dr. P.C Pathmanathan's case (supra), it would be necessary to consider the main question involved before Hon'ble Supreme Court in Kamatchi case (supra), the Respondent (husband and in-laws) had challenged the proceedings initiated by the Appellant/Wife under Section 12 of the D.V. Act by filing an application under Section 482 of the Cr.P.C. The Application of father-in-law was allowed. However, with regard to the Application filed by the husband, although the Hon'ble High Court had rejected the contention of the Respondent/Husband on merit, however on the point of limitation, the application under Section 12 of the D.V. Act was dismissed by the High Court as the same was filed after one year by the appellant/wife. The said order was challenged by the wife by filing an appeal before the Hon'ble Supreme Court. Before, the Hon'ble Supreme Court, on behalf of the wife, two submissions were advanced; firstly, that the limitation for filing application under Section 12 of the D.V. Act and the limitation provided under Section 468 CrPC would be applicable only for initiation of criminal prosecution under Sections 31 and 33 of the DV Act; and secondly that the judgments relied upon by the High Court were distinguishable and for that purpose reliance was placed on the decision of learned Single Judge of Madras High Court in P. Pathmanathan case. Learned counsel representing the respondent/husband relied upon the decision in Sarah Mathew v. Institute of Cardio Vascular Diseases (2014) 2 SCC 62 to substantiate his submission that period of limitation would be one year and the same has to be reckoned from the date of the application. The second submission was made by relying upon the decision in Adalat Prasad

case. Hon'ble Supreme Court in Kamatchi case has reproduced the said written submission in para 10. Said para 10 of the judgment in Kamatchi case needs to be extracted, which reads as under: (Kamatchi case, p. 61, para 10)

“11. In the written submissions, it is also submitted that:

‘This Hon'ble Court in Adalat Prasad v. Rooplal Jindal (2004) 7 SCC 338 held that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused, or any material implicating the accused, or in contravention of provisions of Sections 200 and 202, the order of the Magistrate may be vitiated. However, the relief an aggrieved accused can obtain at that stage is not by invoking Section 203 of the Code, because the Code does not contemplate a review of an order. Hence in the absence of any review power, or inherent power with the subordinate criminal courts, the remedy lies in invoking Section 482 of the Code.’”

20. It is to be noted that in *P. Pathmanathan* case the issue of limitation was not raised nor the same was dealt with. The issue involved in the said case was with regard to maintainability of proceedings under Section 482 CrPC for quashing the proceedings filed under Section 12 of the DV Act. In order to meet this argument advanced on behalf of the appellant wife relying upon the decision in *P. Pathmanathan* case learned counsel for the respondent/husband before Hon'ble Supreme Court relied upon the decision in *Adalat Prasad* case and submitted that in absence of review power or inherent power with the subordinate criminal courts, the remedy lies only by invoking Section 482 CrPC. Negating the argument of the husband, the Hon'ble Supreme Court made the relevant observations in paras 27 to 30, which are being extracted as herein below:

“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* case as under:

‘19. In the first instance, it is, therefore, necessary to examine the areas where the DV Act or the D.V. Rules have specifically set out the procedure thereby excluding the operation of the CrPC as contemplated under Section 28(1) of the Act. This takes us to the D.V. Rules. At the outset, it may be noticed that a “complaint” as contemplated under the DV Act and the D.V. Rules is not the same as a “complaint” under CrPC. A complaint under Rule 2(b) of the D.V. 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 D.V. Rules. A complaint under the D.V. Rules is made only to a Protection Officer as contemplated under Rule 4(1) of the D.V. 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.'

28. *It is thus clear that the High Court wrongly equated filing of an application under Section 12 of the Act to lodging of a complaint or initiation of prosecution. In our considered view, the High Court was in error in observing that the application under Section 12 of the Act ought to have been filed within a period of one year of the alleged acts of domestic violence.*
29. *It is, however, true that as noted by the Protection Officer in his domestic inspection report dated 2-8-2018, there appears to be a period of almost 10 years after 16-9-2008, when nothing was alleged by the appellant against the husband. But that is a matter which will certainly be considered by the Magistrate after response is received from the husband and the rival contentions are considered. That is an exercise which has to be undertaken by the Magistrate after considering all the factual aspects presented before him, including whether the allegations constitute a continuing wrong.*
30. *Lastly, we deal with the submission based on the decision in Adalat Prasad case. The ratio in that case applies when a Magistrate takes cognizance of an offence and issues process, in which event instead of going back to the Magistrate, the remedy lies in filing petition under Section 482 of the Code. The scope of notice under Section 12 of the Act is to call for a response from the respondent in terms of the statute so that after considering rival submissions, appropriate order can be issued. Thus, the matter stands on a different footing and the dictum in Adalat Prasad case would not get attracted at a stage when a notice is issued under Section 12 of the Act."*

21. *It is to be noted that para 19 of P. Pathmanathan case has been considered by the Hon'ble Supreme Court in Kamatchi case and after considering the same, it was held by the Hon'ble Supreme Court that an application under Section 12 of the DV Act cannot be equated with the lodging of complaint or initiation of the prosecution under the Criminal Procedure Code, 1973. It was also held by the Hon'ble Supreme Court that the decision in Adalat Prasad case would not come to any rescue, so as to justify the argument to invoke Section 482 CrPC in the DV Act proceeding when a notice is issued under Section 12 of the DV Act. It was also specifically held that Adalat Prasad case would be applicable when a Magistrate takes cognizance of the offense in terms of Section 190(1)(a) of the Criminal Procedure Code, 1973 and issue process and not in the matter of issuance of notice under Section 12 of the DV Act. Thus, it was concluded by the Hon'ble Supreme Court that the matter of taking cognizance for issuance of process and matter under Section 12 of the DV Act stands on different footing and therefore, the decision in Adalat Prasad case would not get attracted at the stage when notice is issued under Section 12 of the Act by the Magistrate concerned."*

(11) It has also been submitted by the learned Counsel for the respondent no.2 that this Court in **Smt. Suman Mishra's case (Supra)** expressing its agreement with the judgment of the learned Single Judge of Madras High Court in **P. Pathmanathan case(supra)** and Hon'ble Supreme Court in **Kamatchi's case (supra)**, also relied on the judgment of a Full Bench of this Court in **Dinesh Kumar Yadav v. State of U.P: 2016 SCC OnLine All 3848**, in the following words:

"(23) In terms of Section 28 of the DV Act, proceedings under Sections 12 to 23 of the

DV Act would be governed by provisions of the Cr.P.C. Further, as per Section 29 of the DV Act, an appeal against the order of the Magistrate shall lie to the Sessions Court. The DV Act does not provide for any further appeal against the order passed by the Sessions Court. This Court in Dinesh Kumar Yadav v. State of U.P : 2016 SCC OnLine All 3848, has held that a revision to the High Court is maintainable against an order passed by the Sessions Court under Section 29 of the DV Act. Relevant observations of the said judgment are set out below:

“35. Under section 397 of Cr. P.C. “the High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court...”. That the Court of Sessions is as an inferior Court to the High Court, cannot be disputed. Thus, the Court of Sessions before which an appeal has been prescribed under section 29 of the Act, 2005 is a Criminal Court inferior to the High Court and, therefore, a revision against its order passed under section 29 will lie to the High Court under section 397 Cr.P.C. section 401 Cr. P.C. is supplementary to section 397 Cr.P.C.

xxxx xxxx xxxx xxxx

37. In view of the above, as the remedy of an appeal had been provided under section 29 of the Act, 2005 before a Court of Sessions, which means a Court of Sessions referred under section 6 read with sections 7 and 9 of the Cr.P.C., without saying anything more as regards the procedure to be followed in such appeal, and there being nothing to the contrary in the Act of 2005 which may be indicative of exclusion of the application of the provisions of Cr. P.C. to such an appeal, the normal remedies available against a judgment and order passed by a Court of Sessions by way of appeals and revisions prescribed

under the Cr. P.C. before the High Court, are available against an order passed in appeal under section 29 of the Act, 2005.”

(12) Learned Counsel for the respondent no.2 draws the attention of this Court to the conflicting decision by another Co-ordinate Bench in **Devendra Agarwal and 3 others Vs. the State of U.P. (supra)** to contend that without discussing or touching or considering the facts and circumstances of the case involved in **Smt. Suman Mishra (Supra)**, the Co-ordinate Bench of this Court had erroneously come to the conclusion that the judgment of Smt. Suman Mishra (supra) is *per incurium*.

(13) According to the learned Counsel for the respondent no.2, the Apex Court in catena of decisions have held that when a decision of a Co-ordinate Bench of the same High Court is brought to the notice of the Bench, it is to be respected and is binding subject to right of the Bench of such co-equal quorum to take a different view and refer the question to a larger Bench. It is the only course of action open to a Bench of co-equal strength, when faced with the previous decision taken by a Bench with same strength. In support of his submission, he has placed reliance upon the judgment of Apex Court in “**State of Bihar Vs. Kalika Kuer : (2003) 5 SCC 448**”, “**Mary Pushpam Vs. Telvi Curusumary & Ors. (2024) 3 SCC 224**” and “**UP Power Corporation Ltd. V/s Rajesh Kumar**”, (2012) 7 SCC

1. Learned Counsel submitted that in **Kalika Kuer (Supra)**, the Apex Court has held as under :-

“10. Looking at the matter, in view of what has been held to mean by per incuriam, we find that such element of rendering a decision in ignorance of any provision of the statute or the judicial authority of binding nature, is not the reason indicated by the Full Bench in the impugned judgment, while saying that the decision in the case of Ramkrit Singh [AIR 1979 Pat 250 : 1979 Pat LJR 161 (FB)] was rendered per incuriam. On the other hand, it was observed that in the case of Ramkrit Singh [AIR 1979 Pat 250 : 1979 Pat LJR 161 (FB)] the Court did not consider the question as to whether the Consolidation Authorities are courts of limited jurisdiction or not. In connection with this observation, we would like to say that an earlier decision may seem to be incorrect to a Bench of a coordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or not raised before the court or more aspects should have been gone into by the court deciding the matter earlier but it would not be a reason to say that the decision was rendered per incuriam and liable to be ignored. The earlier judgment may seem to be not correct yet it will have the binding effect on the later Bench of coordinate jurisdiction. Easy course of saying that earlier decision was rendered per incuriam is not permissible and the matter will have to be resolved only in two ways — either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits. Though hardly necessary, we may however, refer to a few decisions on the above proposition.”

(Emphasis supplied)

(14) Learned Counsel for the respondent no.2 has further stated that in **Mary Pushpam Vs. Telvi Curusumary & Ors. (Supra)**, the Apex Court has held as under :-

“1. The rule of “Judicial Discipline and Propriety” and the doctrine of precedents has a

merit of promoting certainty and consistency in judicial decisions providing assurance to individuals as to the consequences of their actions. The Constitution Benches of this Court have time and again reiterated the rules emerging from judicial discipline. Accordingly, when a decision of a coordinate Bench of the same High Court is brought to the notice of the Bench, it is to be respected and is binding subject to right of the Bench of such co-equal quorum to take a different view and refer the question to a larger Bench. It is the only course of action open to a Bench of co-equal strength, when faced with the previous decision taken by a Bench with same strength.”

- (15) In this backdrop, learned Counsel for the respondent No.2 has contended that the only course available to a Co-ordinate Bench in case of taking a different view was to “*frame the question of law*” and refer the said questions to a Larger Bench.
- (16) According to the learned Counsel for the respondent no.2, it was not open on the part of a Bench of co-equal strength to decide as to whether the judgment passed by the earlier Bench of equal strength was *per incuriam* or not. Hence, he prays that in view of conflicting decisions of Co-ordinate Benches, this Court may refer these issues to a larger Bench for its consideration.
- (17) Learned AGA has also supported the submission of the learned Counsel for the respondent no.2 with regard to referring the matter to a larger Bench.

- (18) Learned Counsel for the applicants/petitioners, on the other hand, has no objection in referring the issue to the larger Bench, however, he prays that some protection may be granted to the applicants/petitioners till final outcome of the decision of larger Bench.
- (19) This Court may refer to the decision of the Hon'ble Supreme Court in the case of **“UP Power Corporation Ltd. V/s Rajesh Kumar”**: (2012) 7 SCC 1, which is relevant to the context. In the said judgment, the Hon'ble Supreme Court, after referring and quoting passage from the judgment of **‘Shri Bhagwan Vs Ram Chand, AIR 1965 SC 1767’** and **‘Sundarjas Kanyalal Bhatija V/s Collector, (1989) 3 SCC 396’**, held at paragraph 20 of the said judgment, which makes for an interesting read and is being quoted as herein below :-

“20. The aforesaid pronouncements clearly lay down what is expected from the Judges when they are confronted with the decision of a Co-ordinate Bench on the same issue. Any contrary attitude, however adventurous and glorious may be, would lead to uncertainty and inconsistency. It has precisely so happened in the case at hand. There are two decisions by two Division Benches from the same High Court. We express our concern about the deviation from the judicial decorum and discipline by both the Benches and expect that in future, they shall be appositely guided by the conceptual eventuality of such discipline as laid down by this Court from time to time. We have said so with the fond hope that judicial enthusiasm should not obliterate the profound responsibility that is expected from the Judges.”

(20) Having regard to the submissions advanced by the learned Counsel for the parties, which this Court concerns and considering the conflicting judgment on the subject; one in the case of **Smt. Suman Mishra (supra)** and another in the case of **Devendra Agarwal (supra)**, as also the proprietary of a Single Judge Bench declaring decision of Co-ordinate Bench *per incurium*, without referring the issue to a larger bench, this Court is of the opinion that matter requires reconsideration by a Larger Bench so that the legal position in this regard is settled so as to bring about certitude on the subject.

(21) In this view of the matter, this Court refers the following questions for consideration by a Bench of such strength as Hon'ble the Chief Justice may deem appropriate under Chapter V Rule 6 of the Allahabad High Court Rules, 1952 :-

- I. Whether it was open for the learned Single Judge in **Devendra Agarwal (supra)** to declare the judgment of a Co-ordinate bench as *per incurium*, rather than refer its correctness to a larger Bench ?;
- II. Whether for the purpose of seeking quashing of proceedings filed under Section 12 of the D.V.Act, 2005 at the stage of issuance of notice, remedy is under Section 482 Code of Criminal Procedure, 1973 and/or under Article 226/227 of the Constitution of India?;

- III. Whether section 528 BNSS (corresponding section 482 Cr.P.C) can be invoked and/or is maintainable against any and all proceedings under the provisions of Domestic Violence Act, 2005 in view of the decision of the Apex Court in the case of **Kamatchi Vs. Laxmi Narayanan** reported in 2022 SCC Online SC 446?
- IV. Whether judgment rendered in the case of **Devendra Agarwal and 3 others Vs. State of U.P. and another (Supra)**, lays down the law correctly on the issue of maintainability of an application/petition under Section 482 Cr.P.C. for quashing of the proceedings under Section 12 of the D.V.Act at the stage of issuance of notice or it is the judgment in **Smt. Suman Mishra's case (supra)** lays down the law correctly?
- V. Whether a notice issued by the Protection Officer for conducting a preliminary enquiry pursuant to a direction by the Magistrate under Section 12 of the D.V. Act, 2005 is amenable to section 528 BNSS (erstwhile section 482 Cr.P.C) or other proceedings like Article 226 or 227 of the Constitution of India?.
- VI. Whether a Co-ordinate Bench of a High Court can frame an issue without considering the factum of another case rendered by another Co-ordinate Bench of

this Court and hold a Judgment *per incurium* of another Co-ordinate Bench of equal strength, without first expressing its own view and then referring both the earlier Judgment and its own view, to a larger Bench, for reconciliation and restating the law for clarity, consistency and certainty?; and

VII. Whether the principle of stare decisis should be followed by a Co-ordinate Bench of equal strength and is to be respected and binding subject to right of the Bench of such co-equal quorum to take a different view and refer the question to a larger Bench ?.

(22) Let the matter be placed before Hon'ble the Chief Justice for requisite orders.

(23) As noted above, since the matter is being referred, in case the applicants/petitioners move an application for adjournment of the case before the trial Court, this Court hopes and trusts that it shall be adjourned by the trial Court till final outcome of the reference.

(Om Prakash Shukla, J.)

Order Date : 6th February, 2025
Ajit/-