

Court No. - 89

Case :- APPLICATION U/S 482 No. - 31522 of 2023

Applicant :- Shivam Khanna And 3 Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Yashpal Yadav, Lalji Yadav

Counsel for Opposite Party :- G.A., Rakesh Dubey

Hon'ble Deepak Verma, J.

1. Heard learned counsel for the applicants, learned counsel for the opposite party no. 2 and learned A.G.A. for the State.

2. The present 482 Cr.P.C. application has been filed with following prayer:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to allow the application, call for records and quash order dated 23.03.2023 passed by Addl. District & Session Judge, Court No. 18, Kanpur Nagar in Criminal Appeal No. 138/2021 (Shivam Khanna vs. Anjali Seth) u/s 29 D.V. Act (Annexure-1) in so far as it relates to rejection of the appeal, order dated 25.10.2021 passed by M.M. Court No. 1, Kanpur Nagar in Complaint case No. 13093/2020 (Smt. Anjali Seth Vs. Shivam Khanna) u/s 12 D.V. Act, P.S. - Kohna, District- Kanpur Nagar (Annexure-7) and proceedings initiated in pursuance thereof at complaint case No. 14/2022 (Smt. Anjali Seth Vs. Shivam Khanna) u/s 20 DV Act and pending before M.M. Court No. 1, Kanpur Nagar.

It is further prayed that District & Session Judge, Kanpur Nagar may be directed to consider and initiate proper action in pursuance of the order dated 07.11.2022 passed by Addl. District & Session Judge, Court No. 18, Kanpur Nagar, in Criminal Appeal No. 138/2021 (Shivam Khanna Vs. Anjali Seth) u/s 29 D.V. Act, arising out of order dated 25.10.2021 passed by M.M. Court No. 1, Kanpur Nagar in Complaint case No. 13093/2020 (Smt. Anjali Seth Vs. Shivam Khanna) u/s 12 D.V. Act, P.S.- Kohna, District- Kanpur Nagar.

It is further more prayed that during pendency of this application, the operation and effect of order dated 23.03.2023 passed by Addl. District & Session Judge, Court No. 18, Kanpur Nagar in Criminal Appeal No. 138/2021 (Shivam Khanna vs. Anjali Seth) u/s 29 D.V. Act in so far as it relates to rejection of the appeal, order dated 25.10.2021 passed by M.M. Court No. 1, Kanpur Nagar in Complaint case No. 13093/2020 (Smt. Anjali Seth Vs. Shivam Khanna) u/s 12 D.V. Act, P.S. - Kohna, District- Kanpur Nagar (Annexure-7) and proceedings initiated in pursuance thereof at complaint case No. 14/2022 (Smt. Anjali Seth Vs. Shivam Khanna) u/s 20 DV Act and pending before M.M. Court No. 1, Kanpur Nagar, may be stayed, or pass such other and/or further order as this Hon'ble Court may deem just and proper in the ends of justice, otherwise applicant shall suffer irreparable loss and injury."

3. Counsel for the opposite party no. 2 has raised a preliminary objection that

against the impugned order passed under Section 29 of the Domestic Violence Act, a revision under Section 397 Cr.P.C. is maintainable, in view of the full Bench decision of this Court dated 27.10.2016 in **Criminal Revision No. 582 of 2016 (Dinesh Kumar Yadav vs. State of U.P. & Anr.)**. Counsel for the opposite party no. 2 has placed reliance over paragraph no. 23 of the said order, which is quoted as under:-

"23. 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.

23.1 Section 4 (2) Cr P C does not have any application to the present case. Since the Act, 2005 does not prescribe any special form of procedure either for the proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 or for an appeal under Section 29, therefore, Section 5 is also not attracted.

23.2 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. "

4. In view of the objection and observations made by the Full Bench of this Court in the aforesaid case, the instant application under Section 482 Cr.P.C. is **dismissed** as not maintainable.

Order Date :- 31.10.2023

Aditya