

**Court No. - 13**

**Case :-** CRIMINAL MISC REVIEW APPLICATION  
DEFECTIVE No. - 7 of 2023

**Applicant :-** Pratham Mishra @ Anshu Thru. His  
Mother Smt. Suman Mishra @ Kiran

**Opposite Party :-** State Of U.P Thru. Addl. Chief  
Secy. Home Lko. And 3 Others

**Counsel for Applicant :-** In Person

**Hon'ble Karunesh Singh Pawar,J.**

(Application No.1 of 2023)

Heard the applicant-in-person and learned A.G.A  
for the respondent State on the application for  
condonation of delay in filing the review  
application.

Perused the affidavit filed in support of the  
application for condonation of delay.

Grounds in the affidavit has been shown to be  
sufficient.

The application is allowed.

The delay in filing the review application is hereby  
condoned.

**(Order on review application)**

Heard the applicant-in-person and learned A.G.A.  
for the respondent State.

The applicant through this application has prayed

for the following relief:-

"WHEREFORE, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to review its Judgment & Order dated 16.08.2023 passed in Writ Petition No. 327 (H/C) of 2022 (Pratham Mishra @ Anshu vs. State of U.P. & others) certified copy of which is annexed with the memo of this review application and pass appropriate order permitting the petitioner (mother of the detainee) to meet with her son as & when this Hon'ble Court may deem just and proper in the interest of justice."

The petitioner-in-person submits that while passing the order under review dated 16.8.2023, this Court has taken into account the statement made by the detainee and recorded by Sub-Inspector, which is erroneous and, as such, the said statement is nothing in the eyes of law. She submits that she is not pressing the prayer to provide custody of the detainee rather she is confining her prayer to grant her visiting rights.

Learned A.G.A. has opposed the application and has submitted that no case is made out to review the order dated 16.8.2023 as there is no error apparent at the face of record.

Having regard the aforesaid submissions of the parties and going through the record available before this Court, it is required to be noted herein that while dealing with the scope of review, the

Apex Court in *Thungabhadra Industries Ltd. v. Govt. of A.P.* : AIR 1964 SC 1372, had opined :-

"What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an 'error apparent on the face of the record'. The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an 'error apparent on the face of the record', for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by 'error apparent'. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error."

In *Parsion Devi v. Sumitri Devi*; (1997) 8 SCC 715, the Apex Court after referring to *Thungabhadra Industries Ltd. (supra)*, *Meera Bhanja v. Nirmala Kumari Choudhury*; (1995) 1 SCC 170 and *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma*; (1979) 4 SCC 389, has held thus:-

"Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by

a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise".

The aforesaid authorities clearly spell out the nature, scope and ambit of power to be exercised. The error has to be self-evident and is not to be found out by a process of reasoning. This Court has adverted to the aforesaid aspects only to highlight the nature of review proceedings.

Keeping in mind the aforesaid legal propositions and going through the order under review, this Court finds that while passing the order under review dated 16.8.2023, this Court took note of written instructions received by the State Counsel wherein the statement of detenue was also mentioned, in which it has been specifically stated by the detenue that detenue was major and is residing with his father on his own accord and wants to keep residing with his father who is the natural guardian of detenu. Accordingly, this Court has dismissed the writ petition by means of the order under review dated 16.08.2023.

Considering the facts and circumstances of the case, particularly the fact that the detenu is a

major and is willing to reside with his father out of his own free-will, this Court is of the view that there is no error apparent at the face of record in the order under review dated 16.8.2023. Moreso, petitioner-in-person has failed to show any error apparent on the face of record in the order under review.

However, so far as relief claimed by the applicant in the instant review application regarding visiting rights are concerned, this Court is of the view that it is always open for the applicant to avail remedy as provided under common law, hence the relief claimed by the applicant in the instant review application has no substance.

The review application is not maintainable and is, accordingly, dismissed.

**Order Date :- 27.10.2023**

Madhu