

Court No. - 16

Case :- CRIMINAL MISC REVIEW APPLICATION No. - 4 of 2024

Applicant :- Khushbu Thru. Her Natural Guardian Husband-Lal Chand Rawat

Opposite Party :- State Of U.P. Thru. Prin. Secy. (Home), Lucknow And 5 Others

Counsel for Applicant :- Anil Sharma, Sameer Shukla

Hon'ble Shamim Ahmed, J.

1. Heard learned counsel for the applicant and Sri Vinay Kumar Shahi, learned A.G.A.-I for the Stat as well as perused the record.
2. This application seeks review of judgment dated 09.01.2024 passed by this Court in Habeas Corpus Writ Petition No.5 of 2024 (Khushbu through her Husband Lal Chand Rawat Vs. State of U.P. & Others), whereby petitioner's writ petition has been disposed of granting remedy to the petitioner to avail remedy as available under Section 9 of the The Hindu Marriage Act, 1955.
3. It will be relevant to quote the order dated 09.01.2024 passed in Habeas Corpus Writ Petition No.5 of 2024, which is being reproduced hereunder:-

"Heard learned counsel for the petitioner as well as Sri Ashok Kumar Singh, learned A.G.A.-I for the State and perused the record.

The instant writ petition has been filed seeking issuance of writ, order or direction in the nature of Habeas Corpus commanding and directing the opposite parties to produce the detenue before this Hon'ble High Court.

Learned counsel for the petitioner submits that the marriage of Khushbu (the detenue) and Lal Chand Rawat (the next friend of the detenue) was solemnized on 08.12.2023 and they were living happily. He further submits that on 15.12.2023, the opposite party no.3 called the petitioner alongwith the detenue and forcibly detained the detenue and handed over to the opposite party no.6.

On the other hand, learned A.G.A.-I for the State submits that the detenue is not under illegal custody as she is willingly living with her parents and respondent no.6 is father of the detenue. He further submits that it cannot be said that the major daughter living with her father after marriage is under illegal detention. The detenue is major and she is free to live anywhere she wants on her own sweet will and even though the next friend, who claims to be husband, has not annexed any document to justify that they are married to each other nor any proper marriage registration certificate is filed alongwith the petition nor any other relevant document is filed, which shows that they are married legally as per Hindu rites and rituals except some photographs.

Learned A.G.A.-I further submits that if the detenue is legally wedded wife and she is not coming from her parents' house to live with the next friend, Lal Chand Rawat, then he has a remedy to file a suit under Section 9 of the The Hindu Marriage Act, 1955 before the appropriate forum but not the present petition of Habeas Corpus for custody of wife claiming that she is under illegal detention.

After hearing learned counsel for the respective parties, this Court finds that the detenue is not under illegal custody as she is willingly living with her parents and respondent no.6 is father of the detenue and it cannot be said that the major daughter living with her father after marriage is under illegal detention as the detenue is major and she is free to live anywhere she wants on her own sweet will. This Court further finds that the next friend, who claims to be husband, has not annexed any document to justify that they are married to each other nor any proper marriage registration certificate is filed alongwith the petition nor any other relevant document is filed, which shows that they are married legally as per Hindu rites and rituals except some photographs.

In view of above, this Court is of the view that the petitioner may avail remedy as available under Section 9 of the The Hindu Marriage Act, 1955 to file a suit before the appropriate forum.

*With the above observations, the instant writ petition is **disposed of.**"*

4. I have gone through the grounds taken in review application, which virtually constituting an attempt to re-argue the matter which cannot be done in the garb of review.

5. In the case of **Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh; AIR 1964 SC 1372**, Hon'ble the Supreme Court was pleased to observe:-

"A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error."

6. Further, in the case of **Aribam Tuleswar Sharma Vs. Aribam Pishak Sharma; 1979 (4) SCC 389**; Hon'ble the Supreme Court was pleased to observe:-

"... there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of Appeal. A power of review is not to be confused with appellate powers which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court."

7. Again, in the case of **Meera Bhanja v. Nirmala Kumari Choudhury; AIR 1995 SC 455** while quoting with approval the above passage from **Abhiram Taleswar Sharma Vs. Abhiram Pishak Shartn (supra)**, Hon'ble the Supreme Court once again held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

8. Further, in the case of **Parsion Devi and others Vs. Sumitri Devi and**

others; 1997 (8) SCC 715, Hon'ble the Supreme Court was pleased to observe that an error, which is not self evident and has to be detected by process of reasoning, can hardly be said to be error apparent on the face of the record justifying the court to exercise powers of review in exercise of review jurisdiction.

9. Further, in the case of **Rajendra Kumar Vs. Rambai; AIR 2003 SC 2095**, Hon'ble the Supreme Court was pleased to observe about limited scope of judicial intervention at the time of review of the judgment and held as under:

"The limitations on exercise of the power of review are well settled. The first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead to failure of justice. In the absence of any such error, finality attached to the judgement/order cannot be disturbed."

10. Thus, Review is not an appeal in disguise. Rehearing of the matter is impermissible in the garb of review. It is an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. In the case of **Lily Thomas Vs. Union of India; AIR 2000 SC 1650**, Hon'ble the Supreme Court of India was pleased to observe that power of review can be exercised for correction of a mistake and not to substitute a new. Such powers can be exercised within limits of the statute dealing with the exercise of power. The aforesaid view is reiterated in the case of **Inderchand Jain Vs. Motilal; (2009) 4 SCC 665**.

11. Further, in the case of **Kamlesh Verma Vs. Mayawati and others; 2013 (8) SCC 320**, Hon'ble the Supreme Court was pleased to observe as under:

"19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 of CPC. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction."

Summary of the Principles:

20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:-

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words "any other sufficient reason" has been interpreted in **Chhajju Ram vs. Neki, AIR 1922 PC 112** and approved by this Court in **Moran Mar Basselios**

Catholicos vs. Most Rev. Mar Poulouse Athanasius & Ors., AIR 1954 SC 526, to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India vs. Sandur Manganese & Iron Ores Ltd. & Ors., 2013 (8) SCC 337.

22.2. When the review will not be maintainable:-

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

(emphasis supplied)

12. Today, learned A.G.A.-I for the State has also supplied a copy of instruction dated 08.01.2024 received from the Sub Inspector of Police, Police Station Indira Nagar, District Lucknow, which is taken on record. In the aforesaid instructions, it is stated that the detainee was produced before the learned Sub Division Magistrate, Sanchore, Rajasthan and her statement was recorded, wherein she desires to go with her parents, as such, on her own request, she was handed over to her parents.

13. After perusing the instructions supplied by learned A.G.A.-I for the State as well as considering the aforesaid case laws, this Court is of the view that no ground for review is made out and the instant application is liable to be rejected.

14. Application is accordingly **rejected**.

Order Date :- 12.2.2024

Saurabh