

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO
AND**

THE HON'BLE SRI JUSTICE S.V. BHATT

Rev. W.A.M.P.No.980 of 2015
in
W.A.No.15 of 2015

ORDER: (per M.S.R.J.)

This application is filed seeking review of the order dt.19-01-2015 in W.A.M.P.No.8 of 2015 in W.A.No.15 of 2015 and W.A.No.15 of 2015.

2. Brief facts leading to the filing of Review Petition are set out as under :

THE WRIT PETITION

(i) The petitioner herein is a direct recruit Dy. Superintendent of Police selected in Group-I Services examination conducted by the Andhra Pradesh Public Service Commission in 1987. After his appointment, he had worked as Dy. Superintendent of Police at various places. He was later promoted as Addl. Superintendent of Police and then as Superintendent of Police. He was elevated to I.P.S. in 2002 treating his year of allotment to the I.P.S. as 1998. He belongs to Scheduled Caste community. In 2009, he was working as Chief of Vigilance and Security, A.P. Genco, Vidyut Soudha, Somajiguda, Hyderabad.

(ii) He filed W.P.No.5245 of 2009 against respondents alleging that 1st respondent, who was Addl.DGP (Intelligence) and who was a member of the Police establishment Board (which looks after transfers and postings of IPS Officers) allegedly maligned him, indulged in character assassination, gave false and frivolous information with animosity and caste bias, and was responsible for

his non-consideration for posting as District In-charge; that 1st respondent had committed offence of atrocity, practiced untouchability and is liable for prosecution and punishment under the SC/ST (Prevention of Atrocities) Act, 1989 (for short 'the Act') ; that he given false and frivolous information with animosity towards him to the then Hon'ble Chief Minister; and petitioner was discriminated at every stage in the matter of appointment to the important positions in the Police Department particularly for the post of a District In-Charge Superintendent of Police/Dy.Commissioner of Police (Law and Order) and that Officers junior to him were favoured and given such postings as District In-charge violating the principles of equality and equal opportunity of employment apart from principles of natural justice; that one Sri N.Siva Sankar Reddy, IPS who was conferred to IPS on 11.12.2007 and who was far junior and was not even allotted the Year and batch of IPS officers, was posted Dy.Commissioner of Police (East Zone) ignoring petitioner's claim for regular posting in the department; that he had lodged a complaint dt.03-01-2009 with the 2nd respondent alleging that 1st respondent was guilty of committing an offence under the Act and practicing untouchability and was liable to be prosecuted and punished under the said Act and also Protection of Civil Rights Act, 1955; that 2nd respondent gave reply dt.26.2.2009 that no case was registered and that only a General Diary entry was made for causing enquiry to collect all the facts; that it is still under inquiry; that the action of 2nd respondent was in violation of provisions of the Cr.P.C and the Act; that offence alleged against 1st respondent is a cognizable offence; and a Writ of Mandamus be issued directing respondent Nos.3 and 4 to register a case against 1st respondent under the provisions of the said Act, to furnish a copy of F.I.R. to petitioner

and to investigate the case forthwith as per law.

(iii) In the Writ Petition filed by him, the petitioner did not implead the 1st respondent as a party.

COUNTER AFFIDAVIT FILED BY RESPONDENTS 2 AND 3

(iv) A Counter affidavit was filed in the Writ Petition by respondent Nos.2 and 3. They contended that although 2nd respondent had received the complaint against 1st respondent to register a case under the provisions of the Act, on perusal of the same, the 2nd respondent found that no material evidence was placed in the complaint submitted by petitioner to attract the offences under the Act; that on 04-01-2009, the 2nd respondent sought legal opinion from the Additional Public Prosecutor Grade-I-cum-Special Public Prosecutor for SC/ST (POA) Act cases; the latter had given an opinion on the same day that it is desirable to conduct a preliminary inquiry to ascertain whether information, if any, given by the

1st respondent against petitioner to the Government, was false and frivolous thereby depriving the petitioner of a posting as District In-charge i.e. Superintendent of Police/Dy.Commissioner of Police (Law and Order) on the basis of his caste, for deciding further course of action; on the basis of the said opinion, a preliminary inquiry was taken up by 2nd respondent; it revealed that the Government of Andhra Pradesh had issued G.O.Ms.No.62 General Administration (SC.C) Department dt.07-02-2007 pursuant to the order of the Supreme Court in Writ Petition (Civil) No.310 of 1996; by the said G.O., the Government constituted a Police Establishment Board comprising of the Director General and Inspector General of Police; Additional Director General of Police (Law and Order), Additional Director General of Police

(Administration), Additional Director General of Police (Intelligence) and Additional Director General of police (CID) for the purpose of postings, transfers, promotions and other service matters of the Officers; that he had informed the petitioner vide letter dt.26-02-2009 that enough information was not supplied by him to attract the provisions of the Act and that an entry was made in the General Diary for causing inquiry and for collection of information to take necessary action; after completion of inquiry and after having found that allegations made in the complaint by petitioner against 1st respondent did not attract the provisions of the Act, since no material was placed by complainant in support of his complaint, he had addressed another letter dt.09-03-2009 to 1st respondent intimating him the reasons for not registering case. It was also stated in the counter that 2nd respondent had conducted preliminary inquiry uninfluenced by any statement of any officer/officers and also obtained legal opinion of the Additional Public Prosecutor Grade-I; and that if the petitioner had any grievance on account of the action of 2nd respondent in not registering the complaint, he can approach the competent Court.

COUNTER AFFIDAVIT FILED BY 4TH RESPONDENT IN THE WRIT PETITION

(v) The 4th respondent filed a counter contending that receiving complaints, registering cases and investigations, etc. are taken care of by the concerned Station House Officer and his immediate superior; the 2nd respondent had informed the petitioner on 26-02-2009 that the complaint lodged by petitioner did not contain enough information to attract the penal provisions of the Act and therefore, case was not registered and only entry in General Diary of Saifabad Police Station was made to that effect; if, on a reading

of a complaint, allegations disclose any cognizable offence, then it would be necessary to register a case and then taken up investigation; but since the complaint submitted by petitioner did not attract any cognizable offence, the 2nd respondent had informed petitioner on 09-03-2009 that he did not place any material evidence in support of his complaint and so no case was registered. He also contended that the petitioner was aware that all postings, transfers and promotions to I.P.S. cadre Officers are made (i.e. since 2008) through Police Establishment Board constituted vide G.O.Ms.No.62 dt.07-02-2007 consisting of several officials of which 1st respondent was only one and that ultimately it was the Government/Chief Minister, who finally takes decision in such matters. He therefore contended that complaint of petitioner did attract any penal provisions of law to register a case.

REPLY AFFIDAVIT OF PETITIONER IN THE WRIT PETITION

(vi) A reply affidavit was filed by petitioner to the counter affidavit of respondent Nos.2 and 3 reiterating the submissions in the affidavit filed in support of the Writ Petition. He again reiterated the contents of the complaint and stated that the 1st respondent, being a member of Police Establishment Board, had not given objective and fair information about him to the Government on account of his caste bias. He also contended that 2nd respondent had not examined him for any information and he ought to have filed final report under Section 173 Cr.P.C. He contended that under Section 154 Cr.P.C. registration of F.I.R. was mandatory and that conducting preliminary enquiry into correctness or otherwise of the allegations made by the informant, was contrary to law.

THE ORDER OF THE LEARNED SINGLE JUDGE

(vii) On 30-12-2014, a learned Single Judge of this Court allowed

the Writ Petition on the sole ground that the Additional Advocate General (Telangana), who was representing respondent Nos.2 and 3, conceded that necessary steps would be taken by respondent Nos.2 and 3 for registering F.I.R. against 1st respondent and investigate the complaint against him under the Act. The learned Single Judge in the order dt.30-12-2014 allowing the Writ Petition stated that no further enquiry was needed in view of the concession of the Additional Advocate General (Telangana). He therefore directed the competent authority to register an F.I.R. as early as possible, preferably within one month from the date of receipt of a copy of the said order and take necessary proceedings in accordance with law against the 1st respondent.

THE APPEAL BY 1ST RESPONDENT SEEKING LEAVE

(viii) Challenging the same, the 1st respondent filed W.A.M.P.No.8 of 2015 seeking leave to file appeal under clause 15 of the Letters Patent against the orders of the Single Judge by order dt.30-12-2014 in W.P.No.5245 of 2009 and W.A.(SR) No.1269 of 2015 under Clause 15 of the Letters Patent questioning the said order.

THE ORDER OF THIS DIVISION BENCH IN THE WRIT APPEAL

(ix) By order dt.19-01-2015, this Bench granted leave to 1st respondent to file the Writ Appeal and simultaneously also allowed the said Writ Appeal after hearing arguments of the counsel for all parties at length.

JUDGMENT OF SUPREME COURT FOLLOWED TO HOLD THAT 1ST RESPONDENT IS AN 'AGGRIVED PERSON'

(x) We held that 1st respondent's interest would be affected if F.I.R. is registered against him pursuant to the direction in the Writ

Petition and therefore he is a “person aggrieved”; and since the complaint filed by the petitioner, which had been rejected for various reasons, was sought to be revived in the Writ Petition by the petitioner seeking a direction to respondent Nos.2 to 4 to register the F.I.R. against

1st respondent and investigate the same, principles of natural justice would warrant that 1st respondent should have been impleaded as a party and should have been heard before the Writ Petition was decided. The judgment of the Supreme Court in **A.N.Santhanam Vs. K.Elangovan**^[1] was relied on by us and it was held that he has *locus* to file the Writ Appeal and was entitled to grant leave to challenge the order of the learned Single Judge.

CONSTITUTION BENCH DECISION APPLIED

(xi) We also held, relying on the judgment of the Constitution Bench in **Lalita Kumari Vs. Government of Uttar Pradesh and others**^[2], that after the complaint dt.03-01-2009 was given by petitioner to

2nd respondent, the 2nd respondent had come to the conclusion that it did not disclose commission of a cognizable offence; so it was permissible for him to conduct a preliminary enquiry; such enquiry conducted by 2nd respondent revealed that Police Establishment Board consisting of several high officials mentioned above was dealing with postings, transfers, promotions since 2007 and 1st respondent was not solely responsible for the postings given to petitioner; failure of

2nd respondent to register the F.I.R. on the basis of allegations made in the complaint by petitioner cannot be said to be contrary to law in the facts and circumstances of the case; and that the 2nd

respondent had acted in conformity with the principles laid down in **Lalita Kumari** (2 supra). We held that respondent Nos.2 to 4 had not violated the provisions of the Cr.P.C. or the law laid down by the Supreme Court and rejected the contention of the learned counsel for the petitioner that 2nd respondent was bound to register the F.I.R. on the premise that a cognizable offence was disclosed in the complaint. This Court also held that the *concession* made by the Additional Advocate General (Telangana) before the learned Single Judge was contrary to the plea taken in the counter affidavit filed by respondent Nos.2 to 4 and was also contrary to the law declared by the Supreme Court in **Lalita Kumari** (2 supra) in the context of the facts mentioned in the complaint of petitioner.

(xii) This Court also referred to Rules 5 and 7 of the Scheduled Castes and Schedule Tribes (Prevention of Atrocities) Rules, 1995, Section 2(h) of the Cr.P.C., which defines the term “investigation”, and the judgment in **Lalita Kumari** (2 supra) and held that only after registration of F.I.R., investigation would be done and not before; and that investigation under Rule-7 by a police officer (not lesser in rank than Dy. Superintendent of Police), as sought by the petitioner, cannot be done since no F.I.R. had been registered. This Court also categorically held that if information received by the Officer In-Charge of the Police Station did not disclose commission of an offence under the Act, in view of **Lalita Kumari** (2 supra), he is permitted to conduct a *verification or preliminary inquiry* to ascertain whether such offence is disclosed or not and if such *preliminary inquiry or verification* does not disclose the commission of an offence under the Act, he can close the complaint and supply copy of the entry of such closure to the complainant giving reasons for closing the complaint and for not proceeding further.

(xiii) This Court also expressed a view that the grievance of the petitioner in relation to his posting is a service dispute, normally adjudicated before the Central Administrative Tribunal and that it had been given the colour of an “atrocities” under the Act, that there was force in the contention of the 1st respondent that filing of the complaint by petitioner against 1st respondent is an abuse of process of law, and that the complaint of petitioner against 1st respondent, in the facts and circumstances of the case, is not *bona fide*.

3. Seeking review of the said order, this Review Petition has been filed.

4. Heard Sri P.Ratnam, learned counsel for petitioner in the Review Petition, Sri R.Raghunandan Rao, learned Senior Counsel appearing for Sri T.Vinod Kumar, counsel for 1st respondent in the Review Petition, learned Special Government Pleader, attached to the Office of the Additional Advocate General (Telangana) for respondent Nos.2 and 3 and Sri M.Naga Raghun, learned counsel for 4th respondent.

5. Although in para-(vii) of the grounds of Review, the Review Petitioner had contended that in our Order dt.19-01-2015 in W.A.No.15 of 2015, we had held that investigation *precedes* the registration of an F.I.R., he fairly submitted that there is no such finding in our order and that we had correctly held that investigation *succeeds* the registration of F.I.R.

6. In ground-(ix) of the grounds of Review, a contention was raised by the Review petitioner that there is a presumption under Section 8 of the Act as to offences under the Act. The said

section states creates a presumption of abetment of an offence under the Act if it is proved that the accused rendered any financial assistance to a person accused of, or reasonably suspected of committing an offence under Chapter II of the Act. The provision also states that in a prosecution for an offence under this Chapter, if it is proved that a group of persons committed an offence under this Chapter and if it is proved that the offence committed was a sequel to any existing dispute regarding land or any other matter, it shall be presumed that the offence was committed in furtherance of the common intention or in prosecution of the common object. In the facts of the present case neither of these clauses in Section 8 is attracted and the learned counsel for the Review petitioner *frankly admitted* that it is inapplicable.

7. In ground-(v) of the grounds of Review, it is contended by the learned counsel for the Review petitioner that this Court in its order had failed to notice the amendments made to the Criminal Procedure Code and in particular to Section 41-A inserted vide Act V of 2009 making it compulsory for the police to issue a notice in respect of a cognizable offence for which the sentence of imprisonment of maximum of 7 years is prescribed. He contended that the 1st respondent would be entitled to a notice and opportunity to represent his case before the police officer and it is for the police officer to register the case or to file a final report before the Magistrate to close the case. He therefore contended that

1st respondent was not aggrieved and need not have been made a party in the Writ Petition.

The learned counsel for 1st respondent pointed out that the said point had not been argued at the time of hearing of the Writ Petition or the Writ Appeal by the petitioner; that the said provision

was not on the statute book at the time when the complaint was lodged on 3.1.2009 or when the Writ Petition was filed in 2009 and that it had been brought into force only w.e.f. 01-11-2010 long after the lodging of the complaint; and therefore the reliance on the said provision by the petitioner is misplaced.

We completely agree with the said submission of counsel for respondent no.1. The said provision was not on the statute book when the complaint was lodged on 3.1.2009 or when the Writ Petition was filed since it had come into effect only w.e.f. 01-11-2010 and so the petitioner is not entitled to contend that the said provision would have protected the interests of the petitioner at the time when the Writ Petition was filed in 2009. Also no such contention was advanced before us when the Writ Appeal was heard by us by the learned counsel for the petitioner relying on Section 41-A.

In any event, apart from **A.N.Santhanam's** case (1supra) of the Supreme Court referred to above on the question whether 1st respondent was 'person aggrieved', we are of the opinion that the concept of "persons aggrieved" in the context of exercise of judicial review under Article 226 of the Constitution of India, is different and broader as explained below.

8. In **Bar Council of Maharashtra Vs. M.V.Dabholkar** etc. [\[3\]](#) a Constitution Bench of the Supreme Court held that the meaning of the word "a person aggrieved" may vary according to the context of the statute and that one of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. It held that a person is also aggrieved if a legal burden is imposed on him and that the test is whether the words "person aggrieved" include "a person who has a genuine

grievance because an order has been made which prejudicially affects his interests". Judged by this standard, it cannot be said that the 1st respondent was not "aggrieved" by the order passed by the learned Single Judge allowing the Writ Petition filed by the petitioner directing an F.I.R. to be registered under the provisions of the Act against the 1st respondent.

9. In **Praboth Verma and others etc. Vs. State of Uttar Pradesh and others** ^[4], the Supreme Court held that a High Court ought not hear and dispose of a Writ Petition under Article 226 of the Constitution of India without the persons, who would be vitally affected by its judgment, being before it as respondents or at least some of them before it, as respondents in a representative capacity if their number is too large to join them as respondents individually, and, if the petitioners refuse to so join them, the High Court ought to dismiss the petition for non-joinder of necessary parties.

10. The said principle has been reiterated in **Ramrao and others Vs. All India Backward Class Bank Employees Welfare Association and others** ^[5] wherein it was held that an order issued against a person without impleading him as a party and thus without giving him an opportunity to hear him, must be held to be bad in law.

11. In ground (xiv) of the grounds of Review, petitioner contended that this Court ought not to have relied upon the judgment in **A.N. Santhanam** (1 supra) while holding that 1st respondent was entitled to question the judgment of the learned Single Judge by seeking leave in the Writ Appeal. He contended that in that case, the Supreme Court was dealing with the situation

where the High Court in exercise of power under Section 401 Cr.P.C. had allowed a Revision and directed a complaint which had been rejected by the Magistrate to be resurrected without hearing the accused; that Section 401 Cr.P.C. itself provides for issuing such notice and opportunity to the parties, but neither Section 154 Cr.P.C. nor Section 3 of the Act or the Rules made thereunder provide for such notice. We are of the opinion that the said contention is not tenable for the reason that while deciding the Writ Appeal, this Court had applied the rationale behind the judgment in **A.N. Santhanam** (1 supra) that a person against whom a complaint was rejected by Magistrate should be given opportunity by a Superior Court which intends to set aside the said decision and directs to register an F.I.R.

To hold that 1st respondent was entitled to grant of leave, this Court had placed reliance on the judgment in **A.N. Santhanam** (1 supra) in addition to the basic principle of natural justice that a person should be heard before an order adverse to him/his interests is passed by a Court, particularly in the exercise of Writ jurisdiction, where the concept of “person aggrieved” is much wider as explained above.

Further the contention of the 1st respondent in the Writ Appeal was not that he should be issued a notice or opportunity at the stage when the F.I.R. was sought to be registered. But his contention was that since judicial review was sought of the refusal of a Station House Officer to register the complaint against him, it would be in violation of principles of natural justice to decide the said Writ Petition without giving him an opportunity to contest it. In our considered opinion, the 1st respondent was a necessary party to the Writ Petition and his non-joinder in the Writ Petition should have been a ground to dismiss the Writ Petition.

12. There is one more reason why our conclusion that the 1st respondent ought to have been impleaded in the Writ Petition can be supported. In the complaint dt.3.1.2009 and in para 6 of the affidavit filed in support of the Writ petition, the petitioner has alleged that the 1st respondent had acted with bias against him and that he had acted dishonestly, willfully, deliberately and continuously maligned the petitioner. He also alleged that 1st respondent was resorting to “character assassination” by giving false and frivolous information with animosity and with caste bias. These allegations clearly amount to allegations of malice against the 1st respondent. It is settled law that where allegations of malice in fact are leveled against any person in judicial review, such person should be made *eo nomine* party to the proceeding for judicial review so that he would have an opportunity to explain his position. If not it would amount to violation of principles of natural justice. This principle has been laid down in **State of U.P. Vs. Yamuna Shanker Mistra and another**^[6], **All India State Bank Officers Federation Vs. Union of India**^[7], **State of Bihar Vs. P.P.Sharma**^[8] and **Mutha Associates v. State of Maharashtra**^[9]. In his absence, no enquiry into those allegations would be made and otherwise it itself is violative of principles of natural justice since it amounts to condemning a person without an opportunity. Even in this view of the matter, the 1st respondent was entitled to grant of leave in the Writ Appeal and the same cannot be found fault with.

13. The contention in ground-(iii) of the grounds of Review that no relief had been sought against the 1st respondent is not

tenable because even though the petitioner had contended in the Writ Petition that there was failure on the part of the State to discharge statutory duty of registering a case and investigating the offence under the Act, the target of the Writ Petition was undoubtedly the 1st respondent. Therefore, the plea of the petitioner that the 1st respondent was not a “person aggrieved” and that leave ought not to have granted by us to him to challenge the order of the learned Single Judge in the Writ Petition, cannot be countenanced.

14. In ground-(vi) of the grounds of Review, the petitioner has contended that registration of an F.I.R. is mandatory and conduct of preliminary enquiry into the correctness or otherwise of the allegation made by the informant in his report would not justify the delay in registration of F.I.R. by placing reliance on the decisions in **A.V.Santhosh Kumar Vs. Saijid Hussain**^[10] and **T.V.G.Chandra Shekar Vs. State of A.P., rep. by its Principal Secretary, Home Department and others**^[11]. These cases had been cited by the learned counsel for the petitioner at the time of the hearing of the Writ Petition itself and in para-31 of our order in the Writ Appeal, we had pointed out that even the said decisions only state that registration of F.I.R. is mandatory only if the contents of the complaint disclose commission of cognizable offence, but not otherwise, and in the said cases also the decision of the Constitution bench in **Lalita Kumari** (2 supra) was followed.

Although the learned counsel for petitioner drew our attention to several paragraphs (paras 72, 73, 77, 84, 86) of the decision in **Lalita Kumari** (2 supra) in support of his general plea that registration of F.I.R. is mandatory, these observations have to be

understood in the light of the “summing up” by the Supreme Court in para-120. As observed by us in para-33 of the order disposing of the Writ Appeal, the complaint dt.03-01-2009 given by the petitioner to the 2nd respondent against the 1st respondent (that his actions resulted in deprivation of posting as District In-charge to the petitioner) was considered by 2nd respondent who opined that it did not disclose the commission of a cognizable offence and that it did not contain enough information to attract the penal provisions of the Act. After obtaining the legal opinion of the Additional Public Prosecutor-Grade-I-cum-Special Public Prosecutor for SC/ST (POA) Act cases, a preliminary enquiry was conducted which revealed that all postings, promotions would be done by the Police Establishment Board constituted under G.O.Ms.No.62 General Administration (SC.C) Department

dt.07-02-2007 consisting of several officials since 2007 and that the 1st respondent was not solely responsible for the postings given to the petitioner. In para-120.2 of **Lalita Kumari** (2 supra), the Supreme Court held that if the information received did not disclose a cognizable offence, but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not. The scope of the preliminary inquiry, according to para-120.5, was not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence. We are of the opinion that there is no substance in the plea of the petitioner that the

2nd respondent was bound to register the F.I.R. in the facts and circumstances of the case. We reiterate that the 2nd respondent had acted in conformity with the principles laid down in **Lalita Kumari** (2 supra).

Although learned counsel for petitioner placed reliance on para-120.6 of **Lalita Kumari** (2 supra) which indicated that preliminary inquiry may be made in matrimonial disputes/family disputes, commercial offences, medical negligence cases, corruption cases and cases where there is abnormal delay/laches in initiating criminal prosecution and contended that the Supreme Court did not mention offences under this Act also as falling within the same category, and therefore preliminary inquiry was impermissible, the said contention cannot be accepted because in the very same para, the Court had observed that the aforesaid *categories are only illustrations and are not exhaustive of all situations which may warrant a preliminary inquiry.*

15. We had posed a question to the counsel for the petitioner as to whether an FIR is bound to be registered if a complaint filed by a person alleges that the accused, who is totally unconnected with the employment of the complainant, is responsible for deprivation of certain service benefits to the complainant on the ground of caste prejudice attracting the provisions of the Act. We did not receive any satisfactory reply from the counsel for the petitioner to this query. Obviously on the basis of allegations in the complaint, if a cognizable offence is not made out, there is no question of registering an FIR and conducting investigation.

16. The contention of the petitioner in ground No.(ix) that the decision in **Lalitha Kumari** (2 supra) ought to be treated as discovery of new and important matter or evidence which was not within the knowledge and could not be contended by the petitioner at the time of hearing of Writ Appeal cannot be accepted because the said judgment was cited by both sides at that time and was relied upon by both parties and was considered by this Court while

deciding the Writ Appeal.

17. The last contention of the counsel for the petitioner contended that this Court, while deciding the Writ Petition committed an error in treating the Writ Petition as a service matter of the petitioner instead of looking at the issue from the point of view of caste bias against him since he belongs to a Schedule Caste. In the facts and circumstances of the case, this Bench came to the conclusion that a service dispute was being given colour of caste bias and an atrocity under the Act. The said view now appears good even when the review is heard.

18. Except the above points, no other contention was advanced by counsel for the petitioner.

THE LIMITED SCOPE OF REVIEW

19. In **Usha Bharti v. State of U.P.**^[12], the Supreme Court has held that the High Court, in exercise of its powers of review, can no doubt reopen the case and rehear the entire matter and that whilst exercising such power the court cannot be oblivious of the provisions contained in Order 47 Rule 1 CPC as well as the rules framed by itself.

20. The scope of power of review has been recently summed up by the Supreme Court in **Inderchand Jain v. Motilal**^[13]. It declared:

“8. An application for review would lie inter alia when the order suffers from an error apparent on the face of the record and permitting the same to continue would lead to failure of justice. In

Rajendra Kumar v. Rambal^[14] *this Court held: (SCC p. 514, para 6)*

“6. 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 judgment/order cannot be disturbed.”

9. The power of review can also be exercised by the court in the event discovery of new and important matter or evidence takes place which despite exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the order was made. An application for review would also lie if the order has been passed on account of some mistake. Furthermore, an application for review shall also lie for any other sufficient reason.

10. It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.

11. Review is not appeal in disguise. In Lily Thomas v. Union of India ^[15] this Court held: (SCC p. 251, para 56)

“56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise.”

21. Having examined the contentions raised by Counsel for petitioner before us, we are satisfied that there is no error apparent on the face of record in our order dt.19.1.2015 allowing the W.A.15/2015. In fact we are of the view that some of the grounds canvassed by counsel for petitioner amount to treating the Review petition as an appeal against our order dt.19.1.2015 in the said W.A. None of the parameters on basis of which review can be sought are satisfied in the present case.

22. We therefore do not find any merit in the Review petition. It is accordingly dismissed. No costs.

JUSTICE M.S. RAMACHANDRA RAO

JUSTICE S.V. BHATT

Date : 21-08-2015

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- [\[1\]](#) (2012) 12 SCC 321
 - [\[2\]](#) (2014) 2 SCC 1
 - [\[3\]](#) AIR 1975 SC 2092
 - [\[4\]](#) AIR 1985 SC 167
 - [\[5\]](#) (2004) 2 SCC 76
 - [\[6\]](#) (1997) 4 S.C.C. 7
 - [\[7\]](#) (1997) 9 S.C.C. 151 at para 22
 - [\[8\]](#) AIR 1991 S.C. 1260 at para 55
 - [\[9\]](#) (2013) 14 S.C.C 304
 - [\[10\]](#) 2014(1) ALD (CrI.) 768
 - [\[11\]](#) 2014(2) ALT (CrI.) 6
 - [\[12\]](#) (2014) 7 SCC 663
 - [\[13\]](#) (2009) 14 SCC 663
 - [\[14\]](#) (2007) 15 SCC 513
 - [\[15\]](#) (2000) 6 SCC 224