

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No.989 of 2018 O&M)

Date of Decision.22.06.2018

Manish Tandon

...Appellant

Vs

Ankita Bhutani and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL
HON'BLE MR. JUSTICE AVNEESH JHINGHAN**

Present: Mr. Manish Tandon, appellant in person.

-. -

AMIT RAWAL J. (ORAL)

The intra-court appeal has been preferred against the judgment rendered by the Single Judge of this Court whereby the writ petition assailing the order dated 11.05.2018 passed by the Family Court, Sonapat dismissing the objections filed against the application seeking execution of the order dated 09.08.2017, has been dismissed.

The facts are already referred to in the impugned order. Before we could hear the arguments of learned counsel for the appellant, who appeared in person, a specific query was raised with regard to maintainability of the writ petition against the rejection of the objections *vis-a-vis* the order dated 09.08.2017 granting maintenance to the respondent-wife in an application submitted under the provisions of Section 125 of the Code of Criminal Procedure, as the remedy was under the provisions of Code of Criminal Procedure.

The aforementioned objection was also noticed by the Ld. Single Judge but decided the matter on continuous insistence of the appellant-petitioner.

In this regard, the appellant relied upon the judgment referred to in the order under challenge i.e. **Hamza Haji Vs. State of Kerala and another (2006) 7 SCC 416** that once the order has been obtained by fraud, it vitiates the decision of the Court. The argument qua maintainability of the writ petition was also rejected by the Ld. Single Judge. No other case law or different provisions of law has been referred *vis-a-vis* the maintainability of the writ petition.

It is a matter of record that the order dated 09.08.2017 has attained finality as the petitioner went upto Hon'ble Supreme Court, which fact has been noticed by the Single Judge. The ingredients of fraud have to be pressed before the culmination of the proceedings under Section 125 Cr.P.C but when confronted with the aforementioned position of law, Mr. Tandon relied upon the judgment rendered by Hon'ble Supreme Court in **Kunhayammed and others Vs. State of Kerala and another (2000) 6 SCC 359** whereby noticing the doctrine of merger, it was held that dismissal of special leave petition without reason would not be a *res judicata* nor doctrine of merger would apply. There is no dispute to the aforesaid ratio decidendi but the fact of the matter is that once final order granting the maintenance has attained finality, impugned order can be assailed by way of criminal revision or petition under Section 482 Cr.P.C.

In view of the aforementioned observations, we are of the view that the order of the Single Judge dismissing the writ

petition does not suffer from illegality and perversity. There is no scope for judicial review. Resultantly, the Letters Patent Appeal is dismissed.

(AMIT RAWAL)
JUDGE

(AVNEESH JHINGHAN)
JUDGE

June 22, 2018
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No