

Sunil Kumar Sharma vs Preeti Sharma & Anr on 14 May, 2019

Author: Anup Jairam Bhambhani

Bench: Chief Justice, Anup Jairam Bhambhani

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ LPA 338/2019 & C.M.No.22986/2019.

SUNIL KUMAR SHARMA

Through: Md.Azam

Appellant in person.

..... Appellant

Ansari, Adv. with

Versus

PREETI SHARMA & ANR.

..... Respondents

Through: None.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% 14.05.2019 C.M.No.22987-88/2019 (exemptions) Allowed, subject to all just exceptions.

1. Taking exception to an order passed on 1st May, 2019 in W.P.(C) No.4619/2019, this appeal has been filed under Clause 10 of the Letters Patent.

2. Facts in brief go to show that the appellant got married to respondent No.1 on 22nd May, 1997. From the wedlock, two children, both daughters were born on 12th November, 1998 and 5th December, 2003 respectively. Due to certain disputes that arose on 17th March, 2010, the respondent No.1 filed a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 and on 4th May, 2015, the learned Metropolitan Magistrate (Mahila Court) directed the appellant to pay maintenance of Rs.30,000/- per month. An appeal filed against this order was dismissed by the Sessions Court on 27th August, 2015 and therefore, a Crl.M.C.No.4816/2015 was filed before a Single Bench of this Court and on 31st October, 2018; the learned Single Bench of this Court took up the issue for consideration and based on petitioner's own undertaking to deposit a sum of Rs.5,00,000/- each in the form of Fixed Deposit Receipts ('FDRs') in the names of his daughters within a period of six months, the matter was disposed of. The said order dated 31st October, 2018 passed by the learned Single Bench in the criminal miscellaneous case is available at page-52 of the paper book.

3. The order passed by the learned Single Judge goes to show that after some hearing, both the parties agreed and jointly made certain submissions through their counsel and gave certain undertakings, based on which the criminal miscellaneous case was disposed of.

4. After disposal of the criminal miscellaneous case, the petitioner filed the writ petition in question with a prayer for modifying the order passed on 31st October, 2018 in the Crl.M.C.No.4816/2015 and sought expunging of the undertaking given in the matter for deposit of Rs.5,00,000/- as FDRs

in the name of his daughters. The learned writ Court found that the writ petition filed under Article 226 of the Constitution for modification or expunging the undertaking given in a criminal proceeding decided by a Bench of this Court, was not maintainable and as such dismissed the writ petition.

5. Today, before us it is argued that as the order dated 31st October, 2018 was passed in a criminal proceeding and since there is no power available to a Court under the Code of Criminal Procedure (Cr.P.C.), or the law governing conduct of criminal proceedings to review or modify an order passed in a criminal proceeding, therefore, in exercise of its extraordinary jurisdiction under Article 226 of the Constitution, a writ Court can modify the order; and that by refusing to do so, an error has been committed by the learned Single Judge.

6. In our considered view, what could not be done in accordance with the law governing criminal proceedings or as per the provisions of the Cr.P.C., cannot be done by taking recourse to a remedy under Article 226 of the Constitution. The extraordinary remedy available under Article 226 of the Constitution cannot be used as a clever means for doing something which is otherwise prohibited in law, that is, under the Cr.P.C. Therefore, in dismissing the writ petition, which was in fact misconceived and not maintainable, the learned writ Court has not committed any error.

7. The appeal is accordingly dismissed along with the pending application.

CHIEF JUSTICE ANUP JAIRAM BHAMBHANI, J MAY 14, 2019 'anb'