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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Review Application No.36 of 2017
in
Writ Appeal No.715 of 2015

1. S.Basheria
2. Y.Sabira Banu
3. Ruby Fathima
4. Y.Kalesha .. Petitioners

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary,
Home Department,
Fort St.George,
Secretariat, Chennai-600 009.

2. Dr.Salahuddin Mohamed Ayub,
Government Chief Kazi,
Office of the Chief Kazi,
to the Government of Tamil Nadu,
Madarasa-I-Muhamadi,
Dewan Sahib Garden Street,
No.323, T.T.K.Road,
Royapettah, Chennai-600 014.

3. T.C.A.Mohamed Yusuf,

4. The Commissioner of Police,
Chennai, Office of the Commissioner of Police,
No.132, E.V.K.Sampath Road,
Vepery, Chennai-600 007.

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5. The Assistant Commissioner of Police,
   Ambattur Police Station,
   Ambattur, Chennai-600 053.

6. The Inspector of Police,
   Ambattur Police Station,
   Ambattur,
   Chennai-600 053. .. Respondents

Review Application filed under Order 47 Rule 1 read with Section 114 of the Code of Civil Procedure against the judgment dated 26.10.2016 in Writ Appeal No.715 of 2015 on the file of this Court.

For Petitioners : Mr.M.N.S.Mohamed Habeeb Raja

ORDER
(The Order of the Court was made by S.Vaidyanathan,J)

This Review Application filed for reviewing the judgment dated 26.10.2016 in Writ Appeal No.715 of 2015 on the file of this Court.

2. The Memorandum of Grounds of Review Application proceeds only on two aspects, namely (i) the written submissions/arguments have not been considered and that it contained the authorities in support of the contentions of the review petitioners, and (ii) the Khulanama dated 09.06.2006 is a forged one and by virtue of the Certificate issued by the second respondent, dated 27.06.2006, the review petitioners/writ appellants were deprived of their rights and that the Chief Kazi has dissolved the marriage, thereby permitting the third respondent, namely T.C.A.Mohamed Yusuf to marry another Muslim woman.

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3. We have rendered categorical findings in the said Writ Appeal, and the relevant portion of the judgment dated 26.10.2016 passed in W.A.No.715 of 2015 reads as follows:

> "13. For the very allegations made by the appellants/writ petitioners, criminal proceedings have already been initiated and the same are pending before the Criminal Court. The veracity or otherwise of the allegations can be gone into by the Criminal Court after following the due process of law. The fact also remains that the criminal proceedings and the claim with regard to the relief sought in the Writ Petition are independent of each other. The allegations made by the appellants/writ petitioners are disputed questions of fact. It is well settled that the disputed questions of fact cannot be gone into by this Court under Article 226 of the Constitution of India. The Writ Court is concerned only with the questions of law, but not the questions of fact. The disputed questions of fact have to be dealt with only by the appropriate forum or the Court or the authority, as the case may be and not by this Court. Hence, in our considered opinion, the Writ Petition was not maintainable, as the appellants have to work out their remedy only before the appropriate forum or authority under the appropriate law. The learned Single Judge has dealt with the matter in detail and rightly come to the conclusion, dismissing the Writ Petition. Therefore, we do not find any infirmity with the order passed by the learned Single Judge.
>
> 14. Accordingly, the Writ Appeal is dismissed. We make it clear that the dismissal of this Writ Appeal will not come in the way of the Criminal Court or any other forum or authority in deciding the matter before it, independently on merits and in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed."

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4. Coming to the submission made by the learned counsel for the review petitioners that the decisions/citations/authorities referred to in the written submissions/arguments have not been considered, it is seen that the review

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petitioners have not furnished the written arguments either to the Court Officer or to the Stenographer. Having failed to give the written arguments in the Open Court and filing it in the Office/Section of the Registry of this Court and thereafter, the counsel having not informed the same to the Court Officer, contending that the written arguments/written submissions have not been considered, is not correct. When judgment was reserved in the Writ Appeal, the bundle will be in the Chambers of the Judge and it is the bounden duty of the counsel to ensure that the written submissions/arguments are tagged along with the main bundle before the judgment is dictated to the Stenographer. Of course, it is also the duty of the staff of the Court (in the Section) to ensure that the written arguments are tied up with the main bundle.

5. In any event, coming to the decisions referred to by the appellants/review petitioners, it is contended that the Chief Kazi has no power to dissolve the marriage between the parties and that he has exercised his power by dissolving the marriage, which amounts to arbitrary exercise of power. According to the review petitioners/writ appellants, the Chief Kazi has got power to dissolve the marriage. First of all, it has to be observed that this is not a ground for review. Moreover, there is a categorical provisions under Section 4 of the Kazis Act, which reads as follows:

> "Section 4. Nothing in Act to confer judicial or administrative powers; or to render the presence of Kazi necessary; or to prevent any one acting as Kazi:
>
> Nothing herein contained, and no appointment made

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hereunder, shall be deemed:

(a) to confer any judicial or administrative powers on any Kazi or Naib Kazi appointed hereunder; or

(b) to render the presence of a Kazi or Naib Kazi necessary at the celebration of any marriage or the performance of any rite or ceremony, or

(c) to prevent any person discharging any of the functions of a Kazi."

6. The above said Section 4, which was also referred to in our decision rendered in the Writ Appeal, shows that the Kazi has got to be present at the time of marriage. In this case, the Kazi has not dissolved the marriage. Moreover, it has to be noted that the Kazi has not exercised arbitrary power. When he has not dissolved the marriage between the parties, the question of exercise of arbitrary powers, does not arise in this case. If the learned counsel for the review petitioners feel that our findings are wrong, the remedy is not by filing review petition, and the remedy is only before the Apex Court. Hence, this Court is not inclined to accept the contentions of the learned counsel for the review petitioners.

7. Coming to the decisions relied on by the learned counsel for the review petitioners, it is to be noted that in the decision of the Apex Court reported in 2011 (8) SCC 670 (State of Uttaranchal Vs. Sunil Kumar Vaish), in paragraphs 17 to 19, the Supreme Court observed as follows:

"17. Of late, we have come across several orders which would indicate that some of the Judges are averse to decide the

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disputes when they are complex or complicated, and would find out ways and means to pass on the burden to their brethren or remand the matters to the lower Courts not for good reasons. Few Judges, for quick disposal, and for statistical purposes, get rid of the cases, driving the parties to move representations before some authority with a direction to that authority to decide the dispute, which the Judges should have done. Often, causes of action, which otherwise had attained finality, resurrect, giving fresh causes of action. Duty is cast on the Judges to give finality to the litigation so that the parties would know where they stand.

18. Judicial determination has to be seen as an outcome of a reasoned process of adjudication initiated and documented by a party based mainly on events which happened in the past. Courts' clear reasoning and analysis are basic requirements in a judicial determination when parties demand it so that they can administer justice justly and correctly, in relation to the findings on law and facts. Judicial decision must be perceived by the parties and by the society at large, as being the result of a correct and proper application of legal rules, proper evaluation of the evidence adduced and application of legal procedure. The parties should be convinced that their case has been properly considered and decided.

19. Judicial decisions must in principle be reasoned and the quality of a judicial decision depends principally on the quality of its reasoning. Proper reasoning is an imperative necessity which should not be sacrificed for expediency. The statement of reasons not only makes the decision easier for the parties to understand and many a times such decisions would be accepted with respect. The requirement of providing reasons obliges the Judge to respond to the parties' submissions and to specify the points that justify the decision and make it lawful and it enables the society to understand the functioning of the judicial system and it also enhances the faith and confidence of the people in the judicial system."

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8. In the present case on hand, there are disputed questions of facts, which we have referred to in our judgment in the Writ Appeal. Learned counsel

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for the review petitioners also relied on a decision of the Apex Court reported in AIR 1994 SC 853 = 1994 (1) SCC 1 (S.P.Chengalvaraya Naidu Vs. Jagannath) and contended that if there is a case of fraud, the litigant should approach the Court and is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side, then he would be guilty of playing fraud on the Court as well as on the opposite party. One who comes to the Court, must come with clean hands. Relying on the said decision of the Supreme Court reported in 1994 (1) SCC 1, learned counsel for the review petitioners contended that the Court can take cognizance of the fraud at any stage of the proceedings. The relevant portion of the said judgment of the Supreme Court in 1994 (1) SCC 1 (cited supra), reads as follows:

> "1. "Fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the Court is a nullity and non-est in the eyes of law. Such a judgment/decree--by the first Court or by the highest Court--has to be treated as a nullity by every Court, whether superior or inferior. It can be challenged in any Court even in collateral proceedings.
>
> ....
>
> 5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the Court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to Court with a true case and prove it by true evidence." The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an

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engine of fraud in the hands of dishonest litigants. The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. We are constrained to say that more often than not, process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the Court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.

6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the Court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the Court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ex.B-15) in faovur of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial tantamounts to playing fraud on the Court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Ex.B-15 and non-suited the plaintiff. A litigant, who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party."

(emphasis supplied)

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9. Whether the review petitioners/appellants have been deceived by the contesting respondent(s), has got to be established through evidence and only thereafter, this Court can come to the conclusion as to whether there is any

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fraudulent act committed by the said respondent(s). Since it is only a still-born-child, the above decision is not applicable to the facts of this case.

10. Learned counsel for the review petitioners also relied on a decision of this Court reported in 2012 (2) TLNJ 261 (Civil) (S.Ganesan and others Vs. The Secretary to Government, Public E Department, Fort St.George, Ch-9 and others) and contended that the compensation has been granted in that case and in that case, even the learned Government Pleader opined that the acquittal of the petitioners therein cannot be a ground to deny compensation because in the Criminal Court, all witnesses have become hostile. Based on the materials available before the Court, and following the judgment of the Supreme Court reported in 1997 (1) SCC 416 (D.K.Basu Vs. State of W.B), the Court came to the conclusion that the injury was inflicted and that the compensation has got to be paid. In that case, the recovery order had been challenged before the Court and taking note of the evidence let in before the Criminal Court and analysing the same, this Court came to the conclusion that a direction given to the State Government to pay Rs.3,80,000/- to the petitioner therein, was held to be correct and that the Government Order, ordering recovery of the amount from the Officer, was perfectly held to be valid. The relevant portion of the said judgment reported in 2012 (2) TLNJ 261 (Civil) (cited supra) reads as follows:

> "8. As to whether amounts can be recovered from the guilty policemen came to be considered by the Supreme Court in D.K.Basu Vs. State of W.B., reported in 1997 (1) SCC 416, wherein the Supreme Court in paragraphs 44, 45 and 54 had held as

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follows:

"44. The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

45. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the Courts too much, as the protector and custodian of the indefeasible rights of the citizens. The Courts have the obligation to satisfy the social aspirations of the citizens because the Courts and the law are for the people and expected to respond to their aspirations. A Court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the Court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at time perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased

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victim, who may have been the breadwinner of the family.

.. ..

54. Thus, to sum up, it is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrongdoer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal Courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit.

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> 9. The fact that the State defended the petitioners in the writ proceedings is not a ground to contend that the petitioners are innocent. It is not the pleadings of the parties which determines the issue in question. But it is the findings rendered by the competent Court that alone can govern the lis between the parties. In the present case, though the State had defended them in the writ proceedings, but subsequent to the loss of the case, after getting an opinion from the Government Pleader, they had decided not to go on appeal thereby allowed the order to become final. In view of the direction issued by this Court, the State is bound to implement the order. Therefore, the contentions raised by the petitioners to the contrary are hereby rejected. The further submission that the departmental proceedings and the outcome of the criminal Court will not finally decide the matter. In the writ proceedings, public tort remedy is available in the light of the guidelines issued in D.K.Basu's case (cited supra). The Court can always order compensation. For this purpose the findings recorded in the other proceedings are not relevant."

11. It is to be noted that, this Court, while dealing with the grant of compensation to the wife of the deceased, who died in police custody, has granted compensation to the victim-wife, though one of the accused in that case had been acquitted by a Bench of this Court in the Criminal Appeal. This was dealt with by this Court in W.P.No.21312 of 2004, and by order dated 15.09.2017, this Court granted compensation by following the decisions of the Supreme Court. But this view is distinguishable on the facts of this case.

12. Learned counsel for the review petitioners also relied on a decision of the Supreme Court reported in 1999 AIR SCW 2429 (Sri.B.S.S.V.V.Vishwandadha Maharaj Vs. State of A.P), which deals with a criminal act, and the Supreme

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Court starts the judgment with the wordings that, "A godman is now in the dock." In that case, order for re-investigation under Section 173(8) Cr.P.C. given by the Magistrate, was in question and that the accused persons represented to have divine healing powers through his touches, particularly of chronic diseases and made the complainant believe that his little girl would be cured of her dumbness through his divine powers. The Supreme Court has held that if somebody offers his prayer to God for healing the sick, there cannot normally be any element of fraud. But, if he represents to another that he has divine powers and either directly or indirectly makes that another person believe that he has such divine powers, it is inducement referred to in Section 415 of the IPC. Thus, it is a case of re-investigation of facts before the Supreme Court in that case. The relevant portion of the said decision reported in 1999 AIR SCW 2429 (cited supra) reads follows:

> "Leave granted.
>
> 2. A godman is now in the dock. One who was initiated by him as his devotee has later turned to be his *bete noire*, and the godman is facing a prosecution for the offence of cheating under Section 420 of the Indian Penal Code. When he moved the High Court to quash the criminal proceedings pending against him, the motion was dismissed as per the impugned order against which the present appeal has been filed by special leave.
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> 3. Facts, thus far developed, are stated below:
>
> An FIR happned to be registered on the complaint lodged by one Venkatakrishna Reddy with the Town Police Station, Nellore, containing the following allegations. Appellant (Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishanandha Maharaj) who is a youngman, son of a teacher of Gummaluru Village (A.P.) claimed to possess occult faculties and attracted a number of devotees. He represented to have divine healing powers through

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his touches, particularly of chronic diseases. Complainant approached him for healing his 15 year old daughter who is congenitally a dumb child. Appellant assured the complainant that the little girl would be cured of her impairment through his divine powers. He demanded a sum of Rs.1 lac as consideration to be paid in instalments. The first instalment demanded was Rs.10,000/- which, after some bargaining, was fixed at Rs.5,000/-. Complainant paid that amount and later he paid a further amount of Rs.1,000/- towards incidental expenses. He waited eagerly for improvement of his dump child till 1994 which was the time limit indicated by the appellant for the girl to start speaking. As the child remained the same, complainant began to entertain doubts. Appellant postponed the time limit till August, 1994 for the girl to develop speech capacity. A little more amount of Rs.516/- was collected for performance of a yagyan. But unfortunately nothing of such thing brought about any change in the girl. In the meanwhile, news of some other persons defrauded by the appellant reached the ears of the complainant as newspapers started publishing such other activities indulged in by the appellant. In one such publication it was mentioned that the appellant had mobilised more than a crore of rupees from different devotees. It was then that the complainant realised the fraud committed by the appellant, according to the complainant. Hence a complaint was lodged with the police for cheating.

4. The police conducted investigation and on 15-12-1994 laid final report before the Magistrate concerned by referring the case as "mistake of fact" mainly on the ground that this is a kind of religious belief "prevalent in India among devotees of God". According to the appellant, this was not a case of cheating or breach of trust. But the Magistrate was not prepared to give accord to the said report. On 2-8-1995 he ordered for "reinvestigation of the case".

.. ...

8. If somebody offers his prayers to God for healing the sick, there cannot normally be any element of fraud. But if he represents to another that he has divine powers and either directly or indirectly makes that another person believe that he has such divine powers, it is inducement referred to Section 415 of the IPC. Anybody who responds to such inducement pursuant to it and gives the inducer money or any other article and does not get the desired result is a victim of the fraudulent representation. Court can in such a situation presume that the offence of cheating falling within the

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ambit of Section 420 of the IPC has been committed. It is for the accused, in such a situation, to rebut the presumption.

9. So the contention that the allegations do not disclose an offence under Section 420 of the IPC has to be repelled and we are of the opinion that the Magistrate has rightly taken cognizance of the said offence.

10. Power of the police to conduct further investigation, after laying final report, is recognised under Section 173(8) of the Code of Criminal Procedure. Even after the court took cognizance of any offence on the strength of the police report first submitted, it is open to the police to conduct further investigation. This has been so stated by this Court in Ram Lal Narang Vs. State (Delhi Admn.) (AIR 1979 SC 1791 : 1979 Cril.L.J. 1346). The only rider provided by the aforesaid decision is that it would be desirable that the police should inform the Court and seek formal permission to make further investigation.

11. In such a situation the power of the Court to direct the police to conduct further investigation cannot have any inhibition. There is nothing in Section 173(8) to suggest that the Court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the Court would only result in encumbering the Court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard. As law does not require it, we would not burden the magistrate with such an obligation."

13. Learned counsel for the review petitioners also relied on a decision of the Andhra Pradesh High Court reported in AIR 1979 AP 116 (Mohd. Abbas Ali Vs. Wakf Board), and the relevant portion of the same reads as follows:

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17. That a kazi performs duties of a religious nature is also mentioned in the Statement of Objects and Reasons of Kazis Act, 1880 (Act XII of 1880), which reads as follows:-

"Under the Mohammadan Law the Kazi was chiefly a Judicial Officer. His principal powers and duties are stated at some length in the Hedaya, Book

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> XX. He was appointed by the State, and may be said to have corresponded to our Judge or Magistrate. In addition, however, to his functions under the Muhammadan Law, the Kazi in this country, before the advent of British rule, appears to have performed certain other duties, partly of a secular and partly of a religious nature. The principle of these seems to have been preparing, attesting and registering deeds of transfer of property, celebrating marriages, and performing other rites and ceremonies. It is not apparent that any of these duties were incumbent on the kazi as such. It is probable that the customary performance of them by him arose rather from his being a public functionary and one known by his official position to be acquainted with the law, than from his having as Kazi, a greater claim to perform them than anyone else.

Such was the position of the Kazi in this country under Native Government. On the 'introduction of the British rule, Judges and Magistrates took the place of Kazis and the Kazi in his judicial capacity disappeared: but the British Government, though no longer recognizing the judicial functions of the Kazi, did not abolish the office. By certain Regulations passed from time to time, the appointment of Kazi-ul-kuzaat and Kazis by the State was provided for, and the performance of their non-judicial duties was recognized by law. In the case of Bengal, indeed, certain additional duties were imposed on them. The duties of the Kazi under these Regulations comprised some or all of the following viz.:-

(1) preparing and attesting deeds of transfer and other law-papers;

(2) celebrating marriages and presiding at divorces;

(3) performing various rites and ceremonies;

(4) superintending the sale of distrained property and paying charitable and other pensions and allowances.

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In the course of subsequent legislation, the first and last of the above duties devolved on officers specially appointed for the purpose, and there remained nothing to be performed by the Kazi but the second and third, which were purely ceremonial. Under these circumstances it appeared no longer necessary that the Government should appoint these officers. Accordingly, in 1864, Act XI of that year, all the Regulations relating to the appointment of

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Kazis by Government and the duties to be discharged by them were repealed, but in order that it might be clear that no interference with the ceremonial functions of these officers was intended, a section was added to that Act as follows:-

> "Nothing contained in this Act shall be construed so as to prevent a Kazi-ul-Kuzaat or other Kazi from performing, when required to do so, any duties pr ceremonies prescribed by the Muhammadan law (see Section 2 of Act XI of 1864).

Certain of his duties having thus survived the passing of Act XI of 1864, the Kazi is still a functionary of considerable importance in the Muhammadan community. What was originally in some sense an accidental adjunct of his judicial office has become his principal and only duty, and in some parts of the country at least, the presence of a kazi at certain rites and ceremonies appears now to be considered by Muhammadans essential from their point of view.'

In the preamble to the Kazis Act , it is stated as follows:-

> 'Whereas by the preamble to Act No. XI of 1864 (an Act to repeal the law relating to the offices of Hindu and Muhammadan Law officers and to the offices of Kazi-ul-kuzaat and of Kazi, and to abolish the former offices) it was (among other things) declared that it was inexpedient that the appointment of the kazi-ul-kuzaat, or of City, Town or Pargana Kazis should be made by the Government, and by the same Act the enactments relating to the appointment by Government of the same officers were repealed; and whereas by the usage of the Muhammadan community in some parts of (India) the presence of Kazis appointed by the Government is required at the celebration of marriages and the performance of certain other rites and ceremonies, and it is therefore expedient that the Government should again be empowered to appoint persons to the office of Kazi;"

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19. The aforesaid extracts from the Statement of Objects and Reasons and the preamble to the Kazis Act, clearly show that a kazi holds a position of considerable importance in Muhammedan community and that his presence at the celebration of marriages and at the performance of certain other rites and ceremonies, is considered essential by Muhammadans. Therefore the contention of

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Sri K.F.Baba, that a kazi performs not only secular duties but also certain religious duties, has to be upheld.

20. But the question for consideration is as to who is the authority competent to appoint a Kazi. Under S.2 of the Kazis Act, 1880, it is the State Government that has to appoint a kazi after consulting the principal Muhammadan resident of such local areas. In the instant case, the State Government has not exercised the power to appoint a Kazi."

14. From a reading of the above decision of the Andhra Pradesh High Court, more particularly, with regard to the Statement of Objects and Reasons of Kazis Act, 1880 (Act XII of 1880), it is clear that the Kazi is entitled to be present for performing the various rites and ceremonies and also for celebration of any marriage. Further, from a reading of Section 4 of the Kazis Act, extracted supra, it is seen that the Kazi is necessary for celebration of the marriage and there is no obligation for him to be present at the time of divorce. In this case, there are disputed questions of fact. The Apex Court, in a catena of decisions, held that when the facts are not in dispute, the Court is empowered to grant the relief. When the facts are disputed, this Court cannot delve into the same. In this case, the learned single Judge has rightly held that the criminal proceedings are pending and the rights of the writ petitioner are relegated to be renewed after conclusion of the criminal trial.

15. Reference to the decisions relied on by the learned counsel for the review petitioners are distinguishable on facts and they are all cases gone into by High Court and the Supreme Court, pursuant to the adjudication by the trial

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Court. Based on discussion of the evidence, the Courts have arrived at a conclusion in those decisions. In the case on hand, there is no finality attained with regard to the dispute. In this context, it is worthwhile to quote a decision of the Supreme Court reported in 2002 (3) SCC 533 (Padma Sundara Rao Vs. State of T.N.), wherein the Apex Court has held as follows:

> "9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington Vs. British Railways Board (1972 (2) WLR 537 = 1972 AC 877 (HL)). Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

16. From the order passed by the learned single Judge in the Writ Petition and the judgment rendered by us in the Writ Appeal, it is clear that more than one disputed question of fact are there in this case. When the counsel is stating that the Courts have got to be fair, there is no justification on the part of the counsel in not furnishing the written submissions/arguments to the Court Officer/Stenographer. Therefore, the review petitioners/counsel waited for a decision and after adverse orders are passed in the Writ Appeal, the counsel comes forward with the Review Application on the ground that the Division Bench, while rendering judgment in the Writ Appeal, has not looked into the

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written submissions. The Courts are here only to render justice. It is the duty cast upon the lawyer to ensure that the written submissions/arguments are tagged along with the main bundle and it reaches the correct bundle. In this case, the written arguments/submissions have been filed into the Registry and not brought to the attention of the Judges by the counsel. Nothing prevented the counsel from presenting a copy of the written submissions/arguments in the open Court, by furnishing the S.R. number of the written submissions/arguments filed into the Registry, as the very same Division Bench was hearing the cases upto 07.10.2016 and nothing also prevented the counsel from handing over the written submissions/arguments, after making a mention before the Division Bench, and presenting the same to the Court Officer or Stenographer.

17. Further, in the case on hand, there is no error apparent on the face of record to review the judgment rendered by us in the Writ Appeal. The basic principle to entertain a Review Application under Order 47 Rule 1 C.P.C. is to correct the errors, but not to substitute a view. The judgment under review cannot be reversed (or) altered taking away the rights declared and conferred by the Court under the said judgment; once a judgment is rendered, the Court becomes "*functus-officio*" and it cannot set aside its judgment or the decree; no inherent powers of review were conferred on the Court; the review Court cannot look into the trial Court's judgment; it can look into its own judgment for limited purpose to correct any error or mistake in the judgment pointed out by the

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review petitioner without altering or substituting its view in the judgment under review; the review Court cannot entertain the arguments touching the merits and demerits of the case and cannot take a different view disturbing the finality of the judgment; the review cannot be treated as appeal in disguise, as the object behind review is ultimately to see that there should not be miscarriage of justice and shall do justice for the sake of justice only and review on the ground that the judgment is erroneous cannot be sustained.

18. Further, in the case of *Meera Bhanja Vs. Nirmala Kumari Choudhury,* reported in 1995 (1) SCC 170, the Supreme Court, while considering the scope of the power of review of the High Court under Order 47, Rule 1, C.P.C., held as under:

> "The 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 C.P.C. The review petition of error apparent on the face of the record and not on any other ground. An error apparent on the face of the record must be such an error which must strike one on mere looking at the record and would not require any longdrawn process of reasoning on points where there may conceivably be two opinions. The limitation of powers on court under Order 47, Rule 1, C.P.C. is similar to jurisdiction available to the High Court while seeking review of the orders under Article 226."

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19. Further, the Supreme Court in the decision reported in 2013 (8) SCC 320 (Kamlesh Verma Vs. Mayawati), considered the scope of the review jurisdiction and summarised the factors as to when the review will be

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maintainable and when the review will not be maintainable and the same reads as follows:

"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" have been interpreted in Chhajju Ram Vs. Neki ((1921-22) 49 IA 144 : (1922) 16 LW 37 : AIR 1922 PC 112) and approved by this Court in Moran Mar Basselios Catholicos Vs. Most Rev. Mar Poulose Athanasius (AIR 1954 SC 526 : (1955) 1 SCR 520) 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. ((2013) 8 SCC 337 : JT (2013) 8 SC 275).

20.2. 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

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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."

20. Moreover, a Review Application cannot be entertained merely, as the Supreme Court in the decision reported in 1997 (9) SCC 736 (Tamil Nadu Electricity Board Vs. N.Raju Reddiar), has observed as follows:

"1. ... ... When an appeal/special leave petition is dismissed, except in rare cases where error of law or fact is apparent on the record, no review can be filed; that too by the Advocate-on-Record who neither appeared nor was party in the main case. It is salutary to note that the court spends valuable time in deciding a case. Review petition is not, and should not be, an attempt for hearing the matter again on merits. Unfortunately, it has become, in recent time, a practice to file such review petitions as a routine; that too, with change of counsel, without obtaining consent of the Advocate-on-Record at earlier stage. This is not conducive to healthy practice of the Bar which has the responsibility to maintain the salutary practice of profession. ... "

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21. Further, in another decision of the Supreme Court reported in 2014 (5) SCC 75 (Subramanian Swamy Vs. State of T.N), it has been observed in paragraph 52 as follows:

"52. ... ... Thus, even an erroneous decision cannot be a ground for the court to undertake review, as the first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent

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on the face of the order and in absence of any such error, *finality attached to the judgment/order cannot be disturbed.* (Vide - *Rajender Kumar Vs. Rambhai - 2007 (15) SCC 513 : 2010 (3) SCC (Cri) 584 : AIR 2003 SC 2095)."*

22. In view of the above settled principles of law, this Court is of the view that if the review petitioners herein has got any grievance, the only remedy available to them is to challenge the judgment rendered by us in the Writ Appeal, by filing a Special Leave Petition before the Supreme Court.

23. The learned counsel for the review petitioners, citing the decisions, indirectly, is trying to point out as if the Court has committed a mistake in its judgment. The conduct of the review petitioners like the present one, makes us to think that the Court will have to ensure that the Advocates are asked not to file written submissions/arguments. If the Advocates are going to blame the Judges indirectly, this Court will not ask the parties / counsel like the one here to file written submissions/arguments. If any written submissions/arguments are filed, without the leave of the Court, then, certainly, the Court can ignore the same. Since in this case, the Court has directed the counsel to file written submissions/arguments, the same has been filed before the Section/Office/Registry and neither the counsel nor the Registry has brought the same to our notice/attention during the hearing of the Writ Appeal, nor the said written submissions/arguments have been given to the Court Officer/Stenographer after leave of the Court and after serving/not serving the

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same on the other side.

24. The non-consideration of the written submissions/arguments will not be a ground for reviewing the judgment rendered by us in the Writ Appeal, more particularly, when there is no error apparent on the face of record.

25. For the foregoing discussion, the Review Application is dismissed. No costs.

(H.G.R..J) (S.V.N.J)
03.11.2017

Index: Yes
Internet: Yes
Speaking Order

cs

To

1. The Secretary, Home Department,
   Fort St.George, Secretariat, Chennai-600 009.

2. The Commissioner of Police,
   Chennai, Office of the Commissioner of Police,
   No.132, E.V.K.Sampath Road,
   Vepery, Chennai-600 007.

3. The Assistant Commissioner of Police,
   Ambattur Police Station,
   Ambattur, Chennai-600 053.

4. The Inspector of Police,
   Ambattur Police Station,
   Ambattur,
   Chennai-600 053.

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HULUVADI G.RAMESH, J

and

S.VAIDYANATHAN, J

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Review Application No.36 of 2017
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