

**IN THE SUPREME COURT OF INDIA  
CRIMINAL ORIGINAL JURISDICTION**

**Transferred Case (Criminal) No 1 of 2020**

**Neelam Manmohan Attavar**

**...Petitioner(s)**

**Versus**

**Manmohan Attavar (D) Thr LRs**

**...Respondent(s)**

**ORDER**

1 The petitioner instituted a writ petition<sup>1</sup> under Article 226 of the Constitution seeking to challenge a judgment dated 31 July 2018 delivered by a Single Judge of the High Court of Karnataka in the exercise of the criminal revisional jurisdiction. The relief which was sought in the writ petition was that the judgment of a Single Judge of the High Court dated 31 July 2018 in Criminal Revision Petition 282 of 2018 “may be declared void/disabled/ recalled”. For convenience of reference, the prayers in the writ petition are extracted below:

- “1. The Writ may be permitted.”
2. Judgment dt 31.7.2018 passed in Crl RP 282/2018 may be declared void/disabled/recalled to protect rights and secure probity in public life.
3. De novo/Fresh - Free hearing may be recommended before a higher/full Bench.”

1 Writ Petition 44237 of 2018

- 2 The writ petition before the High Court has been transferred to this Court on 13 December 2019 under Article 139A of the Constitution in Transfer Petition (Criminal) No 342 of 2019. The order of transfer reads thus:

“Having heard the petitioner-in-person and the learned counsel appearing for the respondents and gone through this transfer petition filed under Article 139A of the Constitution of India and considering the facts and circumstances of the case, we deem it fit and proper to transfer W.P. No. 44237/2018 titled as “Neelam Manmohan Attavar Vs. Manmohan Attavar (D) through LRs” from the High Court of Karnataka to this Court.

We order accordingly.

The Registry is directed to immediately transmit a copy of this order to the High Court forthwith.”

- 3 The proceedings which have culminated in the institution of a writ petition under Article 226 of the Constitution before the High Court need to be summarized briefly at this stage. The petitioner instituted proceedings<sup>2</sup> under Section 12 of the Protection of Women from Domestic Violence Act 2005<sup>3</sup>. On 30 July 2015, the petition was dismissed by the Metropolitan Magistrate, Traffic Court-II, Bengaluru. On 5 November 2015, in an appeal<sup>4</sup> arising out of the dismissal of the proceedings, the interim relief seeking residence and expenses was initially refused by the Additional Sessions Judge, Bengaluru. Subsequently, on 19 September 2016 in a petition<sup>5</sup> under Article 226 filed by the petitioner, the Single Judge recognised a right of residence to the petitioner in a house situated at Bengaluru and, on 24 October 2016, directed the withdrawal of the appeal to the High Court. These orders of the High Court became the subject matter of

2 Criminal Misc Petition No 179 of 2013 renumbered as Criminal Misc Petition No 139 of 2015

3 “Act”

4 Criminal Appeal No 1070 of 2015

5 Writ Petition No 49153 of 2016

proceedings before this Court in Civil Appeal Nos 2500 and 2502 of 2017. On 14 July 2017, this Court set aside the orders passed by the High Court in regard to residence and for the withdrawal of the appeal to itself. On 17 August 2017, this Court also dismissed a petition seeking a review of its judgement dated 14 July 2017. As a consequence of the judgment rendered by this Court, the appeal filed by the petitioner before the Additional City Civil and Sessions Judge was heard on merits and was eventually dismissed by an order dated 17 February 2018. The petitioner carried the matter in revision<sup>6</sup> which was dismissed by the High Court on 31 July 2018. Challenging the order of the High Court, the petitioner filed a writ petition under Article 226 of the Constitution. The writ petition has been transferred to this Court under Article 139A by an order of this Court dated 13 December 2019.

- 4 The petitioner who has appeared in person has submitted that the writ petition under Article 226 is maintainable on the ground that the order dated 31 July 2018 of the High Court is void *ab initio*. Elaborating her submissions, the petitioner has urged that the order has not been written by the Judge of the High Court. Moreover, the petitioner submits that the High Court, while disposing of the criminal revision, has not exercised its jurisdiction in a manner consistent with the provisions of Section 397 of the Code of Criminal Procedure 1973. On merits, the petitioner has assailed the correctness of the findings of the High Court, which affirmed the judgment of the appellate court and held that the original respondent with whom the petitioner claims to have entered into a relationship 'in the nature of marriage' had a subsisting marriage, and hence such an alleged relationship could not have been legitimately recognized in law.

6 Criminal Revision Petition No 282 of 2018

The petitioner has challenged this finding of the High Court, together with the other findings to the effect that (i) there was no shared household; and (ii) there was no proof of marriage. The petitioner challenges these findings on the ground that they are erroneous.

- 5 The petitioner has further submitted that in order to put forth a claim based on a relationship in the nature of marriage, it is not necessary under the law that neither of the parties should have a subsisting marriage and that notwithstanding the fact that the respondent was in a subsisting marriage, a valid claim under the Act would be maintainable in a situation such as the one which has been set up by the petitioner as the foundation for the grant of relief. She urged that in a situation such as the present, if the respondent who had a subsisting marriage entered into a relationship with her, there is no reason why a woman in the relationship should be left without a remedy.
- 6 At the outset and since the petitioner has appeared in person, we have made her conscious of the fact that she has instituted a writ petition under Article 226 of the Constitution to challenge an order which has been passed on the judicial side by a Single Judge of the High Court exercising revisional jurisdiction against proceedings which originated from a claim under the Act.
- 7 Urging that the writ petition is maintainable under Article 226, the petitioner has highlighted the pleadings contained in the writ petition as the basis for her grievance that the order has not, as a matter of fact, been scribed by the Single Judge of the High Court. The allegations which have been made in the writ petition are extracted below:

### “3. Grounds

#### Grave Injustice and Serious Prejudice

- 3.1 Evidence Act S 44 reads fraud or collusion in obtaining judgment, or incompetency of court may be proved.

Judgment passed in CrI RP 282/2018 dated 31.7.2018 is the culminating evidence and testimony to trail of grave injustice and serious prejudice in the instant case where Courts themselves are complicit.

- 3.2 As submitted to Hon’ble CJ Kar vide CJC 1694/2018 dt 3.8.2018 and instructions dt 21.8.2018 on the evidence placed before Lordship, issued on 23.8.2018, the Petitioner is resubmitting the two judgments passed by Hon’ble Sitting Judge of HC in her matters on 31.7.2018 and as PCCJ on 16.2.2016. Also another Judgment passed by “same” Hon’ble Sitting Judge of HC on 27.6.2018 in another matter, as material proof of language of the Sitting Judge even on date.

- 3.3 Judgment in question dt 31.7.2018 is not written by Sitting Judge although it bears his authorship.

- That such a situation was foreseen after claims of Adv Vasudevan N prior commencement of hearing was duly reported to Ld RG. It is a verifiable fact and prima facie evidence.
- Language of the Hon’ble Sitting Judge of HC is self-speaking testimony to the fact. It is impropriety and the judgment should have no values in eyes of law.
- Litmus test amplifies further...PS to Director WCD was casually asked to read a free flowing para from each judgment passed in Petitioner’s case.

Q: Is it written by the same person?

A: No.

This was enough to strengthen petitioner’s belief.”

8 The original respondent has died on 12 December 2017. His Legal Representatives have been impleaded as parties to the writ petition.

9 Having heard the petitioner who appears in person and Mr. Balaji Srinivasan, learned counsel appearing on behalf of the Legal Representatives of the original respondent, we are of the view that a writ petition under Article 226 of the Constitution would not be maintainable in order to challenge an order which has been passed by the High Court in the exercise of its judicial powers. In the present case, the High Court has exercised its revisional jurisdiction. Merely assailing the order as an order which is void would not enable a litigant to avoid the consequences which emanate from the order, by instituting a writ petition under Article 226. A litigant is not without her remedies. An order which has been passed by the High Court can either be assailed in a Letters Patent Appeal (in those cases where the remedy of a Letters Patent Appeal is available in law) or by way of a review (where the remedy of a review is available in a certain class of matters). A remedy is available to a litigant against a judicial order of the High Court passed in revisional proceedings, under Article 136 of the Constitution before this court.

10 In the present case, the order dated 31 July 2018 is amenable to the jurisdiction of this court under Article 136 of the Constitution. Though the petitioner has attempted to urge the merits of her grievances against the order of the High Court in these proceedings, we are not inclined to express any opinion on them, so as not to preclude the rights and remedies which are open to the petitioner in the form of a petition under Article 136 of the Constitution. Though the order of the High Court was passed on 31 July 2018, the petitioner who has appeared in

person had initially instituted a writ petition under Article 226 which, as we have noted earlier, was transferred to this Court on 13 December 2019. Should the petitioner choose to espouse the remedy which is available under Article 136 of the Constitution, it would be open to her to explain the delay which has been occasioned on the ground that she was pursuing a remedy which has, by this order, been found to be not maintainable. We, thus, leave open specifically all the rights and contentions of the petitioner in a substantive challenge to the judgment of the High Court dated 31 July 2018 in proceedings under Article 136 of the Constitution.

- 11 Before concluding, it would be necessary for the Court to record that having regard to the fact that the petitioner appears in person, the Court had indicated to her that an *amicus curiae* may be appointed to assist her in preparing the case without, obviously, any involvement of financial expenditure on her part. The petitioner has declined legal assistance stating that she is competent to pursue her own rights and remedies.
- 12 For the above reasons, while we have come to the conclusion that the writ petition under Article 226 of the Constitution was not maintainable for assailing the judgment of the Single judge of the High Court dated 31 July 2018, we expressly leave open the rights and remedies available to the petitioner, including by way of a Special Leave Petition under Article 136 of the Constitution to assail the judgment of the Single Judge of the High Court of Karnataka in proceedings before this Court. We, therefore, decline to entertain the substantive petition under Article 226 of the Constitution seeking a declaration of the invalidity of the order dated 31 July 2018 while expressly keeping open

the rights and remedies available to the petitioner under Article 136 of the Constitution.

13 The Transferred Case is accordingly disposed of.

14 Pending application, if any, stands disposed of.

.....J.  
[Dr Dhananjaya Y Chandrachud]

.....J.  
[K M Joseph]

**New Delhi;  
September 03, 2020**

ITEM NO.17                      Court 3 (Video Conferencing)                      SECTION XVI-A

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Transferred Case (Criminal) No.1/2020

NEELAM MANMOHAN ATTAVAR

Petitioner(s)

VERSUS

MANMOHAN ATTAVAR (D) THR LRS

Respondent(s)

(WITITH IA No.84373/2020 - APPROPRIATE ORDERS/DIRECTIONS & IA No. 31910/2020 - APPROPRIATE ORDERS/DIRECTIONS)

Date : 03-09-2020 This case was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD  
HON'BLE MR. JUSTICE K.M. JOSEPH

For Petitioner(s)    Petitioner-in-person

For Respondent(s)    Mr. Balaji Srinivasan, AOR

UPON hearing the counsel the Court made the following  
O R D E R

- 1        The Transferred Case is disposed of in terms of the signed order.
- 2        Pending applications, if any, stand disposed of.

(SANJAY KUMAR-I)  
AR-CUM-PS

(SAROJ KUMARI GAUR)  
COURT MASTER

(Signed order is placed on the file)