



SUB-APPLN.No.104 of 2023
in Cont.P.No.372 of 2023

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S.VAIDYANATHAN,J.

AND

N.ANAND VENKATESH,J.

(Order of the Court was made by N.Anand Venkatesh,J)

The Contempt Petition has been filed against the respondent for non-compliance of the directions issued by this Court in Paragraph No.16 of the order passed in H.C.P.No.1689 of 2022, dated 03.01.2023.

2. The respondent seems to have initiated domestic violence proceedings against the petitioner in DVC No.116 of 2022 before the Additional Mahila Court at Magisterial level, Egmore, Chennai. The respondent also initiated proceedings before II Additional Family Court, Chennai, in O.P.No.2788 of 2022, seeking for the relief of restitution of conjugal rights against the petitioner. These proceedings became the subject matter of challenge in C.R.P.Nos.3586 and 4156 of 2022 by the petitioner, who took a stand that both the proceedings are not maintainable and hence he sought for striking off of both the above proceedings. Civil Revision Petitions were filed under Article 227 of the

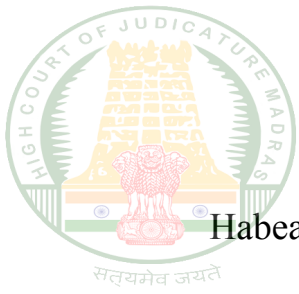


Constitution of India.

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3. The learned single Judge, who dealt with the above Civil Revision Petitions, came to the conclusion that the proceedings initiated by the respondent were maintainable and, accordingly, refused to strike off the proceedings. The learned single Judge, while deciding the Civil Revision Petitions, collaterally went into the findings of the Division Bench made in H.C.P.No.1689 of 2022 and, virtually, the custody, that was granted by the Division Bench, was set at naught by the learned single Judge. It must be mentioned here that the issue with regard to the custody of the children was not even the subject matter before the learned single Judge and it had absolutely no relevance while deciding the Civil Revision Petitions, which were filed to strike off the proceedings initiated by the respondent under the Domestic Violence Act and for restitution of conjugal rights.

4. In exercise of its powers under Clause 37 of the Letters Patent and Article 225 of the Constitution of India, the High Court has framed the Madras High Court Writ Rules,2021, with effect from 08.09.2021. Rule 17 (1) (ii) of the Rules mandates that a petition for



Habeas Corpus shall be posted only before a Division Bench. It is, by virtue of this Rule, the H.C.P.No.1689 of 2022 was posted before the Division Bench.

5. The learned single Judge was not dealing with the challenge to the custody of the children, that was ordered by the Division Bench in the H.C.P. That apart, there was no *lis* before the learned single Judge, seeking for the custody of the children. In view of the same, with due respect to the learned single Judge, the Hon'ble Judge could not have dealt with the subject matter of custody which was already decided in the H.C.P. and he cannot, in a petition filed under Article 227 of the Constitution of India, indirectly set aside the findings and directions issued by the Division Bench.

6. It is too well settled that what cannot be done directly cannot be achieved indirectly by a collateral attack on the order passed by the Division Bench.

7. The Apex Court, in *State of Punjab v. Davinder Pal Singh Bhullar*, (2011) 14 SCC 770, has held as follows :

"70. In view of the above, the legal regime, in this respect, emerges to the effect that the Bench gets jurisdiction from the assignment made by the Chief Justice



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and the Judge cannot choose as to which matter he should entertain and he cannot entertain a petition in respect of which jurisdiction has not been assigned to him by the Chief Justice as the order passed by the Court may be without jurisdiction and make the Judge coram non judice"

8. It is also relevant to take note of a Full Bench decision of this Court in *District Magistrate v. K.C.Mammen Mapillai*, 1939 (2) MLJ 135, wherein, the Full Bench Court was confronted with the question as to whether a single Judge could deal with a petition for Habeas Corpus, which was exclusively allotted to a Division Bench under the Appellate Side Rules. The Full Bench held that a single Judge of the Court had no power to deal with a matter, contrary to the allocation made under the Appellate Side Rules. Speaking for the Bench, Leach, CJ, observed as under :

"As the order of Pandrang Rao, J., directing a writ of habeas corpus to be issued was an order passed without jurisdiction, it must be disregarded and the application, which the respondents have filed under Section 491 of the Code of Criminal Procedure, must be dealt with by the Bench dealing with criminal matters."



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9. Given the above discussion, we have to necessarily hold that the findings and the directions issued by the learned single Judge contrary to the discussion, observations and directions issued by the Division Bench must be held to be non-est in the eye of law. The learned single Judge should have exercised restraint and ought not to have sat on the considered judgment passed by a Division Bench and any orders passed by the Hon'ble Judge must be taken to be without jurisdiction and it vitiates the order as the one passed by a *corum non judice*.

10. In view of the same, lending the language from the Full Bench as above, the observations and directions, issued by the learned single Judge, touching upon the custody of the children, must be "disregarded".

11. The Passport of the children is expiring on 06.03.2023. There is already an order passed by a Circuit Court of Fairfax County, USA, dated 21.07.2022, wherein, the right to renew the Passport has been given to the petitioner. There is an immediate need to renew the Passport since the stay of the children in India beyond 06.03.2023 will become illegal and, if the Passport is not renewed, the OCI Card, that



was granted in favour of the children, will get immediately cancelled.

This situation will cause a lot of embarrassment to the children, who are, admittedly, American citizens.

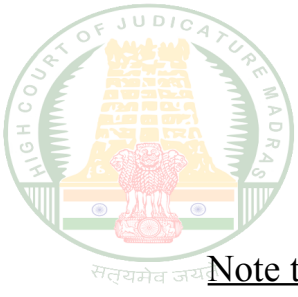
12. In view of this urgency that has been urged in the affidavit, filed in support of this Sub-Application, considering the paramount interest of the children, this Court is inclined to grant permission to the petitioner to take his two sons, namely, [REDACTED] and [REDACTED] with him to the United States of America and get the Passport renewed. As already directed in the order passed in H.C.P.No.1689 of 2022, it is left open to the respondent to accompany the children to the USA, in which case, the petitioner shall accommodate the respondent and provide her with all facilities and maintenance. If the respondent chooses not to accompany the children, the petitioner shall make arrangements to take the children and get the Passport renewed. This interim direction is subject to further orders that will be passed by this Court in the main Contempt Petition.

13. Post the matter on 31.03.2023.

(S.V.N.,J.) (N.A.V.,J.)
02.03.2023

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AND
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02-03-2023