

**IN THE SUPREME COURT OF INDIA
CIVIL INHERENT JURISDICTION**

CONTEMPT PETITION (C) Nos. 340 – 342 OF 2020
in
CRIMINAL APPEAL Nos.1341-1343 OF 2019

Meenal Bhargava

.....Petitioner

versus

Naveen Sharma

.....Respondent

O R D E R

1. This Contempt Petition is the outcome of an unfortunate matrimonial dispute between the petitioner-wife and the respondent-husband. They have a male child – Pranav who is about 12 years old. As it happens in every such dispute, the child is the worst sufferer.

2. The marriage between the parties was solemnised in the year 2007. After the marriage, the petitioner started residing with the respondent who was already a resident of USA since 2004. The child

was born on 25th October 2007. The child is a citizen of USA. According to the case of the petitioner, after the birth of their child, at the instance of the respondent, both the petitioner and the son were sent to Canada where the respondent's mother and sister were residing. The petitioner's case is that on 27th July 2013, she along with her son were thrown out of the house which compelled her to come to India in August 2013 along with her son.

3. The respondent adopted a remedy before the Canadian Court for the custody of his son. An ex-parte order granting sole custody to the respondent was passed by the concerned Court. The said Court issued directions to various agencies and INTERPOL to enforce the order. Even a warrant was ordered to be issued against the petitioner. The respondent adopted a remedy in India by filing a writ petition seeking a writ of *habeas corpus* for the production of the child before the Rajasthan High Court. In the said writ petition, there was a settlement arrived at which is recorded in the order dated 17th December 2015. The order discloses that the parties agreed to live together on the terms set out in the said order. Both of them agreed to withdraw the cases filed against each other within four months. The respondent agreed to find out three or four suitable flats in USA with an option for the

petitioner to select one. One of the clauses of the settlement was that till the petitioner shifts to USA, the respondent will regularly visit India. Similarly, the petitioner agreed to visit USA along with her son.

4. The respondent filed a contempt petition before the High Court alleging that the petitioner had committed breaches of the consent order. The High Court convicted the petitioner for committing contempt. Thereafter, the petitioner approached this Court for challenging the High Court's decision. This Court while setting aside the order of conviction, ordered the revival of the disposed of *habeas corpus* petition. On 11th January 2019, a Division Bench of the High Court disposed of both the *habeas corpus* petition and the contempt petition by dismissing the same. However, certain directions were issued for providing access to the respondent to meet his child physically as well as through the medium of video conferencing. The judgment was the subject matter of challenge before this Court in Criminal Appeal Nos.1341-1343 of 2019 preferred by the respondent. In September 2019, an order of payment of maintenance was passed against the respondent by the Family Court at Ajmer. In the same month, the Family Court at Ajmer passed a decree of divorce by dissolving the marriage between the petitioner and the respondent.

5. In the aforesaid criminal appeals, a series of orders were passed by this Court starting from the order dated 5th April 2021. This Court permitted the respondent to take his son to Canada from 1st June 2021 to 31st June 2021 with a direction to bring back the child to Ajmer on 30th June 2021 where the petitioner was residing. As India is not a signatory to the Hague Convention, on the application made by the petitioner, this Court permitted the petitioner to get the order of this Court dated 5th April 2021 mirrored by the competent Court in Canada. Though after some delay, the respondent signed the necessary documents for consenting to pass an order of mirroring, he attempted to oppose the said application filed in the Canadian Court on the ground that he had signed the consent documents under duress. Therefore, the concerned Court did not mirror the order of this Court. In terms of the order of this Court dated 5th April 2021, the respondent took the minor son with him to Canada and brought him back, albeit belatedly.

6. This Court appointed Hon'ble Mr. Justice Kurian Joseph, a retired Judge of this Court as a facilitator to facilitate the settlement between the parties on the question of custody and visitation rights.

While granting adjournment on 16th February 2022, this Court warned the parties that on their failure to place on record the settlement arrived at, costs would be imposed on both of them. The order dated 12th April 2022 records that the respondent was incorrigible. This observation was based on the conduct of the respondent of adding something to the settlement which was facilitated by the learned facilitator. As the respondent sought time, this Court granted time subject to deposit of costs of Rs.5,00,000/- with the Supreme Court Mediation Centre.

7. Ultimately, on 11th May 2022, terms of the settlement were placed on record. In the settlement, it was agreed that the parties will pray to the concerned Canadian Court (Superior Court of Justice, Family Court, Ontario) to set aside the orders dated 2nd April 2015 and 16th April 2015 granting custody of the child to the respondent. The respondent agreed that he would give no objection to mirroring the final order passed by this Court in terms of the settlement if the petitioner moves the concerned Court for the said relief at her own cost. The terms of settlement record that the said two orders of the Canadian Court as well as the orders passed by the Rajasthan High Court shall be superseded. Even the order of the Family Court at

Ajmer of the grant of maintenance was agreed to be set aside. We may note here that the terms of the settlement were duly signed by both parties and were notarized. The terms of the settlement recorded that the son – Pranav who was in sixth standard at that time shall continue to live and complete his education at Ajmer till he completes his education up to tenth standard and thereafter, he shall be shifted to USA where the respondent was residing. It was also agreed that until the son completes his education up to the tenth standard, he would visit Canada and USA with the respondent every year from 1st June to 30th June. It was agreed that the respondent would pick him up from the Airport at Ajmer on 1st June and drop him back at the same place on 1st July. The respondent specifically agreed to cooperate with the mirroring process by giving no objection. By accepting the settlement, this Court disposed of the criminal appeals by order dated 11th May 2022. The order dated 25th May 2022 passed by this Court records that the learned counsel for the petitioner made a statement that she has filed an application before the Superior Court of Justice, Ontario in Canada for mirroring the entirety of the order of this Court. The undertaking of the respondent was recorded in the said order to furnish consent to the application for mirroring which may be made by the respondent. In the order dated 25th May 2022, this Court recorded

that the respondent shall not impede the passing of the order of mirroring. Ultimately, on 27th May 2022, the Superior Court of Justice, Family Court at Hamilton, Ontario mirrored the order dated 11th May 2022 passed by this Court by holding that the said order shall be deemed to be an order of the said Court and enforceable as such. Orders dated 28th October 2014 and 16th April 2015 passed by the Canadian Court were terminated by the said order.

8. In terms of the order passed by this Court on 11th May 2022, the respondent did not turn up on 1st June 2022 to pick up his minor child. Ultimately, the respondent came to Ajmer on 7th June 2022 and took his son with him to Canada via Delhi. However, he has failed to bring back Pranav to India even to date. Only from the child that the petitioner learned that on 6th July 2022, her child was taken to USA. As the respondent did not bring back the child, the present contempt petition was filed on 8th July 2022. Notice was issued by this Court on 14th July 2022. Thereafter, there were several orders passed by this Court.

9. On 22nd July 2022, a statement of the learned counsel appearing for the respondent was recorded that initially his cell phone number

was blocked by the respondent, which was unblocked after some time. The learned counsel stated that the respondent is not informing him anything about bringing the child back to India. In fact, in the very order, this Court recorded a prima facie view that the respondent is guilty of committing a breach of orders of this Court.

10. We have heard the learned counsel appearing for the parties and perused the pleadings and documents on record. One of the breaches alleged is of the undertaking of the respondent recorded in the order dated 11th May 2022. The undertaking was that he will appear before the Court in Ontario on any date which may be fixed. Further, an undertaking was that the respondent will abide by the orders passed by this Court. Another undertaking was given by him to sign the necessary papers for getting the orders mirrored. However, the respondent did not sign the documents and during the course of hearing on 27th May 2022 on the application for mirroring made by the petitioner before the said Court in Canada, he raised several objections. In paragraph 33 of this contempt petition, it is specifically alleged that on 27th May 2022, the respondent raised several objections before the Court in Canada though he had not filed any affidavit. This allegation has not been specifically denied in the

counter affidavit filed by the respondent.

11. Clause (D) of paragraph 3 of the terms of settlement filed in this Court reads thus.:

“3.(D) Until Pranav Sharma completes his Class X in Ajmer, he would visit Canada and USA with Naveen Sharma, every year, from 1st day of June to 30th day of June. Naveen Sharma would pick up Pranav Sharma from Kishan Garh Airport, Ajmer on the 1st day of June and drop him back at Kishan Garh Airport, Ajmer on the 1st day of July. Meenal Bhargava will ensure that Pranav Sharma is checked in at the time of Pranav Sharma’s departure from Kishan Garh Airport.”

The main grievance in the contempt petition is about the failure of the respondent to bring back the child to India in terms of the above stipulation. The contention raised in the counter affidavit of the respondent is that after the child travelled with him firstly to Canada and thereafter to USA, the child disclosed that he was sexually abused by the members of the family of the petitioner while he was at Ajmer. The case of the respondent is that he reported this fact to a Child Aid Society in Canada. The respondent stated that he approached the authorities in USA. He pointed out that after a complaint on that behalf was filed with the Department of Children & Family Services (DCFS), an assessment was made by the child psychologist. The child

admitted before the counsellor that he was sexually abused. Thereafter, the child was in an extreme state of distress. The respondent stated in the counter affidavit that a complaint has been filed with the Federal Bureau of Investigation (FBI). Thereafter, due process would be followed to bring the offenders to the book. He has claimed that only after the forensic interview is completed and charges are framed, the child will be permitted to leave USA. It is contended that the child's USA passport has expired and the same will not be renewed unless all forensic interviews are conducted and criminal charges are filed. In fact, in paragraph 13 of the counter affidavit affirmed on 1st October 2022, the respondent prayed for a grant of extension of time of two months to bring back the child. It may be noted here that as per the order dated 11th May 2022 passed in terms of the settlement, the respondent was under an obligation to bring back the child to India on 1st July 2022. In fact, the respondent had provided a copy of the return ticket of the minor son of 3rd July 2022 from Delhi to Ajmer. We may note here that on one of the dates on which the respondent appeared virtually, he had kept the minor son present. According to the case of the respondent, the minor son told this Court about the sexual harassment. However, we must note here that the clear impression we got was that the minor son was reading

something which was recorded on a device.

12. During the course of the hearing on various dates, we made a query to the respondent whether any material is available on record to show that he had tried to apply for renewal of the child's passport and the said request was declined. The respondent could not produce any such material. It is not pleaded by the respondent that there is any statutory provision that prevents the authorities from renewing the passport of the minor on the ground that a forensic investigation is allegedly pending. The respondent could have always applied before this Court for a grant of extension of time by setting out factual details and producing the relevant documents. He failed to do so. As noted earlier, the counter affidavit seeks an extension of time by a period of two months from 3rd July 2022. We are of the considered view that not even an attempt was made by the respondent to seek renewal of the passport of the child. This shows that the respondent never intended to bring back the son to India though he was duty bound to do so on 1st July 2022 in terms of the order of this Court. Apart from the fact that the transcripts of the Circuit Court for Cook County, Illinois show that the respondent claimed that he had not submitted himself to the jurisdiction of this Court, the consistent conduct of the

respondent clearly shows that he has no intention to bring back the child to India in terms of the orders of this Court. Therefore, we have no manner of doubt that there is wilful disobedience on the part of the respondent of the direction to bring back the child to India within one month.

13. The arrangement provided in clause (D) of paragraph 3 of the settlement terms was to continue only for four years till the child passes the class 10th examination. Thereafter, the child was to be shifted to USA for further education. We may note here that the *habeas corpus* petition filed by the respondent seeking custody of the child was dismissed, which was the subject matter of challenge in Criminal Appeal Nos.1341-1343 of 2019 in which the order dated 11th May 2022 was passed. As is clear from the order dated 11th May 2022, as per the settlement, the parties agreed that the orders dated 2nd April 2015 and 16th April 2015 passed by the competent Court in Canada granting sole custody of the child to the respondent as well as the impugned judgment passed by the High Court would stand superseded by the said order dated 11th May 2022. The respondent accepted the said condition as recorded in clause (P) of paragraph 3 of the terms of the settlement. Perhaps, it is only in view of this

agreement that this Court accepted the settlement which incorporated the clause which enabled the respondent to take the child with him every year from 1st June till 30th June. In fact, in view of the assurances given by the respondent, this Court declined the request made by the petitioner to keep the order in terms of clause (3)(D) in abeyance till the mirroring order was passed. The petitioner had contended that unless there was a mirroring order passed by the concerned Court, the child should not be permitted to travel to USA/Canada with the respondent. The apprehension of the petitioner was that the respondent would not bring back the child. Now, the apprehension is proved to be correct. Thus, the respondent has completely betrayed the faith reposed in him by this Court.

14. The conduct of the respondent has been contumacious all throughout. The order dated 2nd September 2022 passed by this Court records the statement of the respondent who had joined virtually that he has always accepted the jurisdiction of this Court and will continue to accept the same. He further stated that he would never violate the orders of this Court. These statements were taken on record by this Court.

15. The petitioner filed I.A.No.164682/2022. Along with the said I.A., the petitioner has filed a copy of the response filed by the respondent on 14th September 2022 in the Circuit Court of Cook County, Illinois. In paragraph 9 thereof, he stated that this Court was exercising improper jurisdiction based on the allegation of abduction of the child. Thus, he defied his own undertaking recorded in the order dated 2nd September 2022 within twelve days of giving the undertaking. Obviously, this is a wilful breach of the undertaking given by the respondent to this Court. We may also note here one more important aspect. From the order dated 23rd December 2022 passed by the Circuit Court of Cook County, Illinois, it appears that the respondent had opposed the request for mirroring the order of this Court and therefore, the said request was denied by the said Court. Thus, at every stage, the respondent has defied the orders of this Court and has committed breaches of the undertakings given by him to this Court from time to time. The breaches committed by the respondent are wilful as can be seen from his conduct. As a result of the breaches committed by the respondent, the petitioner has been deprived of the custody of her son though she is entitled to the custody in terms of the order dated 11th May 2022. Therefore, the violations made by the respondent are of a very serious nature.

16. We, therefore, hold the respondent guilty of civil contempt. However, the respondent will be heard on the question of sentence on the next date.

17. The MSTC Limited has furnished the result of the auction held whereby a bid of Rs.1,23,50,000/- has been received from one Suryadev Singh. The same being the only bid received, we confirm the bid and necessary documents be executed in that behalf in favour of the purchaser and the money so obtained be transferred to the petitioner.

18. The amount deposited in the Registry as a consequence of forfeiture of the earlier bid be also be released to the petitioner.

19. We also feel that even though India may not be a party to the Hague Convention, there may be possibility of entering into mutual agreements with USA as a number of such cases is increasing on account of Indian residents staying in the USA. We issue notice to the Union of India, Ministry of External Affairs and Ministry of Home Affairs for the said purpose returnable on 6th February, 2023.

20. Learned counsel for the CBI submits that a notice dated 27.12.2022 has been issued to the respondent (present before us through the virtual mode), asking him to appear before them on 31st January, 2023 at 10:30 a.m. A copy is provided to the learned counsel for the respondent in addition.

21. Learned counsel submits that if the respondent does not appear, steps will be taken under the Mutual Legal Assistance Treaty with the USA which is in force since 03.10.2005. The respondent being quite aware of this issue now, is expected to appear on 31.1.2023 before the concerned authorities, failing which, necessary orders would enure from the authorities.

22. List on 6th February 2023 for hearing on sentence.

.....J.
(Sanjay Kishan Kaul)

.....J.
(Abhay S. Oka)

New Delhi;
16th January, 2023.

ITEM NO.38

COURT NO.2

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CONMT.PET.(C) No. 340-342/2022 in CrI.A. No. 1341-1343/2019

MEENAL BHARGAVA

Petitioner(s)

VERSUS

NAVEEN SHARMA

Respondent(s)

(FOR ADMISSION I.A. NO. 164682/2022-CLARIFICATION/DIRECTION[FOR FINAL DISPOSAL][PERSONAL PRESENCE OF THE CONTEMNOR])

Date : 16-01-2023 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE ABHAY S. OKA

For Petitioner(s) Ms. Meenakshi Arora, Sr. Adv.
Mr. Amit Pawan, AOR
Mr. Abhishek Amritanshu, Adv.
Mr. Anand Nandan, Adv.
Mr. Suchit Singh Rawat, Adv.
Mr. Hassan Zubair Waris, Adv.
Ms. Shivangi, Adv.
Mr. Aakarsh, Adv.
Mr. Kushagra Raj, Adv.

For Respondent(s) Mr. Saurabh Sharma, Adv.
Mr. Ranjan Mukherjee, AOR

Mr. Akshay Amritanshu, Adv.
Mrs. Swati Ghildiyal, Adv.
Mrs. Vanshaja Shukla, Adv.
Mr. Sharath Narayan Nambiar, Adv.
Mr. Akshay Nain, Adv.
Mr. Nakul Chengappa K.K., Adv.
Mr. Arvind Kumar Sharma, AOR
Mr. G. S. Makker, Adv.

Mr. Pallavi Pratap, AOR
Mr. Prashant Pratap, Adv.
Ms. Prachi Pratap, Adv.
Mr. Akshay Singh, Adv.
Mr. Avadhi Jain, Adv.

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

In terms of the signed order the Court inter-alia passed the following directions :-

"16.We, therefore, hold the respondent guilty of civil contempt. However, the respondent will be heard on the question of sentence on the next date."

XXX

"19.....We issue notice to the Union of India, Ministry of External Affairs and Ministry of Home Affairs for the said purpose returnable on 6th February, 2023."

List on 6th February 2023 for hearing on sentence.

(RASHMI DHYANI PANT)
COURT MASTER

(POONAM VAID)
COURT MASTER

(signed order is placed on the file)