

(1992) 03 DEL CK 0048

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 1819 of 1991

Brinda Karat and Another

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 12-03-1992

Acts Referred:

Citation : (1992) 46 DLT 561

Hon'ble Judges : S. Duggal, J; B.N. Kirpal, J

Bench : Division Bench

Advocate : Kirti Singh, S.K. Mahajan, B.D. Batra, A.S. Chandhiok, Rajiv Nanda and D.P. Reddy, for the Appellant;

Judgement

B.N. Kirpal, J.

(1) With the passing of this order, we hope, a nightmarish chapter in the young life of Ameena will, hopefully, come to a satisfactory end.

(2) Ameena who is a minor and is approximately 12 or 13 years old is at present lodged in the Children's Home for Girls at Delhi. She had earlier been allegedly married to an Arab Sheikh which marriage has since been dissolved. Vide order dated 5th September, 1991 the Additional Chief Metropolitan Magistrate, Delhi declined to give custody of Ameena Begum to her parents and passed an order directing her to be kept in the Children's Home at Delhi. This order was upheld by this Court in the case of Amrita Ahluwalia v. Union of India, C.W. 2758 of 1991 decided on 12th December, 1991. The Court, however, came to the conclusion that Ameena was a neglected Juvenile and the question of her custody should be decided by the Board which is constituted under the Juvenile Justice Act, 1986.

(3) Pursuant to the aforesaid directions, the Juvenile Welfare Board gave their decision dated 4th March, 1992 in which they have, inter alia, come to the following conclusion : "The Board is of the opinion that the child should not be kept in Children Home, Delhi for long as the parents being poor cannot meet the

child as and when they desire. The Board also thinks that the child should not be given back to the parents as she may be exploited again. They are poor and have eight children who are entirely dependent on the father's earnings who is a rickshaw-puller. Hence the Board feels she should not be restored to the parents. Again some applications have been received from social organisations and individuals for the custody of the child. The Board thinks that the child may not be handed over to them since she will be away from her parents which she does not desire. After due consideration and discussion the Board has come to the final conclusion that in the best interest of juvenile & justice she is committed to Children Home for Girls, Delhi for a period of three years. The Board further feels that in view of the desire and interest of the child to remain in contact with her parents and secondly, in the light of the affidavit filed by the A.P. Govt., she be transferred to Service Home under the Department of Women's Development and Child Welfare run by the State Govt."

(4) The present proceedings arise by way of a petition u/s 482 of the Code of Criminal Procedure filed by the Secretary of the All India Democratic Women's Association and the Secretary of Janwadi Mahila Samiti, Delhi. A Single Judge of this Court referred the matter to the Division Bench In view of the earlier order passed by the Division Bench of this Court while disposing of the aforesaid writ petition. The prayer in this petition u/s 482 is that the Delhi Administration and the appropriate authority be directed to place the child in safe custody where her emotional and physical needs will be looked after.

(5) Pursuant to orders passed by this Court, Ameena Begum appeared in Court. After ascertaining her wishes directions were issued to the effect that the father of Ameena should also be present in Court and the State of Andhra Pradesh, which had earlier filed an affidavit, was required to inform the Court as to whether, at Hyderabad, any Board had been constituted u/s 4 of the Juvenile Justice Act and if no Board has been constituted then whether any authority has been nominated u/s 7(2) of the said Act.

(6) Shri Reddy on behalf of the State of Andhra Pradesh has informed the Court that a Board u/s 4 has not been constituted so far at Hyderabad. He, however, submits that the 8th Metropolitan Magistrate at Hyderabad has been empowered to exercise the powers of the Juvenile Welfare Board under the said Act.

(7) A statement of Ameena's father Badruddin has been recorded. He has, inter alia, stated that he and members of his family are willing to take Ameena back into the family and will keep her at home. He has further guaranteed and given an undertaking to this Court, which undertaking is hereby recorded and accepted, that he will look after Ameena with love and affection and take care of her safety. He has further undertaken that Ameena will not be married against her wishes and nor will she be married till she attains the age of majority. He has also stated that he will make arrangements for Ameena's studies if she so desires and he will have no objection to any representative of the State of Andhra Pradesh or of any other welfare board or organisation coming to their

house for purposes of monitoring her welfare or arranging for her studies or vocational training.

(8) The main question which has now to be decided by us is whether the custody of Ameena should be handed over to her father or not.

(9) We are conscious of the fact that Shri K.C. Lohia, Addl. Chief Metropolitan Magistrate has held, which order was upheld by a Division Bench of this Court that the father was not a fit person to be given the custody of the child. The main reason for coming to this conclusion was that because of lust for money Ameena had been married off to an Arab Sheikh against her wishes. This finding of Shri Lohia has also been re-affirmed by the Juvenile Welfare Board.

(10) In matters relating to the custody of children the welfare and wishes of the child are of paramount importance. It is not only the physical but also the mental welfare which has to be taken into consideration. Since the passing of the order of Shri Lohia, which was the basis of the order of this Court in Amrita Ahluwalia's case and also of the order of the Juvenile Welfare Board, one basic circumstance has changed and that is that Ameena has now been divorced by the Sheikh. As of today, the Sheikh has no responsibility towards her. Ameena is living in Delhi by virtue of the orders passed by the Court and the Welfare Board. We have had occasion to talk to Ameena and she has, in no uncertain terms, expressed her desire to go back to her family. Ameena appears to us to be quite mature for her age and does not seem to be under any influence and has been quite unhappy in not being restored to the members of her family. Ameena's father also has appeared in Court today and has expressed his willingness to take Ameena back to Hyderabad. The desire of the father to accept Ameena is also evident from the fact that, even though he was not required to do so, he has produced in Court an affidavit of his wife duly attested by a Notary, in which she has undertaken not to perform Ameena's marriage against her consent and she has further stated that she will perform her marriage after informing the same to the Government of Andhra Pradesh. Another undertaking given by her is not to perform Ameena's marriage to any Arab national or a person of any other nationality. She has also undertaken to provide any facility to the Government authority for any type of discussion with Ameena and has stated that she will maintain her and provide her all the facilities without torturing her by asking her about past matters. Along with the aforesaid affidavit Ameena's father has also produced another undertaking of security and guarantee from one Smt. Sultan Jahan Baqri, President of the Andhra Pradesh Mahila Welfare Society who has undertaken to provide security to the life and bringing up of Ameena Begum. Another undertaking which has been produced is that of one Shri Salim Ashraf, President of the Women's Welfare Society, Hyderabad who, as a social worker of Hyderabad City, has undertaken to provide security to the life of Ameena Begum.

(11) From the aforesaid it appears to us that time is now ripe for Ameena to be restored to her parents. This will be in her best interest. There are various agencies which have expressed their desire and willingness to help in looking

after and bringing up of Ameena Begum even while she is residing at Hyderabad.

(12) It will be appropriate to issue directions in order to see that Ameena Begum is safely escorted to her home at Hyderabad. At the same time it is not possible to forget the traumatic experience which she has undergone and it will be necessary to safeguard her from any further similar disturbance in her life. u/s 34 read with Section 7(3) of the Juvenile Justice Act, this Court can send a Juvenile back to a relative even if that relative is outside the jurisdiction of the competent authority. The Section further provides that the competent authority exercising jurisdiction over the place to which the juvenile is sent shall, in respect of any matter arising subsequently, have the same powers in relation to the juvenile as if the original order had been passed by itself. It is in this connection that the order passed by the State of Andhra Pradesh empowering the 8th Metropolitan Magistrate with the powers of the Board u/s 7 of the Act, which becomes important. Even with the transfer of Ameena Begum from Delhi to Hyderabad the competent authority under the Juvenile Justice Act at Hyderabad will have jurisdiction in the matter. The effect of the order which we are passing today would also amount to our exercising powers u/s 40 of the Juvenile Justice Act and revising the order of the Juvenile Welfare Board dated 4th March, 1992 whereby the Board had directed that custody of Ameena should not be given to her parents.

(13) At this stage it will be relevant to refer to the affidavit which has been filed on behalf of the State of Andhra Pradesh, in some detail. It has been stated in the affidavit of Shri C. Balasubramaniam that under the Department of Women Development and Child Welfare there is a Children's Home at Hyderabad where children up to 18 years can stay. It has also been stated in the said affidavit that it is possible to arrange for the monitoring and development of Ameena if she is given in custody of her parents and in that case arrangements will be made so that an officer of the said Department and a social worker to be chosen by the Director of the Department visit Ameena jointly in her parental house so as to ensure her proper upkeep. It has further been stated that the A.P. Women Cooperative Finance Corporation would be starting several vocational skill training centres tentatively from April, 1992 through the assistance of voluntary organisations pre-dominantly in the old city area for young girls below 20 years and that Ameena can also be attached to one of the centres and be imparted vocational skill training.

(14) On behalf of the petitioners also it was contended before us that there is a branch of this organisation at Hyderabad and persons connected therewith will also look after and take care of Ameena Begum. 565

(15) In view of the aforesaid we hereby give following directions with regard to the handing over of the custody of Ameena Begum to her father and about her subsequent monitoring : (1) Ameena Begum should be taken to Hyderabad on arrangements being made in this behalf by the Director, Social Welfare Board, Delhi. It will be ensured that Ameena Begum travels in the same train as her

father and she also has adequate escort with her in the form of lady constable. (2) On reaching Hyderabad, Ameena Begum should be housed at the Children's Home run by the Department of Women Development and Child Welfare, Hyderabad. (3) Ameena should be produced on Monday, the 16th March, 1992 at 11.30 A.M. before the 8th Metropolitan Magistrate at Hyderabad, who has been empowered u/s 7(2) of the Juvenile Justice Act, by the escort from Delhi and also by the Officer/In charge of the Children's Home at Hyderabad. (4) The parents of Ameena should also appear before the said 8th Metropolitan Magistrate. The 8th Metropolitan Magistrate, Hyderabad, should record statements of the parents of Ameena, undertaking to the safety of the child and also giving an undertaking of their own good conduct and behavior and also record such undertakings as the father shall produce before him and thereafter hand over the custody of Ameena to her parents, after satisfying himself that the said undertakings are by responsible persons who are in a position to ensure good conduct of the parents, and can also monitor welfare of Ameena Begum, (5) The State of Andhra Pradesh, as volunteered by them in their aforesaid affidavit, should depute an officer of the Women Development and Child Welfare Department and/or a social worker to be chosen by the Director of the said Department to visit Ameena so as to ensure her proper upkeep. Initially for a fortnight this visit should be once in two days and after that it should be once in a week for a period of another fortnight and afterwards the visit should be once a fortnight, regularly, till Ameena attains the age of majority. (6) The State of Andhra Pradesh should also make arrangements so as to see that Ameena is either enrolled in a school and receives formal education or, depending upon her desire and inclination, receives vocational training from a recognised training Institute.

(16) The authorities viz, the Social Welfare Board, the Police Commissioner and the State of Andhra Pradesh should so co-ordinate the programme of the departure of Ameena Begum as to ensure that she is produced in the Court of the 8th Metropolitan Magistrate at Hyderabad on the date and time fixed by us.