
(2019) 11 DEL CK 0316

In the Delhi High Court

Case No : CONT.CAS.(CRL) No. 10 Of 2019, Criminal Writ Petition No. 2375 Of 2019, Criminal Miscellaneous Application No. 39230 Of 2017, 38135, 34316, 34316, 34316, 38136 Of 2019

Court On Its Own Motion

APPELLANT

Vs

Aman Lohia & Ors

RESPONDENT

Date of Decision : 25-11-2019

Acts Referred:

Indian Penal Code, 1860 — Section 361, 365
Contempt Of Courts Act, 1971 — Section 12

Citation : (2020) 1 AD(Delhi) 12

Hon'ble Judges : Manmohan, J; Sangita Dhingra Sehgal, J

Bench : Division Bench

Advocate : Dayan Krishnan, Malavika Rajkotia, Rytim Vohra, Akriti Tyagi, Sanjeevi Seshadri, Niharika Kaul, Kiran Lohia, Geeta Luthra, Altamish Siddiki, Rajat Bhalla, Aman Lohia, Vikas Pahwa, Vaibhav Sharma, Ruchika Wadhawan, Ajey Lohia, Joshini Tuli

Judgement

Manmohan, J

Crl.M.A. 41097/2019 (for exemption) in W.P(Crl.) 2375/2019

Allowed, subject to all just exceptions.

Accordingly, present application stands disposed of.

Crl.M.A.41096/2019 in W.P(Crl.) 2375/2019

Present application has been filed by Mr. Aman Lohia seeking dismissal of the writ petition as not maintainable and for vacation of the orders passed therein.

The grounds that have been urged primarily in the present application are that Mr. Aman Lohia-applicant is a diplomat who enjoys legal immunity.

Further, Baby Raina, Mr. Aman Lohia as well as petitioner are all foreign nationals and, therefore, this Court has no jurisdiction to hear the present writ petition.

It is also submitted that a biological parent cannot kidnap his/her own child under Sections 361 and 365 IPC and, therefore, the FIR registered against the applicant is not maintainable.

Issue notice.

Ms. Malavika Rajkotia, learned counsel accepts notice on behalf of the petitioner. She prays for and is permitted to file a reply affidavit within a period of two days.

Rejoinder affidavit, if any, be filed before the next date of hearing.

List on 03rd December, 2019.

Cont.Cas.(Crl.) 10/2019 & Crl.M.A. 38135/2019

1. On the last date of hearing i.e. 20th November, 2019, this Court had directed Mr. Aman Lohia as well as Baby Raina to be personally present today. This Court had further stated that it would proceed to sentencing of Mr. Aman Lohia as this Court had already found him guilty of Criminal Contempt of Court vide order dated 16th September, 2019.

2. However, neither Mr. Aman Lohia nor Baby Raina are present. Nothing fresh has been filed.

3. This Court is of the view that Mr. Aman Lohia by not appearing today along with Baby Raina has compounded the contempt.

4. At this stage, Ms. Geeta Luthra, learned senior counsel for Mr. Aman Lohia states that Mr. Aman Lohia had never been served with a notice in the criminal contempt petition. She further states that after conviction, Mr. Aman Lohia, who was entitled to another notice, had not been served till date.

5. Learned senior counsel for Mr. Aman Lohia states that, in a child custody case, at the highest a notice of civil contempt can be issued and not a notice of criminal contempt. She points out that notice of civil contempt had already been issued on 26th August, 2019 and initiation of present proceeding amounts to double jeopardy.

6. She also states that Mr. Aman Lohia has no Visa to come to India and as an open ended NBW stands issued against him, he cannot travel.

7. Ms. Geeta Luthra submits that this Court has no jurisdiction to hear the present writ petition since Baby Raina, Mr. Aman Lohia as well as the petitioner are all foreign nationals and Mr. Aman Lohia is enjoying diplomatic immunity as he is "An Ambassador of an Intergovernmental Institution for the Use of Micro - Algae Spirulina Against Malnutrition (IIMSAM)". According to her, the order directing Mr. Aman Lohia to be personally present in Court is without jurisdiction and therefore, he cannot be sentenced for violation of any such order.

8. She lastly vehemently submits that Mr. Aman Lohia is a victim of gender bias that the Indian Courts practice and that it was the love for his daughter which

made him to do what he did.

9. Per Contra, Mr. Dayan Krishnan, learned senior counsel for Ms. Kiran Lohia contends that Mr. Aman Lohia is neither a diplomat nor any exchange of credentials have taken place between Mr. Aman Lohia and the Government of India.

10. In the alternative, he states that the Apex Court in the case of Republic of Italy Thr. Ambassador & Ors. vs. Union of India & Ors. vide order dated 02nd April, 2013 in W.P.(C) 135/2012 had restrained the Ambassador of Italy from travelling, during the Enrica Lexie Incident indicating that where a diplomat thrusts himself into proceedings the contempt jurisdiction is totally excluded from the purview of the immunity under the Vienna Convention on Diplomatic Relations, 1961.

11. He further states that Mr. Aman Lohia had been served in the contempt petition not only at the initial stage, but also subsequent to his conviction under the Contempt of Courts Act.

12. He states that the petitioner without prejudice to her rights and contentions undertakes to withdraw the civil contempt petition against Mr. Aman Lohia pending before the learned Single Judge.

13. Mr. Dayan Krishnan emphasises that Mr. Aman Lohia and his father are "working in tandem" inasmuch as in the divorce petition filed by Mr. Aman Lohia in Dubai, he has mentioned the residential address of Mr. Ajey Lohia as his residential address.

14. Having heard learned senior counsel for the parties, this Court wanted to dictate the order in open Court, but as it was continuously interrupted by a counsel, it decided to pass the order in the chamber.

15. Having also perused the file, this Court finds that on 28th August, 2019, it had initiated suo motu criminal contempt proceedings against Mr. Aman Lohia and others as a Division Bench of this Court vide order dated 08th March, 2018 in the previous habeas corpus petition bearing W.P.(Crl.) 357/2018, while handing over the custody of Baby Raina Lohia to Ms. Kiran Lohia (Petitioner), had apart from other conditions, also laid the following conditions:-

(vii) The child shall remain in the custody of the petitioner till the decision of the writ petition. However, the petitioner is directed not to remove the child from Delhi.

xxx xxx xxx

(vi) On Saturdays, the child shall remain in the custody of the petitioner, with no visitation rights to respondent No.4 or his parents.

(vii) On Sundays, the child shall be left at the residence of parents of the respondent No.4 (as desired by respondent No.4) at 10:00 a.m. in the morning,

and collected at 07:00 p.m. in the same evening by the petitioner. We have made this arrangement keeping in view the welfare of the child, since the child, admittedly, was with respondent No.4 and his parents till now, ever since the child was taken to Bangkok and Dubai, and brought back to Delhi, with the petitioner having visitation rights.

xxx xxx xxx

(xi) This arrangement shall continue till the petition is disposed of.

(xii) Both the petitioner and the respondent No.4 shall strictly abide by this condition, and if it is reported that either of the two parties have not complied with this condition, or have resisted its compliance, this Court shall re-consider the arrangement.

(xiii) This arrangement has been worked out without prejudice to the rights & contentions of either of the parties. It is not a reflection of the merits of the case of either party.

16. The aforesaid arrangement was partially modified by the said Division Bench vide order dated 13th March, 2018 to the extent that the Baby Raina may remain with the petitioner on Sundays and may be handed over to Mr. Aman Lohia and his parents on Saturdays.

17. This consensual parenting plan/arrangement dated 08th March, 2018 agreed by the parties and modified on 13th March, 2018, as recorded by learned Predecessor Bench, continued till the disposal of WP(Crl.) No.357/2018 vide Order dated 01st May, 2018. While disposing of the said petition, the earlier Division Bench ordered as under:-

"Accordingly, we dispose of the present petition by continuing the arrangement devised by us in our order dated 08.03.2018, as modified by our order dated 13.03.2018. The said arrangement shall continue to remain in force till so long as it is varied by the competent Family Court in appropriate proceedings that have been filed by the respondent-father to seek custody and visitation rights in respect of the minor child."

18. At the pain of suspension of visitation rights, Mr. Aman Lohia had deposited the original sole passport of Baby Raina issued by Union of India with the Registry of this Court. The order dated 04th May, 2018 passed by the previous learned Division Bench of this Court is reproduced hereinbelow:-

"Issue notice. Learned counsel for the petitioner accepts notice. This application has been filed by respondent no.4 to seek leave to deposit the passport of the minor child i.e. Baby Raina before this court in terms of our order dated 01.05.2018. Learned counsel for respondent no.4/ applicant has produced the original passport of Baby Raina. The same has been examined by counsel for the petitioner as well.

The said passport is taken into custody. The same be kept in a sealed cover

securely by the Deputy Registrar concerned. The passport shall not be released to any person except under orders passed by a competent court and after hearing counsels for both the parties.

Since the passport of Baby Raina stands deposited in this court, the passport of respondent no.4 may be released by the SHO concerned.

Consequently, we restore the visiting rights in terms of our dated 08.03.2018 read with order dated 13.03.2018. The applicant/ respondent no.4 has also indicated that he is changing his residence to that of his parents. The said position is taken on record.

Application stands disposed of. Dasti"

(emphasis supplied)

19. Consequently, the parenting plan dated 08th March, 2018, partially modified on 13th March, 2018 in W.P.(Crl.) 357/2018 contained a condition that the Baby Raina shall not be removed from Delhi. The said plan is still in force and as such, neither of the parents of Baby Raina could have taken her out of Delhi.

20. This Court is also of the view that Mr. Aman Lohia cannot advance the argument that being a biological father he cannot be held guilty under Sections 361 and 365 IPC for kidnapping inasmuch as Mr. Aman Lohia has been held guilty of criminal contempt of Court and not for kidnapping inasmuch as he procured a second passport for Baby Raina from Commonwealth of Dominica when her supposedly exclusive passport issued by the Government of India had been deposited with the Registry of this Court in pursuance to an order passed by this Court and had taken her out of the jurisdiction of this Court contrary to the consensual parenting plan in force by virtue of the Court order.

21. In the present matter, an Advocate had filed Memo of Appearance on behalf of Mr. Aman Lohia in both the contempt and the writ petition on 05th September, 2019. After considering the reply affidavit dated 04th September, 2019 filed by Mr. Aman Lohia through his previous counsel, this Court had held him guilty of contempt as Mr. Aman Lohia by taking Baby Raina outside the jurisdiction of this Court had not only interfered with and/or obstructed due course of justice, but also lowered the authority of this Court in the eyes of the public. The relevant portion of the order dated 16th September, 2019 is reproduced hereinbelow:-

"22. Having heard the parties at considerable length, this Court is of the prima facie view that the way Mr. Aman Lohia procured a second passport for baby Raina from Commonwealth of Dominica when her supposedly exclusive passport issued by the Government of India had been deposited with the Registry of this Court and the manner in which he had taken baby Raina by flight to Bagdogra and from there by road across the Indian border to Nepal to avoid detection and then flown to Doha (Qatar) and finally to Dubai where personal laws enjoin exclusive custody upon the father, shows a lot of prior planning, both legal as well as logistic in taking the baby Raina out of the jurisdiction of this Court.

23. Moreover, this Court is of the opinion that "after having taken the law into his own hands" and having decided "to become a judge, jury and an executioner rolled into one", Mr. Aman Lohia, respondent no. 4 is now trying to adorn the role of a victim/martyr! Nothing can be further from the truth. This Court rejects the defences put forward by Mr. Aman Lohia with contempt that it deserves.

24. It is pertinent to mention that affidavit of respondent No.4-husband has not even expressed a word of apology, remorse or even the willingness to purge the contempt by returning the child to the mother. This compounds the contempt. In fact, the present matter "is a text book case of a rich and haughty man mocking at the system".

25. Consequently, the conduct of the respondent no.4, Mr. Aman Lohia in removing baby Raina from the jurisdiction of this Court interferes with and/or obstructs the due course of justice and tends to lower the authority of the Court. Accordingly, respondent No.4, Mr. Aman Lohia is held guilty of criminal contempt of Court. In fact, it is necessary to do so in order to uphold the majesty of law and dignity of courts as well as sanctity of court proceedings.

26. However, prior to passing the order on sentence, we deem it appropriate to issue a fresh notice to him. Let the said notice be served upon Mr. Aman Lohia by learned counsel for the petitioner by all modes."

(emphasis supplied)

22. Subsequent to the order holding Mr. Aman Lohia guilty of contempt, this Court had deemed it appropriate to issue another notice to him. The petitioner-Ms. Kiran Lohia has filed an affidavit dated 26th September, 2019, in which it is stated that Mr. Aman Lohia was served by way of e-mail.

23. Keeping in view the Memo of Appearance dated 05th September, 2019 filed by the previous counsel of Mr. Aman Lohia in both the writ petition as well as the present contempt petition and the subsequent service by e-mail, which has not been disputed till date, this Court is of the view that Mr. Aman Lohia stands duly served both prior and subsequent to being held guilty under the Contempt of Courts Act.

24. In any event, the order dated 16th September, 2019 by which Mr. Aman Lohia was held guilty of contempt has attained finality. Consequently, Mr. Aman Lohia cannot urge today that only a notice of civil contempt could have been issued and not a notice for criminal contempt. Further, as the learned senior counsel for petitioner has undertaken to withdraw the civil contempt petition, the argument of double jeopardy, if any, does not survive.

25. As far as the inability expressed by Mr. Aman Lohia to travel to India is concerned, this Court finds it to be a "red-herring" as neither any application had been filed by Mr. Aman Lohia seeking any Exit Visa nor any prayer for a similar order, (as had been passed on 16th September, 2019 when Mr. Pawan Kumar had appeared before this Court), was sought.

26. As far as the issue of diplomatic immunity is concerned, this Court finds that Mr. Aman Lohia has not placed even a single document on record to establish that he is "An Ambassador of an Intergovernmental Institution for the Use of Micro - Algae Spirulina Against Malnutrition (IIMSAM)". Though a photocopy of Mr. Aman Lohia's diplomatic passport was sought to be flashed during the hearing, yet the same cannot be taken at its face value as neither its original nor any certificate issued by the Union of India stating that Mr. Aman Lohia is entitled to legal immunity, has been produced. Moreover, in the present proceeding, Mr. Aman Lohia is being held guilty for the acts committed by him prior to becoming a diplomat, if any.

27. Proceeding on the demurrer that Mr. Aman Lohia is in fact associated with the IIMSAM and could constitute as a Representative of the IIMSAM, his act of taking Baby Raina to a foreign country could in no way be covered within the limited immunity available under Sections 11 and 12 of the Schedule to The Convention on the Privileges and Immunities of the United Nations, 1946 as made applicable by the United Nations (Privileges and Immunities) Act, 1947 as the same is only relatable to Representatives of Members during their journey to and from the place where the meeting is to be held.

28. In any event, if Mr. Aman Lohia is a diplomat, according to Union of India, then at the highest the sentencing order shall not be given effect to till he is a diplomat.

29. Even otherwise, Mr. Aman Lohia by agreeing to the parenting plan as recorded in the orders dated 13th March, 2018, 1st May, 2018 and 4th May, 2018 in W.P.(Crl.) 357/2018, is estopped from contending today that this Court has no jurisdiction to take action under the Contempt of Courts Act, 1971.

30. It is further settled law that an order even though interim in nature (like the order dated 20th November, 2019 directing Mr. Aman Lohia as well as Baby Raina to be personally present today) is binding till it is set aside by a competent Court and it cannot be ignored on the ground that the Court which passed the order had no jurisdiction to pass the same. Moreover the order was passed by this Court which is a superior Court of Record and "in the case of a superior Court of Record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a court of limited jurisdiction, the superior Court is entitled to determine for itself questions about its own jurisdiction." [See: Ravi S. Naik vs. Union of India & Ors., 1994 Supp (2) SCC 641; Powers, Privileges and Immunities of State Legislatures, Re v. Special Reference No.1 of 1964 (1965) 1 SCR 413].

31. The argument that Mr. Aman Lohia is a victim of gender bias reminds this Court of the following quote from Merchant of Venice:-

"The devil can cite Scripture for his purpose.

An evil soul producing holy witness Is like a villain with a smiling cheek, A goodly

apple rotten at the heart.

O, what a goodly outside falsehood hath!"

William Shakespeare, The Merchant of Venice

32. Mr. Aman Lohia has not only clandestinely as well as illegally removed Baby Raina from the jurisdiction of this Court, but has also tried to acquire diplomatic immunity subsequent to being held guilty of Criminal Contempt of Court, changed his citizenship as well as religion and passport to change the applicable law and to defeat binding consensual Court orders.

33. Keeping in view the aforesaid as well as the contumacious conduct of Mr. Aman Lohia, he is sentenced under Section 12 of the Contempt of Courts Act to undergo simple imprisonment for a period of six months along with a fine of Rs.2000/-.

34. Registry is directed to prepare the necessary warrants forthwith and the Respondents-UOI and CBI are directed to file a status report a day prior to the next date of hearing.

35. List on 03rd December, 2019.