
(2019) 09 DEL CK 0150

In the Delhi High Court

Case No : CONT.CAS.(Criminal) No. 10 Of 2019, Criminal Writ Petition No. 2375 Of 2019, Criminal Miscellaneous Application No. 34315, 34316, 34467, 34924 Of 2019

Court On Its Own Motion

APPELLANT

Vs

Aman Lohia & Ors

RESPONDENT

Date of Decision : 16-09-2019

Acts Referred:

Indian Penal Code, 1860 — Section 360, 361, 363, 365

Citation : (2019) 4 JCC 3651

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

Bench : Division Bench

Advocate : Jai A Dehadrai, Siddharth Arora, Joginder Tuli, Joshini Tuli, Divya Jangid, Dayan Krishnan, Malavika Rajkotia, Rytim Vohra, Mayank Grover, Bhavna Bawa, Ripu Daman Bhardwaj, Vikas Pahwa, Ruchika Wadhawan, Vidushi Nishank, Vaibhav Sharma

Judgement

Manmohan, J

CrI.M.A.No.35915/2019

Exemption allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CrI.M.A.No.35914/2019

1. Present application has been filed by respondent no. 8-Mr. Pawan Kumar for cancellation of Non-Bailable Warrants and Red Corner Notice issued against him by this Court vide order dated 5th September, 2019.

2. In the present application, it has been averred that applicant-respondent no. 8 is only a business associate of father of respondent no. 4, i.e., respondent no. 5 and he had no knowledge of internal family matter or disputes going on between the petitioner-wife and respondent no. 4's (husband's) family.

3. It has been further averred that as respondent no. 5 was not making payment of outstanding amounts to the applicant-respondent no. 8, he decided to travel to Dubai and when respondent no. 4-husband came to know about the applicant-respondent no. 8's travel plan, he asked him to accompany him and made his travel arrangement.

4. In the present application, it has been admitted that applicant-respondent no. 8 travelled with respondent no. 4-husband along with baby Raina and respondent no. 9 by flight to Bagdogra on 24th August, 2018 and from there by car to border of Nepal and thereafter by flight to Doha (Qatar) and finally to Dubai and returned to India by the same route.

5. It has also been alleged in the application that though the counsel for the applicant-respondent no. 8 had appeared before this Court on 5th September, 2019, yet without hearing her, adverse orders had been passed against the applicant-respondent No.8.

6. Mr. Dayan Krishnan, learned senior counsel for the petitioner-wife states that respondent no.8 has been associated with the family of respondent no. 4 for the past twenty years. He further states that he was a part of reconciliation meeting held on 8th January, 2018 between the petitioner-wife and family members of respondent no.4-husband. He also states that the applicant-respondent no.8 had attended a hearing before the learned predecessor Division Bench in W.P.(Crl.) No.357/2018 between February and March, 2018. Learned senior counsel for the petitioner-wife emphasises that the applicant-respondent no. 8 is a close confidant of respondent nos. 4 and 5 and has deliberately made false averments in the present application to mislead this Court.

7. Mr. Dayan Krishnan, learned senior counsel for petitioner-wife vehemently submits that this is a fit case for custodial interrogation of applicant-respondent No.8.

8. Needless to say that the aforesaid allegations are denied by learned counsel for the applicant-respondent no. 8. However, during the course of hearing, learned counsel for the applicant-respondent no. 8 admitted to having held a mediation hearing on 08th January, 2018 in Dubai as well as having attended a hearing in this High Court between February and March, 2018 in W.P.(Crl.) No.357/2018.

9. Keeping in view the aforesaid admission, this Court is of the prima facie view that it is improbable that the applicant-respondent no. 8 was not aware of the litigation between the petitioner-wife and respondent no.4's family.

10. Further, the 'circuitous' travel plan to Dubai by which applicant-respondent no. 8 travelled along with respondent no. 4-husband as well as baby Raina and respondent no. 9 should have alerted any reasonable person that something was seriously amiss.

11. Also the allegation that despite the counsel for applicant-respondent no. 8

appearing on 5th September, 2019, adverse orders were passed, is incorrect as a junior lady advocate had appeared for the applicant-respondent no. 8 after the order had been passed and, that too, after the matter had been heard thrice during the course of the day. Even when the said counsel for the applicant-respondent no. 8 had sought to mention the matter after the order had been dictated, this Court had asked her as to whether she had filed her vakalatnama or memo of appearance. Since she replied in the negative, this Court had refused to take cognizance of her appearance and had asked her to file an application in writing forthwith.

12. Consequently, this Court is of the view that the orders passed on 28th August, 2019 and 5th September, 2019 call for no interference. However, as the applicant-respondent no. 8 has now submitted to the jurisdiction of this Court, the Red Corner Notice and non-bailable warrants issued against him are stayed till the next date of hearing. Applicant-respondent no. 8 is directed to appear before the Investigating Officer - DSP Sangwan at the CBI Headquarters today itself at 5.30 P.M.

13. With the aforesaid direction, the present application stands disposed of.

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W.P.(CRL) 2375/2019

14. Learned counsel for UOI/CBI states that the Mission/Embassy of India, Abu Dhabi has sent a Note Verbale dated 09th September, 2019 to the UAE Foreign Office to ensure that Mr. Aman Lohia does not leave UAE.

15. Learned counsel for UOI/CBI further states that in pursuance to the Court's order dated 05th September, 2019, Red Corner Notice as well as Blue Corner Notice have been issued against respondent nos.4, 8 and 9.

16. In response to the notices issued by this Court in the aforesaid writ petition as well as the suo moto criminal contempt petition, respondent no. 4, Mr. Aman Lohia, the husband of the petitioner has filed an affidavit dated 04th September, 2019 in which he has claimed that he 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. He has further averred in his affidavit that Indian Courts, in his experience, do not consider matters in detail inasmuch as false submissions on the part of the petitioner - wife in the earlier proceeding i.e. W.P. (Crl.) No.357/2018 have been accepted by learned predecessor Division Bench of this Court.

17. It is pertinent to mention that learned predecessor Division Bench had put in place a parenting plan, pending finalization by the Family Court, by which the custody of baby Raina had been primarily handed over to the petitioner-mother. To ensure that both respondent no.4-husband and the petitioner-wife had access to baby Raina in accordance with the directions of this Court, learned predecessor Division Bench had directed respondent no.4-husband to deposit the

passport of baby Raina with the Registry of this Court. In pursuance to the said direction, respondent no.4-husband deposited the passport of baby Raina issued by the government of India with the Registry of this Court. Subsequently, with the consent of parties, a retired Supreme Court Judge was appointed as a mediator so as to facilitate a consensual parenting plan of the baby Raina. Contrary to the parenting plan and the intent of the direction to deposit the passport of baby Raina with the Registry of this Court, the respondent no.4-husband moved baby Raina out of the jurisdiction of this Court.

18. On the last date of hearing i.e. 05th September, 2019 before passing the order, this Court had directed Mr.Jai A Dehadrai, learned counsel for respondent no.4-husband to obtain instructions as to whether his client was willing to come back to India along with baby Raina and to submit to the jurisdiction of this Court. However, learned counsel for respondent no.4 after a short pass over had informed this Court that respondent no.4-husband was unwilling to submit to the jurisdiction of this Court. Consequently, this Court was left with no other alternative but to pass the said order.

19. Today at the outset, Mr.Jai A Dehadrai orally prays for a discharge on the ground that respondent no.4-husband has disengaged him. He, however, states that he is willing to assist this Court as an officer of the Court.

20. The prayer for discharge is vehemently opposed by Mr. Dayan Krishnan, learned senior counsel for the petitioner-wife. He contends that respondent No.4-husband cannot adopt a 'scoot and run' policy with this Court. He submits that the averments and submissions made in the affidavit dated 04th September, 2019 are frivolous, irresponsible and wrong. He points out that the said affidavit is not in compliance with the legal procedure of disclosure of address and proper attestation. He further submits that the intent of filing the present affidavit is to scandalize the Court and to use the said affidavit in collateral proceedings. He emphasises that annexures mentioned in the said affidavit have even not been attached.

21. This Court is of the view that as the affidavit dated 04th September, 2019 has been filed by respondent No.4-husband through Mr. Jai A Dehadrai, he should file an application in writing for discharge.

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.

27. As this Court is prima facie of the view that the present matter is a case of child abduction by respondent No.4- husband, Sections 360, 361, 363 as well as 365 IPC are attracted inasmuch as baby Raina had been taken out of this country contrary to the specific intent of binding Court orders and, in all probability, in pursuance to a conspiracy hatched by respondent no. 4 with some unknown persons, this Court directs the Central Bureau of Investigation to investigate the said fact and file a status report within a week.

28. Mr. Vikas Pahwa, learned senior counsel for respondent no.5 as well as Mr. N. Hariharan, learned senior counsel for respondent nos.6 & 7 assure this Court that their clients would fully cooperate with the CBI in their investigation. The statements/assurances given by learned senior counsel for respondent No.5, 6 and 7 are accepted by this Court and the said respondents are held bound by the same.

29. At this stage, Mr. Hariharan prays that his clients i.e. respondent nos.6 & 7 be allowed to travel atleast in Delhi and NCR. Learned counsel for the petitioner-wife has no objection to the same.

30. Consequently, respondents No.6 and 7 are permitted to travel in Delhi and NCR.

31. The Investigating Officer is directed to file a status report a day prior to the next date of hearing. It is made clear that the Investigating Officer has full liberty to investigate the present case, in accordance with law, in the manner he deems appropriate. In the event, the Investigating Officer is of the view that custodial interrogation is required, he shall be free to take a decision with regard

to the same.

32. List on 25th September, 2019 at 2.30 P.M.

33. Order dasti under the signature of the Court Master.