
(1986) 09 RAJ CK 0105

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 235 of 1983

Sharafuddin

APPELLANT

Vs

State of Rajasthan and Mst. Kaneej Fatima alias Bala

RESPONDENT

Date of Decision : 10-09-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 380

Citation : (1988) 1 RLW 599 : (1987) WLN 654

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Guman Mal Lodha, J.—Sharafudin has filed this criminal misc. petition u/s 482, Cr. P.C. with the prayer that the orders dated 11-4-1983 and 16-6-1983 by which the bailable warrants were issued against him and he was asked to produce two children, should be quashed.

2. Shri Sittal Das, learned counsel, has appeared for petitioner--Sharafudin. Mst. Kanij Fatma is represented by Shri A.K. Gupta. Even though, repeated efforts were made to procure Shri Gupta's attendance and the case was adjourned on 4-9-1986 and 9-9-1986, he has not appeared to contest this petition.

3. In brief, the facts leading to this petition may now be narrated On 24-9-1982, Riyazudin s/o Sharfuddin filed a complaint before the police that his uncle, Rahisuddin alias Babu is married with Kanija Fatima of 22 years. This Kanija Fatima has been abducted by Tahir on 3-9-1982 and Tahir wants to keep her as married wife. Rahisuddin was so much shocked and due to that, he committed suicide on 9-9-1982 by jumping into well of Amar Akbari Masjid. Kanija Fatima is absconding. Ramganj Police Station Registered a case and then investigation followed. Kanija Fatima was arrested with two children, namely, Sahina aged 7 years and Ehatramuddin aged 3 years, in First Information Report No. 302/82 registered for the offence u/s 380, IPC. When Kanija Fatima and Mohammed

Tahir were released on bail, these two children were given in the custody of Sharafuddin (petitioner) vide order dated 27-6-1983 which reads as under:

27&6&1983 , -ih-ih- mifLFkr A izkFkhZ;k ds odhy mifLFkr A nksuks cPpks dsk Jh vCnqy eksfeu us is" k fd;k A vr% "kjQqn~nhu eqyfte dks NksM+ izrhr gksrk gS o lqiqnZ dj fn;k tkrk gS A

lqiqnZdkj "kjQqnhu ftls 98 lh-vkj-ih-lh- ds v/khu U;k;ky; dh vkKk ls U;kf;d vfHkj{kk es Hkstk x;k Fkk A D;ksfd mldh vksj ls nksusk cPpks dks U;k;ky; es is" k dj fn;k x;k gSA

vr% fjiyht vkns" k ts-lh- vfofEc fHktk;k tk;s fd lqiqnZdkj ljQqnhu dks vfofEc fjiyht dj nsos A cPpks dks duht Qkfrek ds lqiqnZ dj fn;k x;k A ysfdu cPps tkus ds fy, rS;kj ugh gS] cPph jks jks dj dg jgh gS fd eS ugh tk?axh rFkk xys es pqUuh dk Qank M+kydj dgrh gS fd eS ej tk?axh] vkSj fcy[k fcy[k dj jks jgh gS vkSj tkuk ugh pkgrh gSA NksVk cPpk Hkh fcy[k fcy[k dj jks jgk gSA

vCnqy eksfeu tks cPpks ds pkpk yxrs gS muds lqiqnZ fd;k tkrk gS] lkFk gh vtqtqn~nhu dks funsZ" k fn;k tkrk gS fd cPpks dk nknk "kjQqn~nhu ds laj{k.k es NksM+ ns A duht Qkfrek dks cPpks ls feyus dh iwjh NwV gksxh vksSj og vr, o mldh dLVM+h mldh ekrk Jherh duht Qkfrek dks nh tkrh gSA yM+dh "kk;uk ftldh mez 7 o" kZ gksuk izrhr gksrk gSA "kk;uk fdlh gn rd viuh le> j[krh gSA U;k;ky; ds le{k is" k fd;s tkus ij mlus fHky[krs gq, jksdj dgk fd eS esjh ekWa duht Qkfrek ds ekl ugh tkuk pkgrh gwa A mlus nks"kkjksi.k Hkh fd;k fd duht Qkfrek us esjs fir dks ejok fn;k gS A ,slk izrhr gksrk gS fd cPpks ds pkpk] rkm vkfn cPpks dks vius izHkko es ysdj muls bl rjg dh ckr U;k;ky; es dgyok;h gSA bl lUnHZk es dkuwu dh ekU;rk fcYdqy Li"V gS A D;ksfd bl mez ds cPpks dh ijofj" k o ns[kjs[k dh ftEesokjh ekW ls vf/kd dksbZ ugh dj ldrk A bl czgk.M+ es izR;sd cPps dk tks pkgs euq"; dk gks ;k tkuo dk] ekW ls vf/kd lEeku dksbZ ugh gSA vr% leLr rF;ks dks en~nsutj j[krs gq, nksuks cPpks dk laj{k.k ekrk duht Q+kfrek ;fn cPpks es egRo iSnk dj lds rks dkuwuh :i ls og vkt Hkh laj{k.k gS rFkk yhxy dLVM+h ekW duht Qkfrek ds ekl jgsxh A cPpks ds ,d ckj j[krs oDr vUrfje vkns" k ikfjr fd;k tkrk gS A cPpks ds jksus o :nu ds izR;{k n"kkZ xokg fuEu vfHkHkk" kdx.k gS%

?1? Jh "khrynklt ,l-Mh- eSus nksusk cPpks dks izkIr fd;k A ?2? Jh ckcwyky "kekZ ,l-Mh- ^^ ^^ ?3? Jh mLe ku [kka th ,l-Mh- ^^ ^^ ?4? Jh "kkgcq~nhu xkSjh ?5? Jh eksgEen fljqtqn~nhu nksusk cPpks dks "kjQqnhu ds laj{k.k es nsus ds fy, cPpks ds pkpk Jh vCnqy eksfeu dks lqiqnZ fd;k x;k A

i=koyh ckn rdehy nkf[ky nQ~rj gks A

vkns" k lquk;k x;k A

,l Mh@&

27&6&1983

U;kf;d eftLV?sV izFke oxZ]

dze 1] t;iqj uxj t;iqj

4. Later on, criminal case was investigated but it was found that Kaniya Fatima has gone at her free Will and, therefore, no case is made out. Consequently final report was given and accepted by the court. After that acceptance, application was moved by Kaniya Fatima 16-3-1983 for giving back custody of the two children.

5. On this, certain proceedings were started and ultimately bailable warrants were issued.

6. Shri Shital Das's principal argument is that the custody of the two children were given by the police and once the Magistrate is functus officio as the final report has been given then mother of the children should approach the competent civil court for their custody either under the Guardianship and Wards Act or, the personal law, as advised.

7. I am handicapped in considering this application because no one has appeared on behalf of the mother inspite of my best efforts to get assistance. The order dated 27-6-1983 shows that the children were not prepared to go with the mother even though the court wanted to send them with the mother. The Magistrate has mentioned in the order that the legal guardian would be mother Kaniya Fatima and it would be for the mother to create condition, where the children want to come to her. Obviously, the present one is a case, where the allegation is that father died by committing suicide on account of infidelity of Kaniya Fatima who eloped with Rahisuddin alias Babu. The children were greatly aggrieved by this action of mother and, therefore, were not prepared to go with the mother.

8. Be that as it may, when the criminal proceedings have ended and the final report has been accepted it would not be now in the interest of justice to drag these proceedings for getting children from the custody of the petitioner, Sharafuddin and then deciding the question where these children should go now. It should not be forgotten that the order was passed on 27-6-1983 and since then both the children are with Sharfuddin, mother, Kaniya Fatima is always at liberty to move application for getting custody because the Magistrate had held her to be legal guardian. As and when an application is moved, question of legal guardianship would be decided and at that time the interest of children would also be considered and, views and opinions of the children would be taken by the civil court.

9. I am convinced that the dragging of these proceedings in criminal court as an off-shoot of the main case would not be expedient in the interest of justice.

10. Consequently, the impugned order for calling upon Sharfuddin by bailable warrant, dated 16-6-1983 to produce the children is quashed. It is, however, made clear that this would not be interpreted to mean that this court has approved the order for giving custody to Sharafuddin. This question would be decided by the competent civil court after taking evidence of the parties and according to the personal law and the relevant law applicable in the case.

11. In the net result, this application is accepted as indicated above.