
(1995) 04 AP CK 0037

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3581 of 1995

Srinivasa Rao Kumbhari

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 14-04-1995

Acts Referred:

Penal Code, 1860 (IPC) — Section 363

Citation : (1995) 2 ALT 210 : (1996) CriLJ 353

Hon'ble Judges : M.N. Rao, J;D.H. Nasir, J

Bench : Division Bench

Advocate : J. Chalameshwar and V. Brahmaiah Chowdary, for the Appellant;
A.G. and Vilas V. Afzalpurkar, for the Respondent

Judgement

M.N. Rao, J.—Srinivasa Rao Kumbhari, an Australian citizen of Indian descent, has filed this writ petition seeking a writ of Habeas Corpus directing the respondents - (1) the State of Andhra Pradesh, (2) Dr. T. H. V. Prasad Rao, (3) Mrs. T. Kamala, (4) Mr. Anjaneyulu and (5) Mrs. T. Saraswathi - to produce his minor daughter, Aparna Kumbhari, aged seven years and handover her custody to him. Respondents 2 and 3 are the maternal grand parents of the minor, Aparna Kumbhari; respondent No. 4 is her maternal uncle, and respondent No. 5 is the wife of respondent No. 4 Srinivasa Rao Kumbhari is a Computer Software Engineer residing at No. 107, Willison Road, Carlton, State of New South Wales, 2218, Australia and he works for the State Bank of New South Wales, Sydney, Australia, as a Computer Software Engineer. He is the holder of an Australian Passport bearing No. HOI 7536.

2. In the affidavit filed in support of the writ petition, Srinivasa Rao Kumbhari, among other things, has alleged that his wife, Vijayalakshmi, the mother of the minor Aparna Kumbhari, had a malignant tumor, for which she was treated surgically by Dr. Michael K. Morgan at Sydney in Australia in August, 1991 and for a second surgery, she was taken to the United States by her brothers - T. Krishna and T. Anjaneyulu - and that even after the second operation at

Sanfransisco on 1-6-1993, her health did not improve. She was brought back to Hyderabad by her brothers. His daughter, Aparna Kumbhari, who accompanied his wife from Australia to the United States also came back with her to India and the mother and daughter (Vijayalakshmi and Aparna Kumbhari) lived with respondents 2 to 5 in Hyderabad. His wife, Vijayalakshmi, died at Hyderabad in India on 8-2-1995. Before her death, she filed one petition, Original Petition No. 843 of 1993 under the Guardian and Wards Act, 1890, seeking a declaration that she be appointed as the guardian of the minor Aparna Kumbhari. He alleged that earlier he filed a suit in the Family Court in Sydney for the guardianship and custody of his child Aparna Kumbhari and obtained orders on 27-9-1993 to the effect that he is the sole guardian of his daughter Aparna Kumbhari. An interlocutory order was passed in I.A. No. 570 of 1993 in O.P. No. 843 of 1993 by the Additional Chief Judge, City Civil Court, Hyderabad (India) appointing Vijayalakshmi, the wife of Srinivasa Rao Kumbhari, as the guardian of the minor, Aparna Kumbhari. Challenging that order, Srinivasa Rao Kumbhari filed Writ Petition No. 1519 of 1994 in this Court seeking a writ of Prohibition. He also filed an appeal - Civil Miscellaneous Appeal No. 1018 of 1994 - in this Court questioning the legality of the order passed by the learned Additional Chief Judge. After the death of Vijayalakshmi, her parents, brother and sister-in-law - respondents 2 to 5 herein - filed Original Petition No. 181 of 1995 in the City Civil Court, Hyderabad (India) that one of them may be appointed as the guardian of the minor, Aparna Kumbhari. An interlocutory order in I.A. No. 148 of 1995 was passed by the learned judge of the City Civil Court injuncting Srinivasa Rao Kumbhari from proceeding in any manner for obtaining custody of the minor, Aparna Kumbhari pending disposal of the main case. Challenging the legality of the interim order, Srinivasa Rao Kumbhari filed Writ Petition No. 3851 of 1995 in this Court.

3. When the present writ petition - W.P. No. 3581 of 1995 - came up for hearing on 6-3-1995, this Court directed respondents 2 to 5 to produce the minor girl, Aparna Kumbhari, before this Court on 8-3-1995 at 10.30 A.M. Proceedings were held in camera on 8-3-1995. The statement of Aparna Kumbhari was recorded and after discussing the custody of the minor girl with Srinivasa Rao Kumbhari, his counsel Mr. J. Chalameshwar, the grand parents of the girl - respondents 2 and 3 - and their counsel Mr. Vilas Afzalpurkar, the Court, after observing the desire expressed by Aparna Kumbhari to be with her father, Srinivasa Rao Kumbhari, allowed him to have custody of his daughter till Monday, 13-3-1995 and he was directed to produce the girl at 10.30 A.M. on 13-3-1995 before the Court for further hearing. As doubts were expressed by the grand-parents of the minor, Aparna Kumbhari, that the petitioner (Srinivasa Rao Kumbhari) may not turn up with the minor girl on 13-3-1995, Srinivasa Rao Kumbhari assured the Court that he would definitely attend the Court on that day i.e., 13-3-1995 and in proof of his bona fides, surrendered his passport and that of the minor, Aparna Kumbhari bearing Nos. HO1 7356 and K2772964 respectively. The Registrar (Judicial) of this Court was directed to keep both the passports in his custody.

4. On 13-3-1995, Srinivasa Rao Kumbhari did not appear before the Court with the minor, Aparna Kumbhari. His counsel, Mr. Chalameshwar, said that Srinivasa Rao Kumbhari, along with Aparna Kumbhari, went to Benaras to perform the obseques of his wife and as air-tickets could not be secured for the return journey immediately, the matter may be taken up on Thursday, i.e. 16-3-1995. On that representation, the Court directed that Srinivasa Rao Kumbhari should be present in the Court on 15-3-1995 at 10.30 A.M., along with the minor, Aparna Kumbhari.

5. On 15-3-1995, Mr. Chalameshwar, counsel for Srinivasa Rao Kumbhari, reported no instructions. He was asked to file an affidavit as to the reasons why he was reporting no instructions. Mr. Vilas Afzalpurkar, counsel for respondents 2 to 5, expressed an apprehension that Srinivasa Rao Kumbhari might have already left the country for Australia along with the minor girl. The Court directed the Registrar (Judicial) to inform the Australian High Commissioner in New Delhi not to issue any duplicate passports to Srinivasa Rao Kumbhari and the minor girl, Aparna Kumbhari. The Registrar was also directed to inform the police authorities in Bombay, Madras, Delhi and Calcutta not to permit Srinivasa Rao Kumbhari and the minor Aparna Kumbhari to leave the country. The order of the Court was communicated by the Registrar (Judicial) through Fax. On 20th March, 1995 one of us (M. N. Rao, J.) received a telephone call at 8.30 A.M., from one person claiming himself to be Srinivasa Rao Kumbhari informing that his daughter (Aparna Kumbhari) was safe with him and when he wanted to say something more, M. N. Rao, J., put down the phone informing him that whatever he wanted to say, he could instruct his counsel to mention in the Court and he should not make calls to the residences of the judges.

6. When the case was taken up on 23-3-1995, Mr. Chalameshwar, the counsel for Srinivasa Rao Kumbhari, filed his affidavit which is to the effect that on 15-3-1995, Sunita, the sister of Srinivasa Rao Kumbhari, telephonically informed him that she did not hear anything from her brother, Srinivasa Rao Kumbhari, subsequent to 13-3-1995 and requested him to take further adjournments. He told her that if Srinivasa Rao Kumbhari did not turn up by 10.30 A.M., on 15-3-1995, he would report no instructions and when the matter was called on 15-3-1995, he reported no instructions. Mr. Chalameshwar also averred in his affidavit that on 17-3-1995 at about 11.45 A.M., when he was in his office, Srinivasa Rao Kumbhari called him on telephone and informed that he was calling from Sydney, Australia, to which he replied that what Srinivasa Rao Kumbhari did was in "gross breach of the undertaking given by him to this Hon"ble Court and relying on the undertaking coupled with the surrender of the passports, this Hon"ble Court gave the interim custody to him and the entire conduct of the petitioner was reprehensible and he would have to face serious consequences. He was trying to say something more. I told him that I would not like to hear anything further and that I ceased to be his counsel on 15-3-1995 when I reported "no instructions" to this Hon"ble Court."

7. Mr. K. G. Kannabhiran, Senior Advocate, was requested to assist the Court as *amicus curiae*. We record our grateful appreciation of the assistance rendered by Mr. K. G. Kannabhiran.

8. Writ Petition Nos. 1519 of 1994, 351 of 1995 and Civil Miscellaneous Appeal No. 1018 of 1994 filed by Srinivasa Rao Kumbhari were dismissed as the counsel appearing for him reported no instructions.

9. The entrustment of the minor, Aparna Kumbhari to her father - Srinivasa Rao Kumbhari - was for a limited period - from 8-3-1995 to 13-3-1995. The minor girl, before she was entrusted to her father, was under the lawful guardianship of her grand parents, respondents 2 and 3, by virtue of a lawful order passed by a competent Court of jurisdiction. This Court has entrusted the custody of the minor to Srinivasa Rao Kumbhari reposing full faith in him acceding to his request to keep his minor daughter with him for a few days. Fraudulently representing that he would be present in the Court on 13-3-1995 along with the minor, he obtained the custody of the minor by depositing with the Court his passport and that of his minor daughter. From the evidence available, it is clear that he left the country and has gone to Australia; the telephone talk he had with Mr. Chalameshwar, his advocate, as disclosed in the affidavit filed by the latter amply corroborates this. Srinivasa Rao Kumbhari, therefore, in our opinion, *prima facie*, has committed an offence punishable under S. 363 of the I.P.C., an extradition offence within the meaning of Clause (c) of S. 2 of the Extradition Act, 1962 as amended by the Extradition (Amendment) Act, 1993 (No. 66 of 1993). He must, therefore, be extradited to this country for facing trial for the said offence. Accordingly, we direct the Registrar (Judicial) of this Court to lodge a complaint in the Court of the Chief Metropolitan Magistrate, Hyderabad, against Srinivasa Rao Kumbhari for the offence under S. 363, I.P.C.

10. This Court, being a Court of record, is empowered under Art. 215 of the Constitution of India to exercise contempt jurisdiction. Srinivasa Rao Kumbhari, in breach of the solemn undertaking given by him to appear before the Court on 13-3-1995 along with the minor Aparna Kumbhari, went away to Australia in violation of the order passed by this Court on 8-3-1995 directing him to be present in the Court with the minor, Aparna Kumbhari, on 13-3-1995. His action thus interfered with and obstructed the administration of justice. The act committed by him amounts to criminal contempt within the meaning of S. 2(c) (ii) and (iii) of the Contempt of Courts Act, 1971. Section 11 of the Contempt of Courts Act confers jurisdiction on this Court to enquire into or try a contempt by itself whether the person alleged to be guilty of contempt is within or outside the limits of the Court's jurisdiction. Under S. 15(1) of the Contempt of Courts Act read with R. 5(a) of the Contempt of Court Rules, 1980 framed by this Court under S. 23 of the Act read with Arts. 215 and 227 of the Constitution of India, we take *suo motu* cognizance of the contempt committed by Srinivasa Rao Kumbhari.

11. The Registrar (Judicial) shall address a letter to the Government of India,

Ministry of External Affairs, New Delhi, under S. 19(1) of the Extradition Act, 1962, requesting them to issue a requisition to the Australian High Court Commissioner in New Delhi or to the Government of Australia for the surrender of Srinivasa Rao Kumbhari along with the minor Aparna Kumbhari for the purpose of :

(i) handing over the custody of the minor girl Aparna Kumbhari to her maternal grand parents;

(ii) prosecution of Srinivasa Rao Kumbhari in the Court of the Chief Metropolitan Magistrate at Hyderabad for an offence under S. 363, I.P.C.; and

(iii) for further action by the High Court of Andhra Pradesh against Srinivasa Rao Kumbhari for criminal contempt, an offence punishable under S. 12(1) of the Contempt of Courts Act.

12. Order accordingly.