

## **Chandrakala Menon (Mrs) And Anr. vs Vipin Menon (Capt.) And Anr. on 14 January, 1993**

**Equivalent citations: 1993(41)BLJR536, 1993(1)CRIMES556(SC), I(1993)DMC135, JT1993(1)SC229, 1993(1)SCALE119, (1993)2SCC6, AIRONLINE 1993 SC 535**

**Bench: Kuldip Singh, B.P. Jeevan Reddy**

### **ORDER**

1. Special leave granted.

2. Appellant Chandrakala married respondent Vipin Menon on January 16, 1984. A female child Soumya was born to them on August 26, 1985. In August 1987 husband and wife went to U.S.A. leaving the minor child with her maternal grand parents at Bangalore. In June 1989 Soumya joined her parents in America. In May 1990 Soumya was sent back to Bangalore to live with her maternal grand parents and since then for most of the time she has been living with them. The appellant is doing her research for the degree of Ph.D. in America. Unfortunately differences arose between husband and wife during their stay in America and it became difficult for them to run their married life smoothly. In spite of daughter Soumya being a uniting factor they could not overcome their differences and ultimately a situation came when it became difficult rather impossible for them to live together. It is alleged by the appellant that she and her husband entered into a settlement to get divorce by mutual consent and it was also agreed that Soumya would stay with her maternal grand parents at Bangalore. It is further alleged that the respondent was given a fixed deposit receipt for Rs. 1,50, 000/- which was in the joint name of the appellant and respondent, as a condition of the settlement. It is not necessary for us to delve into these allegations. The fact remains that the parties filed a joint petition for divorce by mutual consent before the District Judge Palakkad on July 3, 1992. Respondent Vipin Menon has filed an application for custody of the child under the Guardian and Wards Act read with Hindu Minority and Guardianship Act before the Family Court at Bangalore. Another divorce petition filed by him is pending before the Family Court, Bombay.

3. This appeal has arisen out of peculiar circumstances. While Soumya was residing with her maternal grand parents at Bangalore, Vipin Menon came to see her on April 29, 1992 and in the process took her away to Bombay. Mr. V.P.R. Nambiar the maternal grand father lodged a complaint at the police station alleging that Vipin Menon and his sisters kidnapped Soumya at about 10.30 a.m. on that day. Although no case was registered by the police against Vipin Menon but finally the Chief Metropolitan Magistrate Bangalore took cognizance of the matter and directed Vipin Menon to produce the child on May 15, 1992. The child was not produced on the said date and a telegram was sent by Vipin Menon seeking adjournment on the ground that he was held up at Bombay due to unavoidable reasons. The Magistrate refused to grant adjournment and passed an order to the effect that Nambiar was entitled to the custody of the child. The Magistrate directed Vipin Menon to hand over the child to the police so that the custody be restored to Nambiar. He

further directed that if Vipin Menon failed to produce the child before the police then the police should register a case against him and also proceed to declare him a proclaimed offender. Vipin Menon challenged the order of the Magistrate by way of petition under Section 482, Criminal Procedure Code. The High Court quashed the order of the Magistrate by reaching a finding that Vipin Menon being a natural guardian of Soumya could not be charged with the offence of kidnapping. This appeal by Chandrakala and her father is against the order of the High Court.

4. We are of the view that in the facts and circumstances of this case the High Court was justified in quashing the criminal proceedings against respondent Vipin Menon. No fault can be found with the High Court order and we uphold the same.

5. Both husband and wife before us are highly educated and belong to well-to-do families. The husband is a qualified engineer and Chandrakala is doing her Ph.D. in America. We are of the view that for doing complete justice between the parties in this appeal it is necessary to settle all the disputes pending between them.

6. We have heard learned Counsel for the parties at length. We have talked to the husband and wife in the presence of their learned Counsel as well as separately and individually. There is no scope of settlement between them. We are of the view that the marriage has irretrievably broken down and there is no chance of their coming together. Petition for divorce by mutual consent under Section 13B of the Hindu Marriage Act, 1955 (the Act) is pending since July 3, 1992 in the Court of District Judge Palakkad. The parties are living separately for over a period of one year. We grant decree for divorce by mutual consent under Section 13B of the Act and dissolve the marriage between them with immediate effect. The divorce petition under Section 13B of the Act pending in the Court of District Judge Palakkad and also the divorce petition filed by Vipin Menon before the Family Court at Bombay shall stand disposed of in terms of our order.

7. The marriage between the parties having been dissolved the delicate question for our consideration is the custody of minor Soumya. We have given our thoughtful consideration to this aspect. It is no doubt correct that Vipin Menon being the father of the minor child is her natural guardian. The question regarding the custody of a minor child cannot be decided on the basis of the legal rights of the parties. The custody of a child has to be decided on the sole and predominant criterion of what would best serve the interest and welfare of the minor. Soumya is an intelligent girl. We have talked to her in the Chamber and gathered her wish and sentiments. She has ample love and affection for both her parents. She likes her maternal grand parents also. After examining every possible angle in this respect, we have come to the conclusion that it would be in the interest and welfare of minor Soumya that she should be permitted to be in the custody of her mother Chandrakala. We order accordingly. We direct that the custody of Soumya be handed over to her mother Chandrakala forthwith.

8. Both Chandrakala and her father Nambiar have undertaken before us to bring Soumya from America once a year to India so that Vipin Menon can have the company of her daughter. They have further undertaken that in case Chandrakala herself is not in a position to visit India once in a year she shall arrange to send Soumya to India so that she can live with her father for some time. Mr.

Vipin Menon is at liberty to visit and meet Soumya in America whenever he likes. The application for custody being Case G & WC No. 42 of 1992 filed by Vipin Menon under Guardian and Wards Act read with Hindu Minority and Guardianship Act before Family Court Bangalore shall stand disposed of in terms of our order. The parties are at liberty to approach this Court if and when it becomes necessary due to change of circumstances. The appeal is disposed of in the above terms.