

Deepti Bhandari vs Nitin Bhandari & Anr on 14 December, 2011

Equivalent citations: AIR 2012 SUPREME COURT 326, 2012 (1) SCC 725, 2012 AIR SCW 293, 2011 CRI LJ (NOC) 524, 2011 (13) SCALE 506, 2012 (1) SCC(CRI) 757, 2012 ALL MR(CRI) 376, 2012 (1) CALCRILR 889, (2012) 2 MARRILJ 505.2, (2012) 2 KCCR 35, 2012 CRILR(SC&MP) 13, (2012) 113 ALLINDCAS 26 (SC), 2012 CALCRILR 1 889, (2012) 1 CLR 304 (SC), 2012 (113) ALLINDCAS 26, AIR 2012 SC (CIVIL) 406, (2012) 1 CIVILCOURTC 525, (2012) 1 HINDULR 1, (2012) 1 ALLCRIR 1078, (2011) 13 SCALE 506, (2012) 1 CGLJ 465, (2012) 1 DMC 112, (2012) 1 RECCIVR 506, (2011) 4 DLT(CRL) 226, (2012) 2 GUJ LR 1332, (2012) MATLR 299, (2012) 1 ORISSA LR 248, (2012) 1 BOMCR(CRI) 790, (2012) 77 ALLCRIC 977, (2012) 92 ALL LR 477, (2012) 1 CHANDCRIC 76, (2012) 2 CIVLJ 840

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Bench: J. Chelameswar, Altamas Kabir

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRL.) NO.5213 Of 2010

Deepti Bhandari

... Petitioner

Vs .

Nitin Bhandari & Anr.

... Respondents

WITH

TRANSFER PETITION (C) NO.856-857 OF 2010

O R D E R

ALTAMAS KABIR, J.

1. The Petitioner and the Respondent No.1 were married to each other according to Hindu rites at Jaipur in the State of Rajasthan on 20th February, 2007. A girl child, Mannat, was born prematurely to the couple on 3rd April, 2008, and had to be kept in incubator for about three weeks. It is the Petitioner's grievance that while they were on their honeymoon in Mauritius, the Respondent No.1, husband, began to treat her with physical and mental cruelty. Even during her pregnancy, she was ill-treated. Ultimately, being unable to withstand the physical and mental cruelty inflicted both on the Petitioner and her minor daughter, the Petitioner was compelled to leave the matrimonial home and return to her parents on 7th October, 2008.

2. On 6th December, 2008, the Respondent No.1, husband, filed an application under Section 9 of the Hindu Marriage Act, 1955 (Case No.609 of 2008) against the Petitioner, for restitution of conjugal rights. Unable to bear the shock of the incidents, which had taken place since the Petitioner's marriage with the Respondent No.1, the Petitioner's grandparents suffered heart and paralytic attacks, as a result of which they have become completely bed-ridden.

According to the Petitioner, on account of the cruelty meted out to her and the child, the Petitioner filed FIR No.7 of 2009 complaining of offences alleged to have been committed by the Respondent No.1 punishable under Sections 498-A and 406 IPC.

3. It is the Petitioner's further case that in order to settle the matter peacefully, the Petitioner entered into a compromise with the Respondent No.1 on 25th February, 2009, so that she could start her life all over again and to acquire financial independence to provide for herself and for

providing proper care to the child on her own. Pursuant to the terms of the compromise, the Petitioner withdrew her complaint under Sections 498-A and 406 IPC, but the Respondent No.1 failed to appear before the Family Court No.2 at Jaipur on 2nd December, 2010, to present a Petition for mutual divorce, as had been agreed upon in the compromise.

4. At this stage, it may be mentioned that on 5th May, 2009, the Petitioner filed a complaint against the Respondent No.1 and his family members under the provisions of the Protection of Women from Domestic Violence Act, 2005, hereinafter referred to as 'PWD Act') before the Upper Civil Judge (A,B) and Judicial Magistrate Serial No.18 Jaipur City, Jaipur, being Criminal Legal Case No.13 of 2009.

Soon, thereafter, on 1st June, 2009, charge-sheet was filed against the Respondent No.1 and his family members in FIR No.7 of 2009 which had been filed by the Petitioner under Sections 498-A and 406 IPC. The next day, on 2nd June, 2009, the Respondent No.1, husband, moved an application under Section 21 of the above Act for visitation rights, which was dismissed by the learned Judge, Family Court.

5. The Respondent No.1 filed Criminal Appeal No.455 of 2009 on 25th August, 2009 against the aforesaid order dated 2nd June, 2009, before the Court of Upper District Judge (Fast Track) No.9, Jaipur City, Jaipur, which dismissed the same.

6. On 18th September, 2009, the Respondent No.1 filed a Petition under Section 482 Cr.P.C. (S.B. Criminal Misc.

Petition No.1977 of 2009) for quashing of the charge-sheet in FIR No.7 of 2009 and further proceedings before the learned Judicial Magistrate-I, No.15, Jaipur City, Jaipur, were stayed therein. On 7th October, 2009, the Respondent No.1 filed another Petition under Section 482 Cr.P.C. (S.B. Criminal Misc. Petition No.2139 of 2009) for quashing of Criminal Legal Case No.13 of 2009 filed by the Petitioner under Section 12 of the PWD Act, 2005. The High Court also stayed the said proceedings pending before the Upper Civil Judge (A,B) and Judicial Magistrate, Serial No.18, Jaipur City, Jaipur.

7. On 22nd January, 2010, when both the matters came up before the High Court for consideration, the High Court directed the Petitioner and the Respondent No.1 to settle their disputes and to apply for divorce by mutual consent within 15 days. The order was passed in the presence of both the parties. While giving the aforesaid directions, the High Court also passed orders allowing visitation rights to the Respondent No.1, husband, in respect of the minor child.

8. On 17th February, 2010, the Respondent No.1 filed S.B. Criminal Revision Petition No.1 of 2010 before the Jaipur Bench of the Rajasthan High Court against the order dated 25th August, 2009 passed in Criminal Appeal No.455 of 2009 dismissing his application for visitation rights. The Respondent NO.1 also filed Application No.3051 of 2010 in S.B. Criminal Misc. Petition No.1977 of 2009 praying for similar visitation rights. On 8th April, 2010, the said application for visitation rights was allowed and the Petitioner was directed to arrange for the meeting of the Respondent

No.1 with the Petitioner and their minor daughter at the office of the learned counsel for the Respondent No.1 on every Saturday between 11.00 a.m. and 1.00 p.m.

9. This is the genesis of the problem which is the subject matter of the present Special Leave Petition.

10. According to the Petitioner, on 14th April, 2010, the Petitioner's brother got admission with I.I.P.M. in Delhi, which required him to shift to Delhi for his higher education and the Petitioner also decided to come to Delhi to establish herself professionally to be able to maintain herself and her minor daughter. According to the Petitioner, since then she has been residing in Delhi and the order directing visitation rights to the Respondent No.1 to meet the minor child at Jaipur in the office of the learned counsel for the Respondent No.1 became extremely difficult for her. The Petitioner thereupon moved an application in the High Court on 30th April, 2010, for modification of the order of 8th April, 2010, and instead of Jaipur, to shift the place of visitation to Delhi. The said application was disallowed by the High Court on 5th May, 2010, resulting in the filing of the Special Leave Petition on 17th June, 2010.

11. During the pendency of these proceedings, the Petitioner also filed Transfer Petition (Civil) Nos.856-857 of 2010 for transfer of Case No.279 of 2009, which had been filed by the Respondent No.1 under Section 9 of the Hindu Marriage Act and Case No.65 of 2009 also filed by him under Section 25 of the Guardians and Wards Act, 1890, from the Family Court at Jaipur to a Family Court of competent jurisdiction in Delhi.

One of the grounds taken in the Transfer Petitions is that in the interest of the child, this Court had directed the Respondent No.1 to visit the child on the 2nd and 4th Saturday of each month at an address in New Delhi and the Petitioner was directed to take the child on the 1st and 3rd Saturday of each month to an address in Jaipur to enable the Respondent No.1 to meet his minor daughter. It was also submitted that the Petitioner had received threats that the case should be pursued in Jaipur instead of Delhi and that fearing for her safety and that of the minor child, she had prayed that the proceedings referred to hereinabove pending before the Court at Jaipur be transferred to a Family Court, having competent jurisdiction, to hear and try the matter in Delhi.

12. As will be seen from the narration of facts which intervened between the Petitioner and the Respondent No.1 during their brief matrimonial obligations towards each other, the child has now become the source of acrimony between them.

13. Although, it was repeatedly urged on behalf of the Respondent No.1 that the Petitioner was still residing in Jaipur and not in Delhi and that the Transfer Petitions had been filed only to cause harassment to him and the other members of his family, such suggestions were strongly denied on behalf of the Petitioner. It was submitted on her behalf that on account of her minor child and the threats extended to her, it would prove extremely difficult for her to defend the case instituted against her by the Respondent No.1 or to conduct the cases which she had filed against the Respondent No.1 and his family members in FIR No.7 of 2009, in which charge-sheet had been filed, in Jaipur. In any event, considering the difficulties on either side in attending to the several

cases pending between them and in order to balance the same, we are inclined to accept the submissions made on behalf of the Petitioner and to modify the order dated 8th April, 2010, whereby the Petitioner was directed to arrange for the meeting of the Respondent No.1 with herself and their minor daughter in the office of the learned counsel for the Respondent No.1 on every Saturday between 11.00 a.m. and 1.00 p.m. and also the subsequent order dated 5th May, 2010, passed by the High Court rejecting her prayer to move the place of visitation from Jaipur to Delhi.

14. It is true that transfer of the several cases to Delhi is likely to cause some inconvenience to the Respondent No.1 and his family members, but it cannot be denied that it would be easier for the Respondent No.1 to attend to the proceedings in Delhi than for the Petitioner to attend to the same in Jaipur, while staying in Delhi with her minor child. We, therefore, see no substance in the persistent demand of the Respondent No.1 that he should be allowed to meet the Petitioner and their minor child at Jaipur to enable him and his family members to meet the child on a regular basis. In our view, it is the Respondent No.1 who should make an effort to meet his minor child in Delhi as and when he wishes to do so. The Petitioner can have no objection whatsoever to such an arrangement and must also ensure that the child is able to meet her father in terms of the order of this Court on all weekends in New Delhi instead of the second and fourth Saturday of each month.

15. As far as the difficulty expressed on behalf of the parents of the Respondent No.1 is concerned, they will be free to apply to the Trial Court for exemption from personal appearance on the dates of the different cases and if such applications are made, the same should be considered by the Trial Court looking to the physical difficulties that may be faced by the parents of the Respondent No.1, who are both considerably aged. The visitation rights granted to the Respondent No.1 will have equal application to his parents and they too will be at liberty to visit the minor child in Delhi, as and when they wish to do so, along with the Respondent No.1.

16. The application for modification of the order dated 8th April, 2010, filed by the Petitioner before the High Court on 30th April, 2010, which was dismissed by the High Court, is, accordingly allowed along with the Transfer Petitions filed by the Petitioner. The order of 8th April, 2010, is modified to the extent indicated above, whereby the Respondent No.1 and his parents will be entitled to meet the minor child, Mannat, on every Saturday in New Delhi, between 10.00 a.m. and 6.00 p.m. In the event, the child is willing, the Respondent No.1 may also take her out for the day and return her to the custody of the Petitioner within 6.00 p.m. This arrangement will continue, until further orders.

17. In addition, Transfer Petition (Civil) Nos.856-857 of 2010 filed by the Petitioner are allowed. Let Case No.279 of 2009, which had been filed by the Respondent No.1 under Section 9 of the Hindu Marriage Act and Case No.65 of 2009, also filed by him under Section 25 of the Guardians and Wards Act, 1890, be transferred from the Family Court at Jaipur to a Family Court of competent jurisdiction in Delhi.

The transferor Court is directed to send the records of the aforesaid cases to the transferee Court, so that the matter may be heard and disposed of by the transferee Court with the utmost expedition.

18. In view of the facts involved, the parties will each bear their own costs in these proceedings.

.....J. (ALTAMAS KABIR)J.
(SURINDER SINGH NIJJAR)J. (J. CHELAMESWAR) New
Delhi Dated: 14.12.2011