

Rajesh Kumar vs Amrawati Bharti And Ors. on 6 May, 1985

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Bench: D.A. Desai, Ranganath Misra

ORDER

D.A. Desai, J.

1. Passage of time heals a festering sore and mollifies the sting caused by the criminal behaviour of the petitioner in this Court as well as in the High Court. If this order would have been pronounced about six months back, the petitioner would have been safely lodged in Tihar Jail for his criminal misconduct in taking false oath, misleading a Senior learned counsel like Mr. S.N. Kacker and polluting the fountain of justice.

2. Let us recapitulate a few facts. The petitioner is the husband of respondent unfortunate wife Smt. Amrawati Bharti. A son Sandeep was born during the wedlock. The match in our opinion was wholly unequal. The respondent Smt. Amrawati Bharti holds the postgraduate degree and is a Lecturer. The petitioner, the husband, is a low-paid workman and yet he displayed conduct of a male chauvinist. When Sandeep was aged about one year, the petitioner husband beat Smt. Amrawati Bharti and inflicted several injuries. She was thrown out of the house after depriving her of the custody of minor Sandeep. The wife lodged information of the occurrence at Police Station Kotwali Etawah around 5.30 P.M. on the day of the occurrence. The officer-in-charge of the Police Station behaved, not unexpectedly in the usual manner and did not take action on the information of the offence lodged at the Police Station. The serious lapse on the part of the Police officer was that he did not care to enquire about the whereabouts of minor Sandeep. Subsequently, when the wife approached Superintendent of Police, Etawah, the petitioner-husband was taken into custody but he was released on bail on the same day after rejecting the application of the Investigation Officer for remand to police custody. No attempt was made to trace minor Sandeep. Subsequently, Smt. Amrawati Bharti frustrated by the apathy and dereliction of duty by the police in her capacity as mother of the minor Sandeep moved a petition for a writ of habeas corpus in the Allahabad High Court. A learned Single Judge of the High Court observed : 'that in view of the fact that minor Sandeep was hardly aged about one, the mother Smt. Amrawati Bharti was entitled to his custody.' Then the case took a curious turn. In response to the notice of the writ petition the petitioner appeared and contended that minor Sandeep was not in his physical custody nor did he know anything about the whereabouts of minor Sandeep. After examining the rival contentions, the learned Judge made an order that the present petitioner-father do produce minor Sandeep Kumar

in the Court on October 23, 1981. It is against this order of the High Court that this present petition for special leave is filed.

3. It was reiterated in the petition for special leave that minor Sandeep is not only not in the custody of the present petitioner but he had no knowledge about his whereabouts. We are reluctant to interfere but a persuasive plea by Mr. Kacker painting the unenviable plight of the petitioner that if we did not grant leave and stay the operation of the order of the High Court, the petitioner will be straightway hauled up for contempt. Against our better judgment, we directed a notice to be issued to the respondent-wife, simultaneously granting ex-parte stay of the order of the High Court. But while granting stay, we had our serious reservations about the poser of the present petitioner. The apprehension was that the petitioner was telling a blatant falsehood and is leading us and his learned counsel on a garden path. Mr. S.N. Kacker, learned counsel appearing for the petitioner was taken in by the apparent facade and poser of innocence adopted by the petitioner. In order to be doubly sure, the petitioner was called before the Court and was questioned and he made a statement on oath that he did not have minor Sandeep in his custody nor did he know anything about his present whereabouts and he has not made any attempt to hold minor Sandeep incommunicado.

4. On November 8, 1982, interim stay granted by this Court was vacated and the Registry of this Court was directed to write a letter to the Director of Central Bureau of Investigation requesting him to trace minor Sandeep. He was assured that he will enjoy all the powers of Police Officer carrying out search and also to have non-bailable warrants and without interference from anyone pick-up minor Sandeep wherever he is found and to produce minor Sandeep before this Court with his report.

5. On November 20, 1982, Shri O.P. Sharma, S.P., C.B.I, produced minor Sandeep in the Chamber of one of us (Desai, J.). Learned counsel representing the parties respectively were present. The custody of minor Sandeep was for the time being handed-over to respondent-mother Smt. Amrawati Bharti.

6. The report of the Central Bureau of Investigation showed that minor Sandeep was held incommunicado at the instance of the present petitioner by Kum. Indira, sister of the present petitioner in House No. 1446, Sector III, Pushpa Vihar, New Delhi. Pursuant to the detailed order made by this Court on November 29, 1982 one Shri O.P. Chhatwal, Deputy Superintendent of Police, C.B.I., Special Investigation Cell filed his detailed affidavit setting out therein how the present petitioner had kidnapped minor Sandeep, secreted him with his sister Kum. Indira, held the child incommunicado and told blatant falsehood to the Court. The child was kidnapped and secreted from May 1981 and all throughout, the petitioner was in full knowledge of the fact and yet truth being not his forte, he took such liberty with the court process that the maximum punishment could not do adequate justice to the cause. From the affidavit it further transpired that Surendra Kumar, brother of the petitioner, Panchhi Lal, father of the petitioner, Kum. Indira, sister of the petitioner and the petitioner ail had entered into a conspiracy to pre-empt or set at naught the court proceeding and to play ducks and drakes with the orders made by this Court. Accordingly, the Court by its order dated December 30, 1982 issued a notice to the afore-mentioned four persons to show cause why each of them should not be punished for gross contempt of the Court. Of all the persons

participating in the proceeding, Mr. S.N. Kacker, learned counsel for the petitioner was the most shocked and he declined to appear and further participate in the proceeding. But at our request, he continued to assist the Court.

7. It must at once be stated that Mr. Kacker was as much a victim as the Court of the diabolical conspiracy hatched by the present petitioner and the falsehood resorted to by him with impunity. Mr. Kacker frankly stated that no amount of punishment would do adequate justice to the gross contempt and unpardonable criminal misconduct committed by the petitioner and his cohorts. The only adequate punishment in this case that can be awarded to the petitioner is to permanently keep him in jail till he departs from this world. Throughout the proceedings after the machinations of the petitioner were exposed, Mr. Kacker found it extremely inconvenient and embarrassing to plead for mercy for the petitioner.

8. We first took up the case of three conspirators namely, father, brother and sister of the petitioner. Sister Kum. Indira, was hardly aged 20 years at the relevant time. She made a clean breast of how she acted under the thumb of the petitioner. She stated in her affidavit confessing the guilt and pleading for mercy that if she is now convicted, her whole future would become bleak. She appeared not to be a voluntary participant and we took pity on her and accordingly accepted her apology and discharged the notice. Same was the case of Surendra Kumar, the brother of the petitioner who was then aged 27. One factor in his favour was that probably he was the first to break down which led to the discovery of the minor Sandeep. Accepting his unqualified apology we discharged the notice. Then we took the case of father-Panchhi Lal. He said that he did not know anything about how the petitioner kidnapped minor Sandeep and he had no knowledge about the same. He offered his unconditional apology. We accepted the same and discharged the notice.

9. We then diverted our attention to the petitioner. Not one syllable can be uttered in his favour. But there were some intervening circumstances which have caused us no small agony and distress for bidding us from sending him to jail. There is no doubt that he deserves to go to jail and be a permanent inhabitant of his cell.

10. Respondent-wife is working as a Lecturer. On couple of occasions, she appeared with minor Sandeep in the Court. When we asked her, how should we deal with her husband, she appeared distraught with conflict of emotions. She could not easily forget the cruel treatment meted out to her, kidnapping of her minor son, tiresome, prolix, expensive and exacting legal process compounded by the utterly false accusation that she was responsible for disappearance of minor Sandeep. On the other hand, this chastened young husband almost implored her to forgive her. After one adjournment, the petitioner went to the residence of the respondent and spent a few days with her. Ultimately, she told us that petitioner, is her husband and it would be an act of sacrilege on her part to ask us to punish him. She thus appeared to be an embodiment of the culture of tolerance of Indian womanhood.

11. The question posed is: whom do we punish because it is a trite saying that the judicial process ends in punishment of innocent. The legal, logical and judicially well-recognised response to the criminal misbehaviour of the petitioner is to send him to jail. Does that in any way help the

respondent and her minor son ? Would it bring cheer to the depressed wife and the harassed son ? Would the society be benefited by sending the petitioner to jail ? On the other hand, nagging doubts arose in our mind that if we do not punish the petitioner for his unpardonable smug conduct, would it set an improper example ? If allowed to be done once like-minded people may repeat such performance and when exposed may find the easy escape route through the ever-obliging wife. Exploitation of sentiments is not unknown to such coward husband. They behave like crooks and when in difficulty, take shelter behind the skirt. We were repeatedly told that even though the petitioner deserves the maximum penalty, law permits to impose, the Court should stay off its hand, tamper justice with mercy so that a happy home in the process of development may not be crucified on the altar of legal retribution. Torn between these conflicting submissions, we also find our path not well illuminated. As usual therefore, we postpone the decision making exercise, and the day of judgment.

12. Accordingly we direct the petitioner-husband to appear before Chief Judicial Magistrate Allahabad and enter into a bond in the amount of Rs. 3,000/- for a period of three years assuring that he would keep peace and be of good behaviour and will in no way try to harass, torture or annoy the respondent Smt. Amrawati Bharti, his wife and the minor son Sandeep. He shall not in any manner directly or indirectly disturb the custody of Sandeep which has been handed over by this Court to his mother Smt. Amrawati Bharti which order is final. In fact, we appoint Mrs. Amrawati Bharti as the guardian of minor Sandeep. In case of the breach of any of the conditions of the bond, petitioner shall appear before this Court to receive the punishment, which we postpone. The petition is disposed of in these terms.