

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

CONTEMPT PETITION (CIVIL) No. 1606/2017

IN

SPECIAL LEAVE PETITION (CIVIL) NO. 18761/2011

SONI GERRY

Petitioner

VERSUS

GERRY DOUGLAS

Respondent

WITH

SLP (Cr1.) No. 6237/2017

O R D E R

The petitioner had preferred a habeas corpus petition before the High Court of Kerala for issuance of an appropriate direction to produce her daughter in the Court, to which the High Court did not accede. The reason for not acceding to the request by the High Court was that the daughter had completed 18 years of age on 19.9.2016. The contention advanced by the mother that she was in illegal custody of the first respondent, the husband, in Kuwait, was not accepted by the Division Bench of the High Court. It came to a categorical conclusion that there had been no illegal detention of the daughter at Kuwait and, therefore, the prayer for habeas corpus was not sustainable.

During the pendency of SLP(Cr1.) No. 6237/2017, Contempt Petition (Civil) No. 1606/2017 was filed, alleging that the orders passed by this Court in SLP(C) No. 18761/2011 had been blatantly violated by the

husband-contemnor. To appreciate the contentions raised in the contempt petition, it is necessary to refer to the order dated 5.8.2011 passed in the said special leave petition, which is to the following effect:-

"Parties have agreed that both the children shall be sent to India from 20th August to 11th September this year and from the next year the children shall be sent for the entire period of vacation to live with the mother. This shall be arranged in the same manner and mode as envisaged by order dated 11th August, 2010.

The Special Leave Petition stands disposed of in view of the aforesaid settlement between the parties."

It is necessary to note here that Contempt Petition (Civil) No. 223/2012 was filed, wherein on 29.11.2012, the following order came to be passed:-

"Pursuant to the directions issued by us, the respondent herein has produced the children. We had a long discussion with the children and also the parents. The respondent herein, who is the father, makes a statement that he is ready and willing to send the children to India to prosecute their further studies after they finish their school course, namely, 9th standard and 2nd standard in Kuwait for a further period of 4 months. However, the petitioner says that in the interest of the children the custody of the children be handed over to her.

We have not yet made up our mind in this regard. For the present, we direct the respondent to file an appropriate undertaking before this court, firstly stating that he is ready and willing to send the children to India after they finish their school course, namely, 9th standard and 2nd standard some time in March, 2013. Secondly, he will also indicate whether the children should prosecute their further studies in India. Thirdly, whether he would financially support the children who would be with their mother and would be prosecuting their further

studies in India.

List tomorrow (30.11.2012)."

Eventually, the contempt petition was disposed of with the following order:-

"Heard learned counsel for the parties to the lis.

Having carefully perused the records of the case, we are of the opinion that nothing survives in this contempt petition for our consideration and decision. Accordingly, the contempt petition is dismissed.

The respondent is directed to strictly comply with the earlier orders and directions issued by this Court without leaving any margin of error which may compel the petitioner to approach this Court once again with yet another contempt petition.

Ordered accordingly."

It is contended by Mr. P.A. Noor Muhamed, learned counsel appearing for the petitioner-mother in Contempt Petition (Civil) No. 1606/2017 that the orders passed in SLP(C) No. 18761/2011 and the earlier contempt petition therein [Contempt Petition (Civil) No. 223/2012] have been seriously violated by the husband and, therefore, the Court should impose an adequate punishment.

When the present special leave petition and the contempt petition were listed, an issue arose, whether this Court could have an interaction or dialogue with the daughter of the petitioner-mother and the respondent. A statement was made on behalf of the mother that the daughter is in custody of the respondent-husband and she

should be directed to remain personally present. Regard being had to the aforesaid submission, this Court on 1.9.2017, passed the following order:-

"Mr. K. Rajeev, learned counsel, submits that he has instructions to appear on behalf of the respondent-husband and to file the reply. The reply be filed within three weeks hence.

Learned counsel has assured the Court that the husband shall make arrangements for travel of the son from Thiruvananthapuram to Kuwait by direct flight.

Let the matter be listed on 22.9.2017."

It was further directed that the daughter shall remain personally present on that day and the father shall make all arrangements for her presence as they were staying together.

Vide order dated 22.9.2017, the matter was adjourned to 5.1.2018 with a further direction that the daughter shall remain personally present and the father shall make all arrangements for her presence, as they were staying together.

Pursuant to our orders dated 1.9.2017 and 22.9.2017, the daughter of the petitioner and the respondent is present in Court today. On a query being made, it is put forth by her that she is pursuing a graduation through correspondence course from the Indira Gandhi National Open University (IGNOU), and presently is doing an internship in Huawei Technologies Kuwait Co. W.L.L. She has categorically stated that her date of birth is 19.9.1998. She has

expressly stated that she would like to go to Kuwait and pursue her career.

At this juncture, Mr. P.A. Noor Muhamed, learned counsel appearing for the petitioner-mother would submit that her opinion is not an informed one and she has been pressurized by the respondent-husband. For the aforesaid purpose, he has drawn our attention to certain Emails, which were sent by the daughter to the petitioner-mother in the year 2016. We do not intend to refer to the contents of the said Emails. Suffice it to state that we had directed the daughter of the petitioner to remain personally present in Court and gave the responsibility to the father to see that she is present. She has appeared. She has, without any hesitation, clearly stated that she intends to go back to Kuwait to pursue her career. In such a situation, we are of the considered opinion that as a major, she is entitled to exercise her choice and freedom and the Court cannot get into the aspect whether she has been forced by the father or not. There may be ample reasons on her behalf to go back to her father in Kuwait, but we are not concerned with her reasons. What she has stated before the Court, that alone matters and that is the heart of the reasoning for this Court, which keeps all controversies at bay.

It needs no special emphasis to state that attaining the age of majority in an individual's life has its own significance. She/he is entitled to make her/his

choice. The Courts cannot, as long as the choice remains, assume the role of *parens patriae*. The daughter is entitled to enjoy her freedom as the law permits and the Court should not assume the role of a super guardian being moved by any kind of sentiment of the mother or the egotism of the father. We say so without any reservation.

As far as the son is concerned, he is still a minor. Mr. P.V. Dinesh, learned counsel for the respondent-husband submits that as per the order dated 1.9.2017 passed in Contempt Petition (Civil) No. 1606/2017 in SLP(C) No. 18761/2011 and SLP(Crl.) No. 6237/2017, the orders passed in the earlier contempt petition [Contempt Petition (Civil) No. 223/2012] and the reasoned order passed by the learned Family Court, Thiruvananthapuram in a petition filed under the provisions of the Guardians and Wards Act, 1890, the petitioner-mother will be entitled to have interim custody during his summer vacation. However, if during the summer vacation, the son is undergoing any essential summer courses, that period will be excluded (not exceeding one month).

As the son is coming to stay with the mother during the summer vacation, it is directed that the respondent-husband shall pay a sum of Rs.50,000/- (Rupees fifty thousand only) to the petitioner-mother on every visit of the child. The respondent-husband shall inform the petitioner-mother about the flight and other relevant

details well in advance. Needless to say, the petitioner-mother would be entitled to talk to the son and the respondent-husband shall not create any kind of disturbance in that regard.

The special leave petition and the contempt petition are accordingly disposed of. All pending interlocutory applications also stand disposed of.

.....CJI.
[Dipak Misra]

.....J.
[A.M. Khanwilkar]

.....J.
[Dr. D.Y. Chandrachud]

New Delhi;
January 5, 2018.

ITEM NO.18

COURT NO.1

SECTION XI-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CONMT.PET.(C) No. 1606/2017 in SLP(C) No. 18761/2011

SONI GERRY

Petitioner

VERSUS

GERRY DOUGLAS

Respondent

(FOR EXEMPTION FROM FILING O.T. ON IA 76564/2017 and IA No.332/2018-EXEMPTION FROM FILING O.T.)

WITH

SLP(Cr1.) No. 6237/2017 (II-B)

(FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS ON IA 75436/2017 FOR PERMISSION TO FILE LENGTHY LIST OF DATES ON IA 75437/2017 FOR EXEMPTION FROM FILING O.T. ON IA 75438/2017 and IA No.92216/2017-impleading party)

Date : 05-01-2018 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For Petitioner

Mr. P. A. Noor Muhamed, AOR
Ms. Giffara S., Adv.

For Respondent

Mr. P.V. Dinesh, Adv.
Mr. Rajesh P., AOR

Mr. Pranay Ranjan, Adv.
Mr. Rajiv Nanda, Adv.
Mr. B. V. Balaram Das, AOR

for intervenor

Mr. Tejaswi Kumar Pradhan, AOR
Mr. S.K. Bandhopadhaya, Adv.

UPON hearing the counsel the Court made the following

O R D E R

The special leave petition and the contempt petition are disposed of in terms of the signed order.

All pending interlocutory applications also stand
disposed of

(Deepak Guglani)
Court Master

(H.S. Parasher)
Assistant Registrar