Smt. Surinder Kaur Sandhu

Vs

Harbax Singh Sandhu and Another

Criminal Appeal No. 183 of 1984

(Y. V. Chandrachud, Sabyasachi Mukharji JJ)

11.04.1984

JUDGMENT

CHANDRACHUD, C.J. -

1. The appellant, Surinder Kaur Sandhu, is the wife of respondent 1, Harbax Singh Sandhu, Respondent 2 is the father of respondent 1. Appellant and respondent 1 were married in 1975 at Bodni Kalan, District Faridkot, Punjab, according to Sikh rites. Soon after the marriage they left for England, where a boy named Pritpal Singh was born to them on October 24, 1976.

2. Within a short period after the birth of the boy, the relation-ship between the spouses came under a strain resulting in a serious episode. The husband was trapped by the Berkshire Police who got the scent that he was negotiating with a hitman to have the wife run over by a car. The husband was convicted and sentenced to a terms of three years for that offence. Ironically, it was the wife who intervened and succeeded and succeeded in obtaining a probation order for the ma who had attempted to procure her murder. The husband was released on probation on February 4, 1982. The period of probation expired on December 24, 1982.

3. On January 31, 1983, while the wife was away at work, the husband removed the boy from England and brought him to India. On the same date, the wife obtained an order under Section 41 the Supreme Court Act 1981 under which the boy became the Ward of the Court with effect from that date. That order was confirmed on July 22, 1983 by Mrs. Justice Booth of the High Court of Justice [Family Division]. By the said order, the husband was directed to hand over the custody of the minor boy to the wife or her agent forthwith.

4. The wife came to India in April 1983. On May 5, 1983 she filed a petition under Section 97 of the Code of Criminal Procedure in the Court of the learned Judicial Magistrate, First Class, Jagraon. She asked for the custody of her son, contending that he was in the illegal custody of the respondents. Section 97 authorises the magistrate to direct a search to be made of persons wrongfully confined and, on their being found, to be produced in the Court in order to facilitate the passing of such order as the circumstances of the case may require. The respondents relied upon Section 6 of the Hindu Minority and Guardianship Act, 1956, and opposed the petition on the ground that respondent 1 was the natural guardian of the minor boy. Accepting that contention, the learned Magistrate dismissed the petition, leaving the question of the custody of the child to be decided in an appropriate proceeding.

5. The wife then went back to England to resume her work and obtained the order dated July 22, 1983 to which we have already referred. She came back to India once again, this time armed with

the aforesaid order of the English High Court. She then filed the present writ petition in the High Court of Punjab and Haryana, asking for the production and custody of her minor son.

6. The learned Single Judge of the High Court who dealt with the petition made an excellent effort to bring about a rapprochement between the spouses but, he did not succeed. He questioned the boy more then once and he even persuaded the spouses to live together for a couple of days in the house of the Inspector-General of Prisons, Haryana. The spouses reported back to him that they were unable to resolve their difference.

7. The learned Judge dismissed the wife's petition on the grounds, inter alia, that her status in England is that of a foreigner, a factory worker and a wife living separately from the husband; that she had no relatives in England; and that, the child would have to live in lonely and dismal surroundings in England. On the other hand, according to the learned Judge, the father had gone through a traumatic experience of a conviction on a criminal charge; that he was back home in an atmosphere which welcomed him; that his parents were in affluent circumstances; and that, the child would grow in an atmosphere of self-confidence and self-respect if he was permitted to live with them.

8. Some of these circumstances mentioned by the learned Judge are not beside the point but, their comparative assessment is difficult to accept as made. For example, the "traumatic experience of a conviction on a criminal charge" is not a factor in favour of the father, especially when his conduct following immediately upon his release on probation shows that the experience has not chastened him. On the whole, we are unable to agree that the welfare of the boy requires that he should live with his father or with the grandparents. The father is a man without a character who offered solicitation to the commission of his wife's murder. The wife obtained an order of probation for him but, he abused her magnanimity by running away with the boy soon after the probationary period was over. Even in that act, he abused her magnanimity by running away with the boy soon after the probationary period was over. Even in that act, he displayed a singular lack of respect for law by obtaining a duplicate passport for the boy of respect for law by obtaining a duplicate passport for the boy on a untrue representation that the original passport was lost. The original passport was, to his knowledge, in the keeping of his wife. In this background, we do not regard the affluence of the husband's parents to be a circumstance of such overwhelming importance as to tilt the balance is favour of the father on the question of what is truly of the welfare of the minor. At any rate, we are unable to agree that it will be less for the welfare of the minor if he lived with his mother. He was whisked away from her and the question is whether, there are any circumstances to support the view that the new environment in which he is wrongly brought is more conducive to his welfare. He is about 8 years of age and the loving care of the mother ought not to be denied to him. The father if made of coarse stuff. The mother earns an income of 100 a week, which is certainly not large by English standards, but is not so low as not to enable her to take reasonable care of the boy.

9. Section 6 of the Hindu Minority and Guardianship Act, 1956 constitutes the father as the natural guardian of a minor son. But that provision cannot supersede the paramount consideration as to what is conducive to the welfare of the minor. As the matters are presented to us today, the boy, from his own point of view, ought to be in the custody of the mother.

10. We may add that the spouses had set up their matrimonial home in England where the wife was working as a clerk and the husband as a bus driver. The boy is a British citizen, having been born in England, and he holds a British passport. It cannot be controverted that, in these circumstances, the English court had jurisdiction to the question of his custody. The modern theory of conflict of Laws

recognises and, in any even, prefers the jurisdiction of the State which has the most intimate contact with the issues arising in the case. Jurisdiction is not attracted by the operation or creation of fortuitous circumstances such as the circumstance as to where the child, whose custody is in issue, is brought or for the time being lodged. To allow the assumption of jurisdiction by another State in such circumstances will only result in encouraging forum-shopping. Ordinarily, jurisdiction must follow upon functional lines. That is to say, for example, that in matters relating to matrimony and custody, the law of that place must govern which has the closest concern with the well-being of the spouses and the welfare of the offsprings of marriage. The spouses in this case had made England their home where this boy was born to them. The father cannot deprive the English Court of its jurisdiction to decide upon his custody by removing him to India, not in the normal movement of the matrimonial home but, by an act which was gravely detrimental to the peace of that home. The fact that the matrimonial home of the spouses was in England, establishes sufficient contacts or ties with that State in order to make it reasonable and just for the courts of that state to assume jurisdiction to enforce obligations which were incurred therein by the spouses. [See International Shoes Company v. State of Washington, which was not a matrimonial case but which is regarded as the fountainhead of the subsequent developments of jurisdictional issues like the one involved in the instant case.] It is our duty and function to protect the wife against the burden of litigating in an inconvenient forum which she and her husband had left voluntarily in order to make their living in England, where they gave birth to this unfortunate boy.

11. For these reasons, we set aside the judgment of the High Court and direct that the custody of the child shall be handed over to the appellant-mother. That shall be done during the course of this day.

12. The High court has referred to the evidence showing that the annual income of the father's family is in the range of Rs. 90,000. That would justify an order directing the respondents to pay a sum of Rs. 3000 three thousand] to the appellant for he costs of this appeal.

13. Order accordingly.

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