

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLAT JURISDICTION
CRIMINAL APPEAL NO. 855 /2020
[SLP [CRL.] NO.5294/2020]

MINAKSHI GUPTA

Appellant (s)

VERSUS

RICHA GUPTA & ORS.

Respondent(s)

O R D E R

Leave granted.

We have heard learned counsel for parties. The aspect which persuaded us to issue notice was that despite the matter being referred to a Larger Bench as per the concluding paragraph 112, in view of a contra view taken by another Bench earlier, the learned Single Judge in a *Habeas Corpus* petition had passed an order *qua* the custody of the child alleged to have been given in adoption who was and is presently in custody of the appellant. We had passed an interim order staying the handing over of the custody of the child while observing that *prima facie* we were of the view that what should be the interim arrangement is best arrived at by the Bench to which the matter will be referred being the larger Bench rather than by the impugned order. We are of the view that the appeal can still be disposed of with this direction as the final direction so that the custody arrangements are dealt with by the Larger Bench.

Ordered accordingly.

The observations in the impugned order on merits while referring to the matter to a Larger Bench are consequently set aside.

The appeal accordingly stands disposed of.

IA No.124615/2020

The only other aspect which we have to consider arises from the application No.124615/2020 filed for appropriate directions.

Issue notice which is accepted by learned counsel for the respondents.

We have heard learned counsel for parties.

The submission of learned counsel for the appellant is that the appellant has remained in India for the benefit of the child though her husband has been residing in the US during this period of time. Both the appellant and her husband have been residents of US since 2014 and the appellant's husband is on a H1B work visa while the appellant is on a H4 visa (dependent visa) sponsored by the employer company of the appellant's husband. The visa is stated to have initially expired on 30.09.2016 and was renewed till July, 2019 and thereafter till 04.03.2021. The appellant had come to India on 22.11.2019 and was supposed to go back to the US in December, 2019 but in view of the present proceedings, had stayed back. The process for extension of visa is stated to require an initiation at least 3 to 4 months prior to its expiry and the details for the same have been set out in para 5 of the application. It has been averred that the company where the appellant's husband is working has already sent various reminders to the appellant's husband for initiating the process for extension of visa and thus, to avoid repatriation of the appellant and her husband, their

presence in US is necessary for extension of visa. The flight is stated to be booked now for 16.12.2020.

The closeness of the child to the appellant has been mentioned and the child is of a young age less than a year and a half now and has been staying with the appellant. The appellant wants to take the child to the US for 2-3 months with an undertaking that she will return back to India with the minor child immediately after receipt of the visa extension papers.

Learned counsel for the respondent opposed the request and specially expresses a concern about the possibility of the appellant and the child not returning to India.

On our query as to what is the security which the appellant is going to furnish, learned senior counsel for the appellant, on instructions, states that the appellant undertakes to return back on or before the 31st March, 2021 to India and to secure the presence of the appellant and the child both in India by that date and is willing to give a bank guarantee in the name of the Registrar of this Court for a sum of Rs.1 crore.

On a consideration of the matter and looking to the peculiar facts of the case, we are inclined to permit the appellant to take the child to the US subject to furnishing an undertaking before this Court to return with the child to India on or before 31st March, 2021.

In addition, the appellant will furnish an unconditional bank guarantee in the name of the Registrar of this Court for a sum of Rs.1 crore, in case there is any breach of this condition.

Subject to the aforesaid, we allow the application including for the appellant to carry Advait Gupta with her. As to what should be the further arrangements in respect of this child form the subject matter of our main order and thus, after 31st March, 2021 those aspects will be dealt with by the Larger Bench to whom the matter has been referred in terms of the impugned order and in terms of the orders passed by us today.

The application also accordingly stands disposed of.

.....J.
[SANJAY KISHAN KAUL]

.....J.
[DINESH MAHESHWARI]

.....J.
[HRISHIKESH ROY]

NEW DELHI;
DECEMBER 14, 2020.

ITEM NO.3 Court 9 (Video Conferencing)

SECTION II-B

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

Petition(s) for Special Leave to Appeal (Cr1.) No(s). 5294/2020
(Arising out of impugned final judgment and order dated 12-10-2020
in CRWP No. 820/2020 passed by the High Court Of Punjab & Haryana
At Chandigarh)

MINAKSHI GUPTA

Petitioner(s)

VERSUS

RICHA GUPTA & ORS.

Respondent(s)

IA No. 124615/2020 - APPROPRIATE ORDERS/DIRECTIONS

IA No. 124616/2020 - EXEMPTION FROM FILING AFFIDAVIT)

Date : 14-12-2020 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE DINESH MAHESHWARI

HON'BLE MR. JUSTICE HRISHIKESH ROY

For Petitioner(s) Mr. Jayant Bhushan, Sr. Adv.
Mr. Atul Kumar, Adv.
Mr. Tarun Gupta, AOR

For Respondent(s)
Mr. Shiv Pratap S. Mann, Adv.
Mr. Ronak Karanpuria, AOR

Mr. Ankit Goel, AOR
Mr. R.K. Gupa, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Application for exemption from filing affidavit is allowed.

Leave granted.

The appeal stands disposed of.

I.A. No. 124615/2020 also stands disposed of in terms of the
signed order.

(CHARANJEET KAUR)
ASTT. REGISTRAR-cum-PS

(ANITA RANI AHUJA)
ASSISTANT REGISTRAR

[Signed order is placed on the file]