

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

Criminal Appeal Nos. 1607-1608/2019
(arising out of SLP (CrI.) Nos. 9345-9346/2019)

MANISH CHHOKAR

Petitioner

VERSUS

RAJYASHREE CHHOKAR & ANR.

Respondents

O R D E R

Leave granted.

Three orders are impugned in these appeals. The orders are dated 27.8.2019, 25.9.2019 and 15.10.2019, which are reproduced below:-

Order dated 27.8.2019

“Mr. Ajay Veer Pundir, learned counsel for the applicant.

Mr. S.S. Adhikari, learned A.G.A. for the State.

Mr. Aditya Singh, learned counsel for respondent no. 2.

List this matter on 23.09.2019, as prayed by learned counsel for the parties.

In the meantime, applicant will not leave the country without prior permission of the Court.”

Order dated 25.9.2019

“Mr. Arvind Vashista, learned Sr. Counsel assisted by Mr. Ajay Veer Pundir, learned counsel for the applicant.

Mr. Lalit Miglani, learned Brief Holder for the State.

Mr. Rakesh Thapliyal, learned Sr. Counsel assisted by Mr. Aditya Singh, learned counsel for respondent no. 2.

It is argued by learned Sr. Counsel for the respondent no. 2 that as per the video conversation through Whatsapp Mobile No.

9810315028 dated 24.09.2019 between the respondent no. 2 and mother of the applicant the son of respondent no. 2, is residing in India.

The S.S.P. Haridwar is directed to submit a report regarding the location of Mobile No. 9810315028 from 23.08.2019 to 24.09.2019 within a period of two days.

List on 27.09.2019 along with connected matters.

Learned counsel for the State will inform the S.S.P. Haridwar today itself, in this regard.

Let a certified copy of this order be supplied to the learned counsel for the parties, today itself, on payment of usual charges.

Interim order shall continue till the next date of listing."

Order dated 15.10.2019

"Mr. Vivek Pathak, learned Advocate for the applicant.

Mr. Rakesh Thapliyal, learned Senior Advocate assisted by Mr. Pankaj Chaturvedi, learned Advocate for respondent no. 2.

Mr. Subhash Tyagi Bhardwaj, learned D.A.G. along with Ms. Farida Siddiqui, learned Brief Holder for the State.

List the case on 22.10.2019 alongwith connected matters.

Both (husband and wife) shall remain present before this Court on the next date of hearing.

On that day, the applicant will also produce passports of his parents as well as ownership title of B-2, Flat No. 1103, Ardee City, Sector-52, Gurugram, Haryana before this Court.

Learned counsel for the applicant will inform his client about the order passed today positively before the next date fixed for hearing.

Interim order shall remain continue till further order.

Urgency application stands disposed of.

Let a certified copy of this order be

supplied today itself to the learned counsel for the parties on payment of usual charges as per rule."

It appears that the main matter which is pending in the High Court of Uttarakhand at Nainital is the proceedings, by which the appellant has called in question the chargesheet against the appellant levelling charges under Section 498A, IPC. Pending the petition, on the basis of an order passed on 24.9.2019, parties were referred to mediation. On the basis of the mediation, the following settlement came to be arrived at between the parties:-

".... Joint and individual sessions were held between the parties. Both the parties have submitted that they are ready to settle their dispute amicably.

1. Smt. Rajyashree Chhokar has filed the following cases which she would withdraw all cases including and not limited to:-

(i) FIR 498-A/323/504/506 IPC PS Kotwali Roorkee, Haridwar.

(ii) Application under Section 125 in District Court at Haridwar.

(iii) A property suit is pending in Civil Court Gurgaon.

2. Mr. Manish has filed Divorce suit which was decreed ex-parte in U.S.A.

3. Smt. Rajyashree has pressed custody of Mr. Ranvir Singh Chhokar age 4 years, who is residing with his father in America and she will withdraw all her cases against her in laws and her husband, which further as per this agreement Mr. Manish Chhokar would also withdraw any case(s) which he may have filed against Smt. Rajyashree either in India or in the United States of America.

4. Mr. Manish Chhokar has agreed to give custody of his son Master Ranvir to Smt. Rajashree (mother of Ranvir) for which he would

be initiating the process at the earliest within a period 60 days from his arrival at the United State for transferring custody of minor Ranvir to Smt. Rajyashree who will visit U.S.A. (if required and/or called by Court) for participating in the process of handling overseas child custody to her and for the purposes of fast tracking the process in the Court at Michigan or any other Court of appropriate jurisdiction in United States of America for the purposes of securing custody of the minor child to Ms. Rajyashree.

5. That the father of child i.e. Shri Manish Chhokar would have visitation rights to the child and would also be entitled to take the child with him any-where in India upto a period of 1 month, but would not be entitled to take the child outside the territories of India without express written consent of the mother of child.

6. That both the parties agreed that they would not be claiming any rights to any of their respective properties and would also not be filing any cases against each other either in Indian Jurisdiction or in the US Jurisdiction at any time in future.

7. That both the parties are also in agreement that they have settled all three disputes including and not limited to alimony and would also not claim any spousal support or child support from each other any time in future either within India or in United States of America.

8. Further it is agreed between both the parties that they would abide by this settlement arrived hereto before which will be binding on them in case anyone of them vitiates from the terms of this compromise then he/she would be liable for civil/criminal action while the other party would be at liberty to renew/restart all the cases withdrawn in terms of this settlement.

9. That this settlement and agreement made between the parties with free will without ill will, influence, fear and favour, with free mind of the parties in presence of their respective counsels.

Let a report to this effect be submitted to the Hon'ble Court.

Mediation successful."

The complaint of the appellant appears to be that despite the fact that the appellant has been willing to abide by the terms of the settlement, the impugned orders came to be passed. The result of the impugned orders is that the appellant is prevented from leaving India to rejoin his employment in the United States of America (U.S.A.).

The terms of the settlement which have been arrived at, primarily concern the handing over of the custody of the minor child of the parties to the first respondent (mother). As far as the other disputes are concerned, they stand settled in terms of the settlement. Learned counsel appearing for the first respondent would in fact point out that there is another settlement, which is produced as Annexure P-31 dated Nil October, 2019. At once the learned counsel for the appellant would point out that the said settlement has not been signed and what holds the field is the settlement, which we have extracted above.

The concern which is voiced by the learned counsel for the first respondent is that the child, who is stated to be in the U.S.A., is actually in Hong Kong. Suspicion has been aroused on account of the conduct of the appellant. It is pointed out that the first respondent is concerned that after leaving India in terms of the settlement, the child may not be returned back. Learned counsel would submit that the first respondent is in fact willing to go to the U.S.A. alongwith the appellant, so that the transfer of custody of the child is facilitated.

The learned counsel for the first respondent further contends that the Court may impose some other condition, so that transfer of the custody of the child to the first respondent is actually effectuated. He points out that the documents of title relating to the property of the appellant, which is in fact referred to in the subsequent settlement (dispute by the appellant) may be submitted before the Court and the Passports of the parents of the appellant may also be made available.

In answer to the above, the learned counsel for the appellant would point out that actually it was the appellant who volunteered and the settlement was arrived at. He would further submit that the mother of the appellant presently is in Hong Kong. He further submits that the appellant is amenable to making available the Passport of his father, who is a resident of Gurugram, Haryana, in this Court. He will also produce a Fixed Deposit Receipt (F.D.R.) for a sum of Rs.25,00,000/- (Rupees twenty five lakhs only) before this Court. The learned counsel would further submit that the appellant will give an undertaking that he will abide by the terms of the settlement dated 24.9.2019 (extracted above), so that the custody of the child is handed over to the first respondent. The learned counsel also submits that the Passport of the father of the appellant and the F.D.R. be returned back only after the conditions of the undertaking are complied with.

We feel that in order to give a quietous to the matter and since the dispute strictly revolves around the custody of the minor child and other matters stand settled, we direct as under:-

(i) The appellant will execute an undertaking before

this Court that he will abide by the terms of the settlement.

(ii) That he will initiate application in terms of the settlement to ensure that the custody of the minor child is handed over to the first respondent, within seven days.

(iii) The appellant will produce an F.D.R. of Rs.25,00,000/- (Rupees twenty five lakhs only) in the name of the Registrar, Supreme Court of India, within a period of three days.

(iv) The appellant will surrender the Passport of his father Mr. R.L. Chhokar within a period of three days before the Registrar of this Court.

Upon the above conditions being fulfilled, the appellant will be free to leave India. We also make it clear that it will be open to the first respondent to either accompany the appellant or to go to the U.S.A. on her own, so that the transfer of the custody of the minor child is facilitated and accelerated.

Immediately upon an affidavit being filed by the appellant showing transfer of custody of the child to the first respondent, the Registry will return the F.D.R. and the Passport of the father of the appellant.

The learned counsel for the first respondent would submit that as far as the divorce is concerned, the matter is settled in terms of the decree which is mentioned in the settlement extracted above.

In view of the above, the impugned orders will stand modified as aforesaid.

Liberty is granted to the parties to approach this

Court seeking any orders, which may be necessary to meet the ends of justice.

As prayed, learned counsel for the State of Uttarakhand may be allowed to file Vakalatnama and appearance.

The appeals accordingly stand disposed of.

.....J.
[K.M. Joseph]

.....J.
[A.S. Bopanna)

New Delhi;
October 21, 2019.

ITEM NO.61

COURT NO.17

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (Cr1.) Nos. 9345-9346/2019

(Arising out of impugned final judgment and order dated 27-08-2019 and 25-09-2019 in C482 No. 1275/2018 passed by the High Court of Uttarakhand At Nainital)

MANISH CHHOKAR

Petitioner

VERSUS

RAJYASHREE CHHOKAR & ANR.

Respondents

(FOR ADMISSION and I.R. and IA No.155504/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.155505/2019-EXEMPTION FROM FILING O.T. and IA No.155503/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 21-10-2019 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.M. JOSEPH
HON'BLE MR. JUSTICE A.S. BOPANNA

For Petitioner

Mr. Prosenjeet Banerjee, Adv.
Ms. Nidhi Mohan Parashar, AOR
Ms. Prachi Dutta, Adv.
Mr. Pratyaksh Sharma, Adv.

For Respondents

Mr. Nalin Kohli, Adv.
Mr. Ankit Roy, Adv.
Mr. Indrajeet Singh, Adv.
Mr. Amarjeet Singh, Adv.
Mr. Rameshwar Prasad Goyal, AOR

Mr. Jatinder Kumar Bhatia, Adv. (AOR)
Mr. Ashutosh Kumar Sharma, Adv.

UPON hearing the counsel the Court made the following
ORDER

Leave granted.

The appeals are disposed of in terms of the

signed order.

Pending interlocutory applications, if any, shall stand disposed of.

**(Deepak Guglani)
Court Master**

**(Indu Kumari Pokhriyal)
Assistant Registrar
(signed order is placed on the file)**