

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No(s). 304 OF 2020  
(Arising out of SLP (CrI.) No(s). 1265 of 2020)

SARA CARRIERE DUBEY

Appellant(s)

VERSUS

ASHISH DUBEY & ORS.

Respondent(s)

O R D E R

Leave granted.

2. This appeal is against a judgment and order dated 21<sup>st</sup> January 2020 passed in a writ petition under Article 226 of the Constitution of India, for a writ of Habeas Corpus, whereby a Division Bench of Delhi High Court has permitted the Respondent No.1, access to his minor children aged 10 and 8 respectively from 11.00 a.m. to 4.00 p.m. every Saturday and Sunday. The Appellant being the mother, has been given the full custody of the minor children until any further orders to the contrary, if any, with regard to their custody/guardianship by a Court of competent jurisdiction.

3. The Appellant, a French lady married the Respondent No.1, an Indian citizen, under the Special Marriage Act, 1954, on 7<sup>th</sup> February 2006.

4. After marriage the Appellant and the Respondent No. 1 jointly purchased property at the Asian Games Village Complex, New Delhi and started residing there together.

5. On 18<sup>th</sup> December 2009, a daughter was born to the Appellant and the Respondent No.1 and on 25<sup>th</sup> June 2011 a son was born to them.

6. According to the Appellant, the Respondent No.1 is now in an adulterous relationship with a lady, with whom he is having an extra-marital affair openly. The Appellant has alleged that the Respondent No.1 has subjected the Appellant and the minor children to domestic violence.

7. The Appellant claims that by reason of violence inflicted by the Respondent No.1 on the Appellant and the minor children, the Appellant has been constrained to leave the matrimonial home and take temporary residence in a hotel with the minor children.

8. The Appellant has placed on record photographs, statements, medical prescriptions and other documents to

establish her allegations against the Respondent No.1.

9. The Respondent No.1 filed the writ petition under Article 226 of the Constitution of India, referred to above, seeking a writ of habeas corpus for production of the minor children.

10. The Appellant strenuously opposed the said writ petition *inter alia* contending that the Respondent No.1 had been adulterous, abusive and indulging in acts of violence. She claimed that the minor children were also physically assaulted and abused. Relying on the opinion of a Child Psychologist, the Appellant claimed that access of the Respondent to the minor children would not be conducive to their well being.

11. From the language and tenor of the pleadings, it is patently clear that Appellant is deeply upset by the matrimonial wrong that may have been committed by the Respondent No.1.

12. By the judgment and order under appeal, the High Court has allowed the Respondent No.1 access to the minor children between 11.00 a.m. to 4.00 p.m. every Saturday and Sunday to ensure that they remain in touch with him. The Appellant has been directed to hand over custody of

the minor children to the Respondent No.1 each succeeding Saturday at the place specified in the judgment and order sharp at 11.00 a.m. The Respondent No.1 has been directed to return the custody of the children to the mother at 4.00 p.m. same afternoon, at the place mentioned in the order. Similarly, on every succeeding Sunday the Appellant is to hand over the custody of the minor children to the father at the place mentioned in the said order and the father is to return the custody of the children to the Appellant the same day, by 4.00 p.m. The High Court has made it clear that access of the Respondent No.1 to the children would be without any hindrance or supervision from the Appellant, in any manner.

13. While one can empathize with the anguish of the Appellant, who may be a wronged wife, we cannot be oblivious to the interests of the minor children which are of paramount importance in cases like this.

14. It hardly need be mentioned that little children need to be brought up with the love and care of both parents. Even if the parents have been constrained to part, the children cannot be denied of their right of access to both the parents.

15. It may be pertinent to note that while the writ petition was pending, the Judges of the Division Bench interacted with the minor children at length in the Chamber and also issued directions with the consent of the parties to provide the children with counselling. A Counsellor attached with the Delhi High Court Mediation and Counselling Centre had been appointed to counsel the children.

16. The Counsellor has submitted a Report dated 13<sup>th</sup> January 2020, which is at page 184 of the paper book. The Report of the Counsellor appointed by the Court, who is a neutral Counsellor indicates that the minor daughter was comfortable with her father, i.e., Respondent No.1, from the very beginning and though there was initial hesitation on the part of the minor son, he too readily and comfortably interacted with the Respondent No.1. The children enjoyed playing board games with the Respondent No.1.

17. The Counsellor reported that even though the children were meeting their father after a gap of almost six months, there existed a latent bond between them, which came alive once they met him, and they got along well with each other. The Counsellor also opined that the children

were willing to meet their father and looked positively forward to such meetings.

18. Counsel appearing on behalf of the Appellant submits that the Appellant has a right to file an exception to the report of the Counsellor should be kept open.

19. The order of the High Court impugned, does not shut out the right of the Appellant to take exception to the report. Exceptions to the report, if taken, shall be considered objectively by the Court of Competent jurisdiction.

20. It is reiterated at the cost of repetition that in matters related to custody and access, the interest of the children is of paramount importance and access to both parents is in the interest of the children. Maybe as contended on behalf of the Appellant, interim orders for custody and access are not ordinarily passed in proceedings under Article 226 of the Constitution of India for a writ of habeas corpus. We do not, however, deem it appropriate to disturb the equitable arrangement worked out by the Division Bench in the interest of the children, with the utmost sensitivity, giving a lot of time and effort. We appreciate the humane approach adopted by the Division Bench of the High Court. The issue of law is

kept open.

21. We are, therefore, not inclined to interfere with the judgment and order of the High Court under appeal whereby a father has been given time bound access to the children for about five hours on Saturdays and Sundays, while custody remains with the Appellant. There is no reason why this arrangement should not be tried out.

22. It hardly needs mention that the arrangement as stipulated in the order impugned may some times have to be modified or adjusted and exceptions made, if exigencies so require. For example, if the children or one of them is unwell, or if the children have a programme at school the Respondent No.1 should not insist on strict compliance of the order of the High Court. However, this observation which is to allow variations in the visitation timings in case of unforeseen circumstances is not to be construed in a manner as to deny the Respondent No.1 visitation rights as granted by the High Court.

23. With the aforesaid observations, the appeal is disposed of.

24. Pending applications, if any, are disposed of.

.....J.  
(INDIRA BANERJEE)

.....J.  
(A.S. BOPANNA)

NEW DELHI;  
FEBRUARY 17, 2020

ITEM NO.44

COURT NO.14

SECTION II-C

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 (CrI.) No(s). 1265/2020

(Arising out of impugned final judgment and order dated 21-01-2020 in WPCRL No. 1757/2019 passed by the High Court Of Delhi At New Delhi)

SARA CARRIERE DUBEY

Petitioner(s)

VERSUS

ASHISH DUBEY &amp; ORS.

Respondent(s)

( IA No.24895/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT )

Date : 17-02-2020 This petition was called on for hearing today.

CORAM :

HON'BLE MS. JUSTICE INDIRA BANERJEE  
HON'BLE MR. JUSTICE A.S. BOPANNA

For Petitioner(s) Mr. Aman Hingorani, Adv.  
Mr. Anirudh Jaiswal, Adv.  
Ms. Shweta Hingorani, Adv.  
Ms. Kanika, Adv.  
M/S. Hingorani & Associates, AOR

For Respondent(s) Mr. Sidharth Luthra, Sr. Adv.  
Mr. Gaurav Kejriwal, AOR  
Ms. Vandana kejriwal, Adv.  
Mr. Hari Pillai, Adv.  
Mr. Gaurav Choudhary, Adv.

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

Leave granted.

The Appeal is disposed of in terms of the signed order.

Pending applications, if any, are disposed of.

(NEELAM GULATI)  
AR-cum-PS

(RAJINDER KAUR)  
ASSISTANT REGISTRAR

(Signed Order is placed on the file)