

MOOT PROBLEM

BEFORE THE HON'BLE HIGH COURT AT INDRAAPRASTH

[Criminal Revisional Jurisdiction]

C.R.R No. 1095/2017

IN THE MATTER OF

AMINA BEGUM

Vs

MD. SULTAN & ORS.

Md. Sultan was born on 5th January, 1980 in Teqqa, the capital of Barloch, the largest province of the country named Pakmulk. The State of Pakmulk, which was within erstwhile British dominion and presently a democratic country, had earned its independence in the year of 1957 after passing through a gory political turmoil with its neighbouring country Lindia. Barloch, which was once a princely state, was accessed to Pakmulk only in the year of 1958 under strange circumstances through an instrument of accession signed by Sk. Rabiul Rehman, the then ruler of Barloch. However, the act of accession of Barloch to Pakmulk has since been a controversial issue and a liberation movement among the people of Barloch was wrought by a non-violent group namely *Inquilab* led by Sk. Habibur Rehman who was the brother of Sk. Rabiul Rehman.

Md. Sultan, born in the year 1980, was the youngest son of Sk. Habibur Rehman, the then chief of *Inquilab*. Md. Sultan, who was an Oxford graduate in Political Science, gained immediate popularity among the people of Barloch with his oratory skill and sincere compassion for his followers and became the second in command of *Inquilab* in the year of 2005.

However, being intimidated with the rapid growth of influence of *Inquilab* on the people of Barloch, the Government of Pakmulk initiated counter-insurgency mechanism and in the year of 2007 the military of Pakmulk led a massive armed attack on *Inquilab* members resulting in the death of Sk. Habibur Rehman. Md. Sultan and his mother Nazma Begum, however, managed to escape the military attack and received political asylum in the neighbouring country Lindia in the month of December, 2008.

Lindia, which is a socialist, republic and democratic country, has, since its independence, suffered innumerable acts of hostility and terrorism perpetrated by Pakmulk and as a counter mechanism, Lindia's foreign policy covertly supports the liberation movement of Barloch people. In the year 2009, the Lindian government provided Md. Sultan and his mother Nazma Begum with LTV (Long Term VISA) and a temporary residential house at Mirjapur of district Bhadrak within Indraprasth (capital of Lindia). Soon, Md. Sultan commenced his vocation as a freelance journalist with a handsome earning and with the latent indulgence of different media houses of Lindia, he raised his voice for the rights of the Barloch people and started generating collective international consensus for the liberation movement of Barloch people.

In the month of March of 2012, Md. Sultan met a local social activist named Shazia Khatun (*daughter of Shabir Ahmed and Amina Begum*), who was a Lindian citizen by birth, residing at Chandni Chawk of Bhadrak District and belonged to an aristocrat family of Indraprasth. Within a few meetings they discovered their mutual compatibility and love for each other and on 24th November 2012 they were married according to Muslim personal laws, rites and customs. Shazia's parents were against this marriage and it took almost 2 years for the Shazia's family to accept the marriage. However, in the meantime, Shazia became pregnant and on 20th October 2014 she gave birth to a female child namely Ruksar. Though initially Md. Sultan was disappointed with Shazia for not being blessed with a male child but in a little while he became affectionate towards his girl child.

The family life of Md. Sultan and Shazia was very happy and it remained so until Shazia yielded to peer pressure and began asking Md. Sultan to apply for the citizenship of Lindia. But Md. Sultan was never interested in becoming a citizen of Lindia, as he had dedicated his life for the liberation of Barloch people and he was planning to return to Barloch with the help of Lindia and other international communities. As a result, tensions between the couple gradually increased and Shazia left her matrimonial home on 22nd July, 2016 and took shelter in her paternal house at Chandni Chawk. Amidst these tensions and conflicts of interest between her husband and paternal family members, Shazia developed acute anaemia and schizophrenia for which she had to be admitted to a local nursing home at Chandni Chawk on 29th July 2016. Further medical probe revealed Shazia to be pregnant of 3 weeks which, in turn, restored Md. Sultan's ambition for a male successor and hence, despite the doctor's abundant warnings, Md. Sultan insisted to continue with the pregnancy. Shazia, too, in expectation of reunion with Md. Sultan, accepted his decision.

Md. Sultan has always been a very lovable husband and father and he brought Shazia and Ruksar back to his house and admitted Shazia to AIIMS, Indraprasth, where he managed to arrange the best medical assistance for her. The doctors of AIIMS also apprised Md. Sultan of the risk of proceeding with the pregnancy but he insisted. After two weeks of treatment Shazia was released from AIIMS and went to her matrimonial home at Mirjapur and reunited with her daughter, husband and mother-in-law. However, she was advised to take continuous rest and medication during her pregnancy by her doctors.

During the days of Shazia's treatment in her matrimonial home, Md. Sultan gave all his love and paid the utmost attention to Ruksar who was being nurtured with due care and responsibility by Md. Sultan and his mother. The parents of Shazia, on the other hand, made several attempts to convince Shazia to terminate the pregnancy but could not persuade her and in the month of October 2016, she even requested her parents, through an Email, (copy was forwarded to his husband's email account) to sever contact with her and her child for the sake of upholding peace in her married life.

Afterwards, the marital life of Shazia and Md. Sultan slowly returned to normalcy and they even celebrated their anniversary. It seemed that the days of remorse were over until Shazia was admitted with labour pain to a local nursing home namely 'Care & Cure' at Mirjapur the month of April 2017. In the late night of 14th April, 2017, her condition deteriorated and the doctors after consulting Md. Sultan performed urgent caesarean operation and in the morning of 15th April, Shazia gave birth to another female child (Razia). The news of birth of another girl child infuriated Md. Sultan who was fervently expecting delivery of his male heir and out of a transitory exasperation, he even told his mother and other relatives that he was no more interested in continuing his marital relation with Shazia and that he wished to remarry for a male progeny.

Although, Shazia's parents were not informed initially but following her operation, when Shazia's condition became critical, they were informed over telephone. Shazia's health declined rapidly thereafter and she had to be admitted to Indraprasth AIIMS. The momentary frustration of Md. Sultan was soon surmounted by the anxiety over his wife's health and during those days Sultan remained present in the Hospital and did not return home.

In the meantime, Shazia's parents and her brother, in the absence of Md. Sultan and Shazia, had requested Sultan's mother to allow them to take Rukshar and Razia with them, till the homecoming of Sultan and Shazia and assuring that they would bring the two children back soon, they took the minors with them to Chandni Chawk.

In the hospital, Shazia fought bravely for 3 days but could not survive the aftermath of her pregnancy and on 18th April, 2017 she breathed her last. Md. Sultan became emotionally shattered and confined himself in his room for almost a week.

In the next week, Sultan went to Chandni Chawk to bring his girls back, but his in-laws refused to return them. Sultan went to the Chandni Chawk Police Station to lodge an FIR against his in-laws for kidnapping and forcefully confining his kids. But due to political connections of his in-laws his prayer was not entertained. Surprisingly, the Mirjapur Police Station also refused to lodge an FIR against Sultan's in-laws due to the same reason. However, following constant persuasion by Md. Sultan, Mirjapur Police Station finally agreed to register his information, there (vide G.D.E No. 4122 / 2017 dated 28/04/2017).

In the meantime Sultan's in-laws initiated a criminal case through Mirjapur Police Station (Case no. 225/2017 dated 29/04/2017, under section 498-A/304-B/302/120-B of Indian Penal Code) against Md. Sultan, Nazma Begum and the doctors of 'Care & Cure Nursing Home' alleging inter-alia that accused Sultan and Nazma have had inflicted physical and mental torture upon deceased Shazia during her marital life for dowry and also for her failure to give birth to a male child. It was further alleged that they have conspired with the doctors of 'Care & Cure Nursing Home' to provide her wrong treatment which facilitated her death.

On the other hand, Sultan also filed an application before the 'Child Welfare Committee' of Bhadrak (hereinafter referred to as 'the CWC') on 02/05/2017 under the Juvenile Justice (Care and Protection of Children) Act, 2015 of Lindia (hereinafter referred as the J.J. Act 2015), alleging inter-alia that his parents -in -law have taken away his two minor children without his consent and have kept the minors under forceful confinement. He further alleged that his in-laws are trying to traffic his children to some unknown destination/country to avenge the death of their daughter Shazia.

The CWC accepted the complaint and directed opposite parties i.e. Shabir Ahmed and Amina Begum to produce the two minors before the CWC. On the next date of hearing i.e. on 10/05/2017 the opposite parties produced the two children and submitted that according to Muslim Personal Laws, *'in the absence of the mother of a girl child, the custody of the girl till she attains her puberty, remains with her maternal grandmother'*. They also contended that Md. Sultan was contemplating to take the two minors out of Lindia to Pakmulk (Barloch) where the children would face grave danger to their lives and security.

The CWC, Bhadrak heard both the sides and passed an interim order with following observation-

".... Two minor children namely Razia and Rukshar have been produced before the CWC today by the opposite parties. The minors are found to be healthy and happy. Heard both the parties. At the very outset it has been contended by the O.P., that the issue relating to 'Custody' of a child can be decided exclusively by the Civil Court. Besides in view of the fact that the children are residing happily with their grandparents, they cannot be treated as 'the child in need of care and protection' under the J.J. ACT 2015 and hence the instant proceeding is not maintainable. It has been further submitted that the two children as well as both the parties are governed by Muslim Personal Laws and therefore O.P. being the grandmother (mother's mother) is entitled to exercise her right of Hizanat till both the minors attain their puberty. O.P. has also submitted that the petitioner and his mother are not citizens of Lindia and have been arrayed as accused in Mirjapur Police Station Case no. 225/2017 dated 29/03/2017, under section 498-A/304-B/302/120-B of IPC for the death of the mother of the two minors and therefore petitioner is not a 'fit person' to be entrusted with the care and protection of the minors.

Upon considering the facts and circumstances and carefully perusing the documents produced before us, we find that the petitioner Md. Sultan being the father is the natural guardian of the two minors. He is also having sufficient means to maintain his family and the two minors.

We have also considered that Article 18 of the Convention on the Rights of the Child (CRC) clearly postulates that the parents have the primary responsibility for the upbringing and development of the child. Moreover, Article 9 of the CRC also casts a duty upon the State to ensure that a child may not be separated from his/her parents against their will. Besides it is pertinent to note that the scheme of the J.J Act 2015 clearly suggests that it is the welfare of the child which is of paramount consideration and not the personal laws of the concerned parties to the proceeding.

Considering the rival submissions we are of the opinion that the interim custody of the two minors namely Rukshar and Razia should remain with their father Md. Sultan until further order. The opposite parties are directed to hand over the custody of the two minor children to Md. Sultan within 3 days from this order. We, however, make it clear that Md. Sultan shall not be permitted to take the minor children out of Lindia under any circumstances and pending adjudication of this case the opposite parties shall have the right to visit their grandchildren for twice every month.

The Child Welfare Officer of Bhadrak is directed to conduct a social investigation and submit a report on the next date.

Fix 22/05/2017 for further inquiry and necessary order".

Being aggrieved by the aforesaid order, Amina Begum the grandmother of the two minor girls filed a Criminal Revision before the Hon'ble High Court of Indraprasth on 17/05/2017.

The criminal revision was registered as C.R.R. No. 1095/ 2017 and on 17/05/2017 the Hon'ble High Court while admitting the criminal revision application was pleased to grant an interim stay of the impugned order. Subsequently, the parties have filed their respective Affidavit in Opposition and Reply. The case is now ready for adjudication and the date of final hearing has been fixed on 21/04/2018.

The moot issues before the Hon'ble High Court are:

Jurisdiction & Maintainability:

- a) Whether the Criminal Revision is maintainable in the High Court of Indraprasth?
- b) Whether CWC, Bhadrak had jurisdiction to entertain the application of Md. Sultan?
- c) Whether CWC can pass order pertaining to 'interim custody' of a child considering the fact that the issue relating to 'custody' of a child can only be decided by a competent Civil Court?

Rights & Duties under the Constitution and International Covenants:

- d) Whether the CWC while passing the impugned order ought to have considered the personal laws of the children and the contesting parties?
- e) Whether the CWC while passing the impugned order has failed to consider the welfare of the two children, while entrusting their interim custody to Md. Sultan, who has been implicated in a criminal case for being responsible for the death of their mother?
- f) Whether the CWC while passing the impugned order should have provided preferential protection to the rights of the grandparents (who are respectable senior citizens of India) over the rights of Md. Sultan who has been granted political asylum in the country?

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- g) Whether the CWC while passing the impugned order restraining Md. Sultan from leaving Lindia with his minor children has disregarded provisions of CRC and other international covenants that are applicable herein?

Note:

All statutes & laws of the State of Lindia are pari materia with the statutes & laws of India. Moreover, the State of Linda's commitment to the international covenants, treaties and customary laws are same as India. On the other hand, all laws in force in the State of Pakmulk are pari materia with the statutes & laws of Pakistan. The diplomatic, social and political relation between Lindia and Pakmulk is also akin to that of India and Pakistan.

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**This Moot Problem has been prepared by
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