

CASE NO.:
Writ Petition (crl.) 110 of 2003

PETITIONER:
Nirmaljit Kaur

RESPONDENT:
State of Punjab & Ors.

DATE OF JUDGMENT: 06/12/2005

BENCH:
Ruma Pal & Dr. AR. Lakshmanan

JUDGMENT:
J U D G M E N T
WITH

CONTEMPT PETITION (CRIMINAL) NO. 1/2005

Dr. AR. Lakshmanan, J.

The case of the petitioner is as follows:-

The petitioner - Nirmaljit Kaur got married to Surinder Singh Batra as per Sikh rites and out of the wedlock a female baby Simran was born on 16.02.1992. Respondent No.2 - Gurubachan Singh Batra is the brother of Surinder Singh Batra. Respondent No.4 - Harbans Kaur is his wife. Respondent No.3 - Arminderjit Singh Batra is the nephew of Surinder Singh Batra whereas Respondent No.5 - Ranjita Kaur is the wife of Respondent No.3 - Arminderjit Singh Batra.

According to the petitioner, Surinder Singh Batra died intestate leaving behind the petitioner and baby Simran as his only legal heirs. On 23.02.1997, the respondent Nos. 2-5 and 3 other sisters of Surinder Singh Batra and sisters of respondent No.3 forcibly took away baby Simran from the petitioner with ill design. The petitioner was turned out of her matrimonial house by them and since then she has been living with her relatives.

It is alleged that the respondents in order to divest the petitioner of her legitimate right to succeed to the estate of her late husband fabricated a Will dated 19.10.1996 purported to have been executed by her husband. The two witnesses to the Will are Joginder Singh and one J.S. Batra (since died). The Will was got registered on 31.03.1997 after the death of the petitioner's husband (died on 23.02.1997) without notice to the petitioner. The alleged Will named Arminderjit Singh as the guardian of the child Simran on the ground that the testator's wife failed to take care of her. According to the petitioner, the Will does not bear the signatures of her husband and the Will falls to the ground for want of compliance with the statutory requirement of Section 63 of the Indian Succession Act, 1925 as the Will was not attested by the two witnesses each of whom had seen the testator signing the Will in their presence. Each of the witnesses has not signed the Will in presence of the testator, though it was signed by two witnesses. This apart, Surinder Singh Batra had no power or authority or right to appoint any person as guardian of her daughter as per the provisions of Section 9 of the Hindu Minority and Guardianship Act. Thus, the appointment of respondent No.3 as sole custodian and guardian of minor by Surinder Singh Batra during the lifetime of the petitioner is a nullity in the eyes of law, inoperative and ineffective.

The third respondent - Arminderjit Singh Batra, on the basis of the said Will, filed an application under Section 192 of the Indian Succession Act before the District Judge, Amritsar. The petitioner filed an application under Section 25 of the Guardian and Wards Act for the custody of the minor child whereas the respondent No.3 claimed guardianship by virtue of the Will dated 19.10.1996. The District Judge, Amritsar, by judgment dated 23.12.1997, dismissed the application of respondent No.3 filed under Section 192 of the Act holding respondent No.3 was not competent to claim guardianship of the minor Simran Batra. However, this order was set aside by the High

Court remanding it back for deciding it as per provisions of Section 193/194 of the Indian Succession Act and parties were directed to appear before the District Court.

The District Court, while deciding the application under Section 25 of the Guardians and Wards Act filed by the petitioner, allowed interim custody to the petitioner and directed the child to be produced on 27.07.1998. However, the child was not produced. The High Court directed the Court concerned to dispose of the said petition finally as agreed but the same has not been decided and the matter is delayed by the respondents resorting to dilatory tactics.

It is further submitted that in order to frustrate the judicial process and to succeed in their design, respondent No.3 in connivance with the other respondents took away baby Simran to U.S.A. in February, 2000 in clandestine manner without disclosing her whereabouts, date of departure, place of living etc. When the petitioner appeared in the Court of Guardian Judge, Amritsar for the custody of the child, respondent No.2 threatened the petitioner with dire consequences if she did not stop pursuing the case and to forget about the child and the property. The petitioner, therefore, filed a transfer petition before this Court for transfer of Guardian Case No.80/97 from Amritsar to Delhi, which was allowed by this Court and the case has been transferred to Faridabad. However, till date matter has not been assigned to any competent Court having jurisdiction to decide. The petitioner also sought transfer of the suit for partition filed by her and an application under Section 192 of the Succession Act filed by respondent No.3. This Court gave liberty to the petitioner to approach the High Court.

As already stated, it is the petitioner's case that the child was taken to U.S.A. by respondent No.3 without the permission of the Court and that the petitioner has not been allowed to meet her child despite various requests being made by the petitioner. The petitioner has bona fide and genuine apprehension that the child may have been made to disappear by the respondents or liquidated by the respondents. It is pertinent to notice that the respondent No.2 acting as Power of Attorney holder of respondent No.3 filed his affidavit on 04.04.2003 by way of evidence before this Court. After this affidavit, the petitioner tried to meet her daughter but respondents did not allow but concealed the child. It is thus clear that the baby Simran was sent to U.S.A. without her knowledge and order of the Court in a clandestine manner to conceal her whereabouts. It is seen from the statements made by respondent Nos. 2 and 3 that the child was abandoned 7/8 days after birth and baby has been living with them from almost inception of birth. It is apparent that the respondent succeeded in their nefarious design and caused the daughter of the petitioner disappear.

The whereabouts of the baby Simran is not known from February, 2000. The petitioner being the natural mother and guardian of the baby is legally entitled to the production and custody of the child and to meet her and respondents are bound to do the needful. According to the petitioner, the identity of the baby presently with respondents as claimed to be Simran can be got established through DNA test only and that there is no other means or mode in establishing the identity and to handover the custody to the petitioner after the test.

Thus, the petitioner filed the above writ petition under Article 32 of the Constitution of India for production of baby Simran, daughter of the petitioner in this Court with the following prayer:

a) issue appropriate writ, order or directions in the nature of habeas corpus, directing the respondents to produce baby Simran, daughter of the petitioner in body in this Hon'ble Court, enabling the petitioner to meet her being the natural mother.

b) issue appropriate writ, order or direction to respondents to disclose the whereabouts of baby Simran, daughter of the petitioner and she be produced in the Hon'ble Court and DNA test be conducted to affirm and ascertain the correct identity of baby Simran being the daughter of the petitioner and custody of the child be given to the petitioner.

c) pass such order or further order(s) and grant any other appropriate relief(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

The writ petition was opposed by respondent Nos. 2-5. They filed a common counter affidavit. It is stated in the counter affidavit that minor Simran had gone to America for sometime during February, 2000 to see respondent Nos. 3 and 5 who are

residing in America since sometime for treatment of their son and that minor Simran is hale and healthy and she was studying Middle Study High School, Amritsar which is clear from the order passed by the High Court in Civil Revision No. 3134/98 and that she is presently studying in Class VI in Amritsar Public School. They produced copy of the application for registration for admission and copy of the certificate dated 10.09.2003 issued by the principal and photographs of Simran Batra as Annexure-R5. They denied allegation that baby Simran was forcibly taken away from the petitioner on 23.02.1997 and further submitted that minor Simran was living with respondent No.3 almost since her birth which was so because of the indifferent attitude of the petitioner towards minor Simran right from the beginning. It is submitted though the minor was produced in the Court on 21.05.1998, 27.08.1998 and 25.09.1998 under the orders of the Court, the minor was not willing to join the petitioner and the child was not willing to

go with her. There is no bar to the minor visiting or staying in America keeping in view her welfare not particularly when standard of education is much higher than this place. Therefore, it is submitted that no ground is made out to produce the minor in Court and that the application is misconceived and merits dismissal with costs. Respondent No.3 had also stated that he had taken the minor child Simran to U.S.A for vacation and for educational purposes so that she got an exposure, travelling itself is an education. The respondent did not seek the permission of the Court as it was not required. In para 20, he stated that child is already back from U.S.A. and is happily studying in one of the best educational institutions of Amritsar and the child is happy and comfortable and being well educated in the house of the respondent.

The matter was listed for hearing on various dates and the parties were present at the hearing.

1. On 07.01.2005, counsel for the respondents was directed to ensure the presence of the child (Simran) in Court on 28.01.2005 along with her original passport and her renewed passport, if any, be also produced.

2. On 28.01.2005, counsel appearing for the respondents stated that the passport has been lost. This Court thereupon directed the respondents to place on record the affidavit stating the passport number, approximate date on which it was obtained/issued, visas, if any, for visit to any country. They were also directed to explain as to why they did not handover the custody of the child Simran to the mother in spite of the Court orders.

3. On 14.02.2005, this Court passed the following order:-
"The original Passport No.B0591819 issued on 6.9.1999 (expired on 5.9.2004) and renewed original Passport No.F0355467 issued by the Passport Office, Jalandhar, on 10.9.2004 (which will expire on 31.12.2006) of the minor child Harsimran (now Simran) which have been produced today in Court are directed to be kept in the Court custody in a sealed cover. The earlier stand taken by the respondents that the original passport had been lost and an FIR had already been registered to that effect stands falsified with the production of these passports and by the subsequent affidavit dated 9th February, 2005 filed by respondent No.4 with a simplistic statement that it was done by mistake.

We are not satisfied with the explanation offered in the affidavit dated 9th February, 2005. Prima facie, we are satisfied that the respondents have tried to create false evidence of loss of the passports and deliberately made a false-statement to the Court.

Let notice under the Contempt of Courts Act be issued to respondent nos. 2 to 4. Mr. Manoj Swarup, Adv. Accepts notice on behalf of Respondent Nos. 2 to 4. He seeks three weeks time to file reply to show cause.

Adjourned to 18th of March, 2005.

Respondents, who are present in person, along with the minor child (Simran) are directed to remain present in Court on the adjourned date of hearing.

Counsel for the petitioner is permitted to peruse the Passports in the presence of an Officer of the Court not below the rank of a Deputy

Registrar."

4. On 18.03.2005, notice under the Contempt of Courts Act was also issued to respondent No.5 and Mr. Manoj Swarup, counsel, accepted the notice on behalf of respondent No.5 and undertook to file a reply. A further direction was issued on that date directing the respondents/contemnors Nos. 2 to 5 to surrender their passport to the Registrar of this Court and remain present in person on the next date of hearing i.e. 21.04.2005 and the minor child also.

5. On 21.04.2005, the following orders were passed:-

"On the previous date of hearing, Respondents-Contemnors Nos. 2 to 5 were directed to surrender their Passports to the Registrar of this Court and remain present in person on the next date of hearing, i.e., today. Minor child (Simran) was also directed to be present before us today. The petitioner and Respondent Nos. 2 and 4 and the minor child are present in Court.

Respondents 3 and 5 are stated to have gone out of country. The Passports bearing Nos. F 2015362 issued on 11/2/2005 (expiring on 15.3.2009) and E 0077744 issued on 1st of November, 2001 (expiring on 31.10.2011) by the Passport Office, Jalandhar, in favour of Gurbachan Singh Batra (respondent No.2) and Harbans Kaur (respondent no.4) respectively have been surrendered before us in Court today by the counsel for the respondents. These passports are ordered to be kept in a sealed cover in court custody. Counsel for the respondents seeks time to ascertain as to when Respondent Nos. 3 and 5 left the country and also when are they likely to come back.

Adjourned to 6th of May, 2005."

6. On 06.05.2005, the following orders were passed:-

"To be listed in the 3rd week of July, 2005.

In the meantime, Mr. Manoj Swarup, Adv. shall file an affidavit stating the particulars of the passports of Respondent/Contemnor Nos. 3 and 5, including the date of issuance and expiry thereof. He is also directed to place on record a zerox copy of the passports issued to these respondents/contemnors. He shall be at liberty to file additional documents, if any.

Respondent/contemnor No.2 is not present today.

The respondents/contemnors and the minor child, namely, Simran, are directed to be present in Court on the next date of hearing."

7. On 15.07.2005, having regard to the nature of the dispute, this Court decided to resolve the dispute as far as is scientifically accurate, by having the DNA of (i) the petitioner, (ii) the child claimed to be the daughter of the petitioner, (iii) Arminderjit Singh Batra and (iv) Ranjeeta Kaur, tested. It was stated by learned counsel appearing on behalf of the respondents that both Arminderjit Singh Batra and Ranjeeta Kaur are in the United States in connection with their son's grave illness. The matter was adjourned by four weeks to file affidavit to the aforesaid effect. In the meanwhile, the DNA test will go on as directed. At the time of hearing, the envelopes containing the passports of Gurbachan Singh Batra, Harbans Kaur and two passports of Harsimran which were opened in Court and are resealed and kept in safe custody. It was also recorded that the passport of Harsimran issued on 06.06.1999 was shown to the petitioner who was present in Court and who had stated that the photograph of the child on the passport is not her daughter.

As directed by this Court, the petitioner - Nirmaljit Kaur and baby Simran appeared in the Chamber of Dr. Bhupendra Nath in-charge CGHS Polyclinic, Supreme Court on 12.08.2005 with their respective counsel and the blood samples for DNA test of Nirmaljit Kaur and baby Simran were collected by Dr. Bhupendra Nath by following the procedure as directed by Dr. Seyed Hasnain, Director, Centre for DNA Finder

Printing, Hyderabad in the presence of Mr. V.K. Jain, Registrar (J-I). Blood samples were kept in separate vials. The vials were signed by Dr. Bhupendra Nath as well as Mr. V.K. Jain and after putting cello tape the vials were kept in separate pouches and then both the pouches were put in another pouch before putting them in the thermos flask containing ice which was wrapped in a cloth and sealed with the stamp of the Supreme Court of India and was sent to the Director, CDFD, Hyderabad through Bluedart Courier Express Ltd. on 22.08.2005. A letter dated 22.08.2005 giving the specimen signature of Dr. Bhupendra Nath and Mr. V.K. Jain was also sent to the Director, CDFD, Hyderabad stating that the signature of Dr. Bhupendra Nath and Mr. V.K. Jain may be tallied with the signature on the vials and if any discrepancy is found, the same may be reported immediately to Mr. V.K. Jain. But regarding discrepancy in signature nothing has been reported. A sealed cover had been received on 02.09.2005 from CDFD, Hyderabad. The DNA report reads as follows:-

"DNA TYPING EVIDENCE FOR ESTABLISHING MATERNITY

30th August, 2005

Registrar General

Hon'ble Supreme Court of India

New Delhi-110 001.

Sub:- Submission of DNA typing report in Contempt Petition(Crl.)1/2005
In WP(Crl.)No.110/2003 on the file of Hon'ble Supreme Court of India-
Regarding.

CDFD File No.1648

DNA typing report No.CDFD/LDFS/2005-1648

DESCRIPTION OF SOURCE

Name of the
source/sample

Received on

Exhibit

Exhibit No.

Blood sample

said to be of Smt.

Nirmaljit Kaur

Identification

Form No.1

23.08.2005

A

X14a

Blood sample

said to be of Ms.

Simran Batra

Identification

Form No.2

23.08.2005

B

X14b

DNA was extracted from the source of the above exhibits and DNA profiles were prepared. AmpF/STR identifier was used for DNA profiling of the samples. Data was analysed by using genescan and genotyper software.

RESULTS OF EXAMINATION

The DNA profile of the source of exhibit B (Ms Simran Batra) is not matching with the DNA profile of the source of exhibit (Smt. Nirmaljit Kaur). The alleles shown by red colour in the enclosed table-1 present in the DNA profile of the source of exhibit B are unaccounted in the DNA profile of the source of exhibit A.

CENTRE FOR DNA FINGERPRINTING AND DIAGNOSTICS

CONCLUSION

The DNA test performed on the exhibits provided is sufficient to conclude that the source of exhibit A (Smt. Nirmaljit Kaur) is not the biological mother of the source of exhibit B (Ms. Simran Batra).

Sd/-
[CH V GOUD]
Technical Examiner

CH V GOUD
Technical Examiner
DNA Fingerprinting Laboratory
Centre for DNA Fingerprinting and Diagnostics
DBT, Ministry of Science & Technology
Government of India, Hyderabad-500 076

Enclosures

1-4 Electropherograms
5 Table-1 \026 allelic data analysis
6-7 identification forms"

Enclosures 1-5 and Identification Form of the petitioner \026 Nirmaljit Kaur and Simran Batra. Enclosures 6 & 7 have also been received along with the DNA Report.

Thus the DNA test performed on the petitioner-Nirmaljit Kaur and Ms. Simran Batra conclusively proved that the source of exhibit A (Nirmaljit Kaur) is not the biological mother of the source of exhibit B (Ms. Simran Batra). It is the consistent stand of the petitioner that she being a widow is entitled to act as a natural guardian of the minor legitimate daughter by reason of the fact that the father of the child is dead. She is entitled to exercise all the rights of a natural guardian of the minor. It is also her case

that the respondents in furtherance of the criminal conspiracy to grab the property of the petitioner's husband caused her daughter Simran Kaur to disappear without the permission of the Court. The petitioner has not been allowed to meet her child despite various requests made by the petitioner. It is also now proved by the DNA test that the child produced before the Court is not her real daughter.

It has been clearly stated in the counter affidavit filed on behalf of respondents 2-5 that minor Simran Batra was living with respondent No.3 almost since her birth, which according to them, was so because of the indifferent attitude of the petitioner towards minor Simran Batra right from the beginning. It is the case of the petitioner that her husband died on 23.2.1997 intestate and on the same date respondents 2-5 forcibly took away baby Simran Batra from the petitioner with ill-design. It is also her case that the respondents have fabricated a Will dated 19.10.1996 and registered the same after the death of the testator on 31.3.1997. When the child produced before the Court is not the child of the petitioner which is now proved by the DNA test it is the duty of respondents 2-5 to produce the child which was forcibly taken by them on the date of the death of her husband i.e. on 23.2.1997. Respondents 2-5 have come to Court with unclean hands and with a view to grab the property of the late husband of the petitioner.

A direction was issued to the counsel for the respondent to produce the original passport of minor Simran Batra. The counsel, on 28.1.2005, informed the Court that the passport has been lost. This Court directed the respondents to place on record the affidavit stating the passport number, approximate date on which it was obtained/issued visas, if any, for visit to any country. They were also asked to explain as to why they did not hand over the custody of the child to the petitioner-mother in spite of the Court orders. On 9.2.2005, respondent No.4 filed affidavit stating that the grave mistake has been committed while getting passport issued to Simran Batra and the wrong information had been given to obtain the passport and that respondent No.4 regrets that this mistake was committed. It is further stated thus:
"The false declaration is in regard to the name of the child. The child was described as Harsimaran d/o Arminsterjit Singh r/o 86, Golden Avenue, Amritsar(Punjab).

That this grave mistake happened on account of the fact that Simran could not be issued passport without the signatures of her mother-Nirmaljit kaur. In 1999, father of Simran, Sardar Surinder Singh was not alive. He expired in the year 1997. The petitioner would never have signed the application for issuance of passport to

Simran.

It is for this reason that this grave mistake was committed with a view to send the child-Simran to America. At that time, Arminderjit Singh alongwith his wife Ranjita and their daughter Sharmeen were going to America.

That the deponent deeply regrets about this grave mistake. The deponent places on record her unconditional apology for this mistake."

On 14.2.2005, the original passport issued on 6.9.1999 and the renewed passport issued on 10.9.2004 of the minor child Simran Batra have been produced in Court. As the earlier stand taken by the respondents that the original passport had been lost and the FIR had already been registered to that effect stands falsified with the production of these passports and the subsequent affidavit dated 9.2.2005 filed by respondent No.4 with a simplistic statement that it was done by mistake. This Court not being satisfied with the explanation offered in the affidavit dated 9.2.2005 issued notice under the Contempt of Courts Act to respondents 2-5. This Court, prima facie, was satisfied that the respondents have tried to create false evidence of loss of the passports and deliberately made a false statement to the Court.

On 10.3.2005, respondent No.4, Harbans Kaur filed the following affidavit:-

"That the deponent had taken a stand earlier that the passport issued to Simran was lost. This stand was totally incorrect. This stand ought not to have been taken.

That deponent expresses her remorse over having taken such a stand.

That deponent has no words to express her regrets. Deponent tenders her unqualified apology for this grievous mistake that has occurred.

That Simran could not be issued passport without the signatures of her mother-Nirmaljit Kaur. In 1999, father of Simran, Sardar Surinder Singh was not alive. He expired in the year 1997. The Petitioner would never have signed the application for issuance of passport to Simran.

That the contents of this affidavit are true to my knowledge."

Similar affidavit was filed by respondents 2 & 5 expressing regret and unconditional apology for the said act. Similar affidavit was also filed by respondent No.3 seeking pardon for such a conduct.

The petitioner has also reiterated in her affidavit filed on 15.3.2005 in paragraphs 4-6 which read as under:

"4. That on 11.3.2003, the counsel for the petitioner perused the passports produced by respondent Nos. 2 to 5. On perusal, it was found that the name of the child is Harsimran, father's name is Arminder Jit Singh and mother's name is Ranjita Dhingra (though respondent No.5 is married to respondent No.3 who is Batra). The date of birth of Harsimaran is 01.01.1992.

5. That the date of birth of the petitioner's daughter Simaran is 16.2.1992. Thus the child produced before this Hon'ble Court is Harsimaran daughter of Arminder Jit Singh. The respondents Nos. 2 to 5 must be in possession of the original date of birth certificate of Harsimaran showing the parentage. They may be directed to produce the same. The petitioner reiterates that the child produced before this Hon'ble Court is not her daughter and illegitimate child of Arminder Jit Singh as stated by her in the

petition.

6. The entries in the passport fully support the case of the petitioner. The respondents want to get out of this, and have stated that false declaration was made, as petitioner would not have agreed for issue of passport. The identity of the child is established to be that of Har Simaran daughter of Arminder Jit Singh and further it can be established beyond doubt by conducting DNA test for which Arminder Jit Singh's presence is required."

It is thus clear that the minor child of the petitioner is in the custody of respondent Nos. 2-5. It is also proved by the DNA test that the child produced before the Court is not the child of the petitioner. Therefore, the respondents are bound to produce the real child of the petitioner before this Court. We, therefore, issue the direction in the nature of Habeas Corpus directing respondent Nos. 2-5 to produce Baby Simran Batra \026 daughter of petitioner in body in this Court enabling the petitioner to have the custody being the natural mother. Prayer(a) of the writ petition is ordered accordingly with costs assessed at Rs.10,000/- . Respondent Nos. 2-5 shall produce Simran Batra on 6.1.2006 in this Court. Call this matter on 6.1.2006 for further directions. While the direction was issued by this Court to produce the passport, the counsel made a statement at the next hearing that the passport had been lost. When the Court directed the respondents to place on record the details of the passport etc. by an affidavit, the respondents filed an affidavit expressing deep regret about the grave mistake and produced the passport in Court. Thus it is seen that the earlier stand taken by the respondents that the original passport has been lost and the FIR has been registered to that effect stands falsified with the production of these passports and by the subsequent affidavit dated 9.2.2005. On 14.3.2005, the respondents have also filed an affidavit tendering their unqualified apology for this grievous mistake that has occurred. We have perused the similar affidavits filed by other respondents. The affidavits, in our opinion, are not genuine and bona fide. The respondents have come to this Court with unclean hands and with a false case. A perusal of the entire proceedings in this Court and the proceedings pending before the other courts would only go to show that the respondents' evil desire to grab the property and to make the life of the petitioner- a widow with a girl child miserable. The result of the DNA test is now crystal clear that the child produced before this court is not the real child of the petitioner and that the petitioner's real child Simran Batra is in the custody of the respondent Nos. 2-5 elsewhere. Several deliberate attempts made by the respondents were falsified by their own conduct in filing affidavits and also the production of the passports in this Court. We, therefore, have no hesitation to hold that respondent Nos. 2-5 are guilty of contempt of this Court and, therefore, they are liable for punishment for their proved misconduct. They have committed the contempt knowingly and that it is attributable to the neglect on their part. Respondents 3 & 5 have not so far appeared before this Court under one pretext or the other. In our view, respondent Nos. 2-5 are liable to punishment for their proved disobedience of the order. We, therefore, impose a fine of Rs.2000/- each to be deposited within three days from this day in this Registry failing which the respondents shall be punished with simple imprisonment for a period of one month each. Both the writ petition and the contempt petition are ordered accordingly. The Registrar General is directed to keep the passports which have been surrendered before this court in safe custody until further orders.