

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C) No.4023/2008**

Judgment Reserved on: 14.11.2008

% **Judgment Delivered on: 07.01.2009**

DR. MEENA CHAUDHARY Petitioner

Through: In person

versus

COMMISSIONER OF POLICE & ORS. Respondents

Through: Ms. Zubeda Begum, Advocate for
respondent Nos.1 to 3
Mr. Atul Jha, Advocate for
respondent No.4

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers
may be allowed to see the judgment?
2. To be referred to Reporter or not? No
3. Whether the judgment should be reported
in the Digest? No

VIPIN SANGHI, J.

1. The petitioner preferred a petition under Article 32 of the Constitution of India before the Supreme Court which was registered as Writ Petition (Civil) No.228/2008. On 16.5.2008, the Supreme Court held that the said petition was not maintainable in its present form. However considering the stand taken by the petitioner, without expressing any opinion on merits, the Supreme Court considered it appropriate to send the petition to this Court to be treated as a petition

under Article 226 of the Constitution of India. That is how the present writ petition came to be registered in and entertained by this Court.

2. The petitioner moved an application, being C.M.No.7884/08 under Order VI Rule 17 C.P.C to seek amendment of the writ petition on the ground that the petition before the Supreme Court was filed in urgency and consequently the petitioner desired to make further averments in support of the prayers made in the petition. Notice was issued on the said application as also in the writ petition as originally filed. On 1.7.2008, this Court directed the petitioner to file the amended writ petition. Eventually the amended writ petition was also filed by the petitioner on 10.7.2008 and refiled on 25.7.2008. Though no formal orders were passed allowing the application for amendment, this Court on 22.8.2008 permitted the respondents to file their counter affidavits to the amended writ petition. Thereafter arguments were heard by the Court on 3.10.2008, 31.10.2008 and were concluded on 14.11.2008. The respondents sought time to place on record certain documents. They were accordingly granted two weeks time. Documents have been filed by respondent No.4 on 27.11.2008. The petitioner desired to file her written submission for which three weeks time was granted. Thereafter the matter was mentioned by the petitioner in person seeking further time to file her written submissions. However, no written submission of the petitioner have come on record till date.

3. Since there was no opposition to the application for amendment moved by the petitioner, I proceed to dispose of the petition on the basis of the amended writ petition.

4. The petitioner, Dr. Meena Choudhary, has filed this writ petition against respondents 1 to 3, 5 and 6 who are police officers, respondent no.4, Mr. Basant Kumar Choudhary, who she states is her husband and one Mr. Jaspal Singh who is said to be a resident of B-108, Hill View Apartments, Vasant Vihar, Delhi. The present petition has been filed by the petitioner, inter alia, to seek a writ of mandamus to direct the police authorities to provide her full security of life, liberty and property. She also seeks a writ of mandamus to direct the police authorities from obstructing her from using the residential premises bearing No.B-108, Hill View Apartments, Vasant Vihar, New Delhi (referred to as appointment) and to direct the said respondents to allow her to occupy and use the said premises.

5. The case of the petitioner is that she is the legally wedded wife of respondent no.4, Mr. Basant Chowdhary. She states that she was married to respondent no.4 on 7.2.1973 who was at that time a pilot with the Indian Air force. The petitioner and respondent no.4 admittedly had two issues from their wedlock. The son was born on 28.5.1974 and a daughter was born on 14.10.1977. The petitioner narrates in the petition various development which took place from time to time with regard to her matrimonial life. According to her, respondent no.4 treated her with cruelty, demanded dowry and

deserted her. However, it is not necessary to go into all those details for the purpose of deciding the present petition.

6. According to the petitioner she filed a case against respondent no.4 in the Crime Against Women Cell (CAW Cell) complaining that she was not being allowed to reside in the aforesaid apartment of her husband. This complaint, according to the petitioner, was filed on 30.4.2008. She states that the CAW Cell informed her that she could move to B-108, Hill View Apartment, Vasant Vihar, New Delhi and that she should withdraw her case against respondent no.4. She states that she immediately shifted to the aforesaid apartment but refused to withdraw the case initiated by her. On 5.5.2008, respondent no.7, Jaspal Singh is stated to have made a police complaint alleging that the petitioner was not the wife of respondent no.4 and that she was seen in the aforesaid apartment. The police arrived at the said apartment and the petitioner on being questioned produced documents to show her relationship with respondent no.4. She states that she left the premises in the afternoon leaving her maid servant and two labourers to clean the house. In her absence, respondent no.4 and one Ms. Vidushi Ojha came to the apartment along with goondas and local police and broke open the door and the lock which the petitioner had put from outside. At about 8.30 p.m on the same day, she was met by various police officers. According to her she was kept waiting till about 12.30 a.m on 6.5.2008 by the Police and was harassed. She states that she was forced to remain out of the apartment by the police officers and the said officers instead of

protecting and safeguarding the rights of the petitioner, have compelled her to wander in the wilderness contravening her rights under Articles 14 and 21 of the Constitution.

7. The police authorities have filed their status reports. The first short affidavit and status report on record filed by the police is of 6.6.2008. It is stated that on 5.5.2008, an information was received at P.S. Vasant Vihar vide D.D. No.18A to the effect that the complainant is abroad and one lady is selling her house-hold articles at B-108, Hill View Apartment. The enquiry into the said complaint was entrusted to ASI V.P.Singh, who reached the spot and found that the petitioner was selling the household articles to a kabadi. When she was questioned, the petitioner replied that she was the legally wedded wife of Mr. B.K.Chowdhary, respondent no.4 and was selling the household articles. On being asked not to do so, she got annoyed and stated that her matter is pending in CAW Cell and that she had got registered one FIR against her husband, who has got married a second time without giving her divorce. It was further stated that the petitioner came to the Police Station where she met the SHO and the ASI V.P.Singh. The petitioner was advised to wait till Mr. Mr. B.K. Chowdhary, respondent no.4 returned from abroad, but she became annoyed and threatened that she would make a complaint against the SHO and other police personnel to the senior officers. Thereafter she left for CAW Cell. It was also verified by ASI V.P.Singh that the petitioner had given a complaint against Mr. Mr. B.K. Chowdhary at the CAW Cell but no FIR had been registered. On the same evening, another call was received

vide DD No.29A to the effect that some goondas had entered into house no.B-108, Hill View Apartment, Vasant Vihar, New Delhi. This DD entry was entrusted to SI Rajesh Shukla, who reached the spot. The complainant, Mr. B.K.Chowdhary was met at the spot and he stated that on 30.4.2008, he along with his wife Ms. Vidushi had gone to U.K. On 5.5.2008 he received a telephone call from one of his friends that one lady broke open the lock of his apartment and entered and packed all his goods in plastic bags. On hearing this, he rushed to India on 5.5.2008 and made a call to the local police to stop the lady from doing so. On reaching Delhi, he found that his flat was locked from inside. He then made a PCR call and on opening the door, he found that his house-hold items were packed in gunny bags. One female and two male, who claimed to be the maid servant and labourers of the petitioner were found inside the apartment. The police further states that both the petitioner and respondent no.4 gave their respective versions to the police.

8. In her statement the petitioner stated, she was married to Mr. B.K.Chowdhary in 1973, who deserted her in 1989 and thereafter married another woman in U.K. She further stated that in November 2004, she came to know that Mr. B.K.Chowdhary was living in Hill View Apartments. She tried to contact Mr. B.K.Chowdhary but she was not permitted to talk to him. She was left with no money, so 2-3 days back, she came to B-108, Hill View Apartment. She entered the flat as she was having the keys to the door. She was only cleaning the apartment and had called the kabadi for removing the waste articles.

While she was doing so, she was stopped by the police. On the other hand, Mr. B. K. Chowdhary stated that he had been living with his wife, Vidhushi for the last 20 years in the aforesaid apartment. Prior to this marriage, he was married to the petitioner but later the two had been divorced by a Court in Bhutan in 1989. The police could not arrive at any definite conclusion since both parties had set up contradictory cases. Consequently, both parties were directed to maintain peace in the area. It is further stated by the police that on enquiry being conducted from the neighbours, the neighbours had stated that respondent no.4 Mr. B.K. Chowdhary was living for the last 20 years along with his wife, Ms. Vidushi. They had never seen or heard of the petitioner at his place. Respondent no.7, Jaspal Singh stated that he had seen one lady packing the goods of respondent no.4's household which was taken in a carriage autorickshaw. He informed respondent no.4 on the same day, as respondent no.4 while leaving with his wife Ms. Vidushi on 30.4.2008 had asked him to take care of the apartment. It was further stated that on 14.5.2008, an application under Section 156(3) Cr.P.C had been received from the Court of Sh.Sameer Vajpayee, Patiala House, New Delhi in which Mr. B.K.Chowdhary, respondent no.4 herein had prayed for registration of a case against the petitioner herein. An action taken report was called for by the learned Magistrate on 16.5.2008. After perusing the same and hearing the arguments of the counsel for Mr. B.K. Chowdhary, the learned Magistrate had directed the registration of a case on 16.5.2008. Accordingly, case FIR No.125/08 dated 17.5.2008 u/s 457/380/IPC had

been registered in the police station and the same is pending investigation. It was further stated that the dispute between the petitioner and Mr. B.K.Chowdhary was a civil dispute. Pertinently, the police authorities also stated that no threat to the life of the petitioner has been perceived, and in the facts and circumstances of the case no police protection as at present is warranted. It is further stated that in case the court directs police protection, the same would be provided to the petitioner. It is lastly stated that the police officials were in no manner responsible for dispossessing any party from the occupation of the apartment in question, or in putting any party into possession thereof. A further status report has been filed by the police on 15.10.2008. As per this status report, it is stated that enquiry was conducted into the complaint made by the petitioner to the CAW Cell by Inspector Jaibir Singh of CAW Cell, Nanakpura. During the course of enquiry, no such evidence of harassment came to light. The petitioner was requested to get her statement recorded in connection with the document of divorce submitted by Mr. B.K. Chowdhary, but she refused to give any statement to the police. It was also noticed that the petitioner has not filed any complaint of harassment/torture caused by Mr. B.K. Chowdhary during the last 19 years since they were separated. The petitioner had been advised to utilize services of the Protection Officer to get relief under the provisions of Domestic Violence Act, if she so desired. The complaint filed by the petitioner at the CAW Cell, Nanakpura had been closed on 25.9.2008⁹ since the

matter was sub judice on the aspect whether the petitioner is the legally wedded wife of respondent no.4 or not.

9. The petition has been primarily contested by respondent no.4. Respondent no.4 has filed his reply on record dated 28.6.2008. Respondent no.4 states that the petitioner has not approached the Court with clean hands. She has concealed important material facts, apart from making misleading statements in the writ petition. It is stated that the marriage between the petitioner and respondent no.4 took place in the year 1973. As aforesaid, one son and one daughter were born out of the wedlock who are 33 years and 30 years old respectively now. The marriage between the petitioner and respondent no.4 was dissolved by mutual consent by a Bhutan court on 29.9.1988. The decree passed by the Bhutan Court has been filed on record by the petitioner herself as Annexure-5 to her application for seeking amendment of the writ petition. He further states that the petitioner again filed for divorce before the District Court, Joharat, vide Matrimonial Suit No.10/91. It is stated that a divorce decree was granted and this fact had been admitted by the petitioner herself in paragraphs 2 and 6 of her plaint in Suit No.351/2000 filed by her against her brothers before the District Court, Patna. He further states that in the year 1996, the petitioner had also approached the British Court for seeking divorce from respondent no.4 by filing Case No.860/96, although she was already divorced in 1989 itself. She obtained an ex parte decree of divorce, which was made absolute on 22.4.1999. Respondent no.4 has placed on record the divorce decree

dated 22.4.1999 as Annexure R-4/1 with his reply. Respondent no.4, therefore, submits that it does not lie in the mouth of the petitioner to claim that she continues to be the legally wedded wife of respondent no.4 and to seek any right to reside in the apartment, where he is residing with his subsequently legally married wife Ms. Vidhushi Ojha for the last nearly 20 years.

10. The petitioner contends that the divorce decree obtained from the Court in Bhutan has no force, since the Court in Bhutan had no jurisdiction to grant the said decree. She further states that it was respondent no.4 who had initiated Suit No.7/2006 titled "**Basant Chowdhary V. Meena Chowdhary**" in the Court of the District Judge, Jorhat on 30.6.1996 to seek divorce against the petitioner. According to her this divorce suit was filed by respondent no.4 since he realised the futility of the "forged decree" obtained by respondent no.4 from the Court in Bhutan. This petition was assigned to the Court of the Additional District Judge, Jorhat on 31.7.1996 and renumbered as Matrimonial Suit No.4/1996. The aforesaid suit was dismissed on 30.5.1998 for non prosecution. She therefore submits that there is no valid decree of divorce between the petitioner and respondent no.4, and therefore the marriage subsists.

11. I may, at this stage itself, deal with the submission of the parties on the aforesaid aspect. The submission of respondent no.4 that the petitioner had filed a suit for divorce against respondent no.4 in the Court of District Judge, Jorhat and that she had obtained a

divorce decree from that Court does not appear to be substantiated. Nothing has been placed on record by respondent no. 4 in support of his submission. On the other hand, the petitioner has placed on record a photocopy of the order passed by the Additional District Judge, Jorhat on 30.5.1998 in case no. T.S(M) No.4/96 titled “**Vasant Kumar Chowdhary V. Meena Choudhary**” which states “*plaintiff absent without steps. No steps was taken for summoning the defendant. The suit is therefore dismissed for default.*” Therefore, the claim of respondent no. 4 that the petitioner and respondent no. 4 are divorced, on the basis of a divorce decree passed by the District Court, Jorhat remains completely unsubstantiated.

12. So far as the divorce decree passed by the Bhutan Court is concerned, it appears that respondent no.4 at the relevant time was employed with the Bhutanese airways. i.e. Druk Air and could, at the relevant time, have been domiciled in Bhutan. Though the petitioner contends that the said decree was secured fraudulently from a Court which had no jurisdiction, she has not initiated any proceeding to have the said decree annulled. The petitioner, however, does not deny the fact that she had initiated divorce proceedings against respondent no.4 in U.K which resulted in a final and absolute decree of divorce dated 22.4.1999 between the petitioner and respondent no.4. Even to this divorce decree, her reply is that the High Court of England did not have the jurisdiction to dissolve the marriage between the petitioner and respondent no.4 which had been solemnized in Patna, India. However,

from the documents filed on record, it appears that possibly, at the relevant time, the parties were domiciled in England.

13. It is also not disputed by the petitioner that in a title suit filed by her against her brothers in respect of certain properties, the stand taken by the petitioner was that her marriage with respondent no.4 already stood dissolved. Reference may be made in this regard to the pleadings made by the petitioner in title suit No.351/00 titled Dr. Meena B.N. Singh, daughter of late Sh. P.L. Singh V. Avinash Kumar Singh & Ors. In paragraphs 2, the petitioner, who was the plaintiff stated that *"her marriage ended in divorce in march 1991"*. This pleading of the petitioner was taken note of by the Special Judge-I, Patna while passing the order dated 17.8.2000. Photocopy of the title suit and the order passed by the Special Judge-I dated 17.8.00 have been placed on record by the petitioner herself. Though, the mere averment by the petitioner that her marriage had ended in divorce in March 1991 would not by itself lead to the conclusion that the petitioner stood divorced from respondent no.4, it does certainly lend credence to the case of respondent no.4 that, as a matter of fact, the marriage between respondent no.4 did stand dissolved by divorce. It also throws doubt on the case now sought to be made by the petitioner that she continues to be the legally wedded wife of respondent no.4.

14. The issue whether the petitioner is the legally wedded wife of respondent no.4 or not is, therefore, a highly contested issue and involves the determination of disputed questions of fact as the

petitioner, who is confronted with the mutual divorce decree passed by the Bhutan Court and the divorce obtained by her from the British Court, contends that these were forged and fraudulent decrees passed by courts without jurisdiction. These issues, in my view, cannot be decided in the present writ proceedings. No doubt the said issue would have to be determined by a competent Court before whom this issue is raised keeping in view the pleadings of the parties, the provisions of Section 13 CPC, and the Hague Convention of 1968 on the Recognition of Divorce and Legal Separation as applied by the Supreme Court in "**Y. Narsimha Rao Vs. Y. Venkata Lakshmi**" (1991) 3SCC 451. However, the determination of the disputed facts would require a trial.

15. Ld. Counsel for respondent no.4 further submits that the aforesaid apartment was not the property of respondent no.4 till 09.06.2008. The apartment was held by the mother of respondent no.4 Smt. Veer Bala Chaudhary, and was mutated in the name of respondent no. 4 only on 09.06.2008. He relies on a communication dated 09.06.2008 issued by the DDA conveying the mutation of the apartment in the name of respondent no. 4. He submits that the petitioner in any event, assuming that she continued to be the wife of respondent no. 4 had no right to claim the right to live in or occupy the said apartment. He seeks to place reliance on "**S.K. Batra & Anr. Vs. Taruna Batra**" (2007) 3 SCC 169 in support of this submission. He further submits that the said apartment already stands transferred by him in favour of one Smt. Sarita Khanna W/o. Sh. D.K. Khanna vide

registered sale deed dated 18.08.2008, registered before the Sub-Registrar on the same day.

16. There is merit in the submission of respondent no. 4 that the petitioner could not have asserted a right of residence in the said apartment, even if she is assumed to be the legally wedded wife of respondent no. 4, till the said apartment continued to remain the property of the mother of respondent no. 4. Only after the respondent was recognized as the owner of the said apartment, such a right could be claimed by the petitioner, provided she had succeeded in establishing her status as the wife of respondent no.4. Merely by disposing off the said apartment, the respondent no.4 could not have avoided his liability (if such a liability exists). Therefore, even if it is accepted that the said apartment has been disposed off by respondent no. 4 in August, 2008, if the petitioner is able to establish her status as the wife of respondent no.4, she could lay a claim to live in any premises owned by respondent no. 4, and such a claim would have to be examined on its merits and would not be liable to be rejected at the threshold without examination on merits.

17. Lastly, it is argued by respondent no.4 that the petitioner has already initiated proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005 in the Court of ACMM, Patiala House, New Delhi in Suit No.51/2008 which is being contested by respondent no.4. Relief sought in those proceedings by the petitioner is for a direction to respondent no.4 herein to secure the

same level of alternative accommodation for the petitioner as last enjoyed by her in her shared household, or to pay rent for the same and to restrain respondent no.4 from entering into the said accommodation. The said complaint was initiated by the petitioner some time in July 2008. The petitioner having invoked an alternative efficacious remedy, she should pursue the same.

18. In my view, the learned Magistrate would be much better equipped to deal with all the issues, including the issue as to whether the marriage between the petitioner and respondent no.4 herein subsists or not, since the fundamental premise on which the relief sought by the petitioner is rested, is that she continues to be the legally wedded wife of respondent no. 4. For all the aforesaid reasons, I am not inclined to entertain this writ petition so far as reliefs (b) and (ba) are concerned.

19. Now coming to the first relief i.e. (a), since the police authorities have stated that they do not perceive any threat to the life of the petitioner, I am not inclined to issue any direction to the respondent police authorities in this regard at this stage. However it is the right of every citizen, in case of any threat to his/her life and liberty, to get adequate protection from the police. In case any threat is received by the petitioner to her life, liberty or property, it shall be open to the petitioner to approach the police and after looking into the complaint that may be made by the petitioner, the police would take timely and appropriate measures upon assessment of any further

threat perception in respect of the petitioner. Accordingly, I dispose off this writ petition leaving the petitioner free to pursue her rights & remedies under the law including the Suit No.51/2008 pending before the Ld. ACMM, Patiala House, New Delhi. No observation made in this order shall be taken as an expression of a view of this Court on the merits of the case of either party.

(VIPIN SANGHI)
JUDGE

JANUARY 07, 2009
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