

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.26694 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- GOPALGANJ

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Anil Kumar Sharma, son of Ishwar Singh Sharma, resident of village/mohalla-235, Bijwashan, New Delhi, District- New Delhi, Rajasthan, the then Principal, Sanskriti the School, Shiv Shankar Marg. Near M.D.S. University, Ajmer, Rajasthan.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Dr. Ashish Ranjan, son of Dr. Brajendra Singh, resident of village + P.O.- Mehura, Via- Bagaha, District- West Champaran, Bihar, at present resident at Sareya Road, Near Kali Asthan, District- Gopalganj, Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Chitranjan Singh, Sr. Advocate.
Mr. Soni Shrivastava, Advocate.

Mr. Ravi Bhardwaj, Advocate.

For the Opposite Party No.2: Mr. Ranjeet Kumar Pandey, Advocate.

Mr. Radhe Shayam Kumar, Advocate.

For the State

Mr. Brajendra Nath Pandey, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT

Date: 01-08-2017

Heard learned counsel for the petitioner, learned
counsel for the opposite party no. 2 and the learned counsel for the
State.

2. This application, under Section 482 of the Code of
Criminal Procedure, is directed against the order dated 18.03.2011
passed in Complaint Case No. 2764 of 2010/ Tr. No. 3761 of 2011,
whereby the learned Judicial Magistrate Ist Class, Gopalganj,
summoned the accused-petitioner, on inquiry, under Section 204 of
Cr.P.C finding the prima facie case, under Section 500 of the Indian
Penal Code.



3. The facts leading to this application is that complainant-opposite party no. 2 performed the marriage with Dr. Anupma Tandon and out of their wedlock, one male child namely, Master Kislay Ranjan, born. Thereafter, the dispute arose in between the complainant-opposite party no. 2 and his wife, Dr. Anupma Tandon, on which, Complainant-opposite party no. 2 filed the Matrimonial Case No. 2 of 2008 for divorce and also filed a petition for permission to visit to see his son, Master Kislay Ranjan, who was studying in Sanskriti School, Shiv Shankar Marg, Near M.D.S. University, Ajmer, Rajsthan, where the petitioner was posted as Principal. On receiving the summon of the said matrimonial case, Dr. Anupma Tandan, wife of complainant-opposite party no. 2 filed a petition before the Hon'ble Supreme Court, the Petition (Civil) No. 195 of 2008 for transfer of Matrimonial Case No. 2 of 2008, in which, complainant-opposite party no. 2 appeared and the dispute in between the complainant-opposite party no. 2 and Dr. Anupma Tandon was settled in terms of the agreement entered in between them in relation to the custody of child Master Kislay, which is as under.

“ (viii) As agreed between the parties, Dr. Anupma Tandon shall have the physical custody and guardianship of the child master Kislay Ranjan who is at present four and a half years old.

(ix) Dr. Ashish Ranjan and his parents shall



have visiting rights to Master Kislay Ranjan who is at present living in Ajmer with his maternal grandparents. Since Dr. Ashish Ranjan and/or his parents would have to come to Ajmer from Gopalganj at long distance, they would naturally advise about the dates and length of their visits at Ajmer before hand either by telephone or through a letter.

(x) In Ajmer, Dr. Ashish Ranjan and/or his parents will visit Master Kislay Ranjan at mutually convenient time (s) in the house where he is living. They will stay with the child for a few hours or as long as the child might wish. Dr. Anupma Tandon stated before the Lok Adalat that while visiting Master Kislay Ranjan. Dr. Ashish Ranjan and his parents will be treated with courtesy and dignity and she would do everything reasonable to facilitate their meeting with the child. It will be open to Dr. Ashish Ranjan and/or his parents to bring suitable gifts for the child.

(xi) To begin with, the meetings with the child will be held only in the house where he might be living with his maternal grandparents or his mother. However, as confidence builds up between all concerned, including the child and as the child grows up and he himself wishes to go out with his father or grandparents, it will be open to Dr. Ashish Ranjan and/or his parents to take out the child in the city where he might be living initially for brief periods.



(xii) As the child future grows up and in case he expresses his willingness and consent to spend one or two nights with his father Dr. Ashish Ranjan and/or his grandparents, it will be open to Dr. Ashish Ranjan and/or his parents to take the child out from his residence for some period and to keep him with them for one or two nights in the same city.

(xiii) As and when the child reaches his teens and in case he is willing to spend some of his holidays or vacations with his father and grandparents away from the place where he might be living with her maternal grandparents or mother, it will be open to Dr. Ashish Ranjan and/or his parents to take the child out of Ajmer or the city he might be living in at that time for as long as the child might wish to stay with them during his holidays or vacation.

(xiv) On each occasion when Dr. Ashish Ranjan and/or his parents take away the child from his guardian, i.e., Dr. Anupma Tandon or his maternal grandparents, it will be their duty and obligation to take full care of the physical, mental and emotional well-being of the child while he remains with them and to return him to his mother/maternal grandparents at the agreed time. As and when the child is taken out from Ajmer all the expenses of his travel and stay will be borne by Dr. Ashish Rnjan and/or his parents.

(xv) Dr. Ashish Ranjan and/or his parents will



be at liberty to speak to master Kislay Ranjan on telephone at convenient times.

(xvi) All these arrangements insofar as they relate to the child will be subject to the express wish and willingness of the child. No visits to see him or taking him out would be permitted unless the child himself is willing and prepared to meet the father and the grandparents and is willing to go out with them.

Thereafter, due to avoiding the terms and conditions as agreed in between the parties regarding the visiting of the complainant-opposite party no. 2 to see his son, Master Kislay Ranjan, complainant-opposite party no. 2 filed the Contempt Petition (Civil) No. 394 of 2009 in Transfer Petition (Civil) No. 195 of 2008 before the Hon'ble Apex Court, which was disposed of on 30.11.2010, giving liberty to the complainant-opposite party no. 2 to approach the appropriate court/forum for seeking custody of the child, Master Kislay or any other appropriate relief in this regard. In case, such a petition is filed, the court concerned is requested to proceed and dispose of the same in accordance with law, without being influence by the consent order dated 03.05.2008 or dismissal order of the writ petition dated 29.09.2009 passed by this Court regarding the custody and visiting rights of the parties towards the child, most expeditiously. Needless to say that the court concerned would proceed with the case, if any, without taking note of any



observation made hereinabove in this Judgment on merit on the issue of custody.

Thereafter, complainant-opposite party no. 2 filed the Complaint Case No. 2764 of 2010 against the petitioner, who was the Principal of Sanskriti School, Shiv Shankar Marg, Near M.D.S. university, Ajmer, Rajasthan, in which, learned Judicial Magistrate Ist Class, Gopalganj, summoned the accused-petitioner, on inquiry, under Section 204 of Cr.P.C finding the prima facie case, under Section 500 of the Indian Penal Code.

4. Learned counsel for the petitioner submits that the petitioner was the principal of Sanskriti School, Shiv Shankar Marg, Near M.D.S. university, Ajmer, Rajasthan at the relevant period, during the pendency of the transfer petition filed by the wife of the complainant-opposite party no. 2, which is disposed of by the Hon'ble Apex Court and the pendency of the Contempt Petition (Civil) No. 394 of 2009 in Transfer Petition (Civil) No. 195 of 2008. The petitioner, being the principal of Sanskriti School, Shiv Shankar Marg, Near M.D.S. university, Ajmer, Rajasthan, also submitted his report in compliance of the direction of the Hon'ble Apex Court. The Hon'ble Apex Court disposed of Contempt Petition (Civil) No. 394 of 2009 in Transfer Petition (Civil) No. 195 of 2008. The Hon'ble Apex Court disposed of the said contempt petition with some



observation but the Hon'ble Apex Court did not whisper any ill treatment or ill behaviour with the complainant-opposite party no. 2 and the court observed about ill treatment and ill behaviour in respect to frustrate visiting rights as allowed to the complainant-opposite party no. 2 to see his son, Master Kislay against his wife Dr. Anupma Tandan. But with ulterior motive the complainant-opposite party no. 2 has filed the Complaint Case No. 2764 of 2010 against the petitioner only to harass him, while the petitioner is posted as Principal in school at Nainital.

5. Learned counsel for the complainant-opposite party no. 2 submits that there is no illegality in the impugned order dated 18.03.2011 but he is not able to show any misbehaviour and ill treatment of the petitioner being the Principal of Sanskriti School, Shiv Shankar Marg, Near M.D.S. university, Ajmer, Rajasthan, where his son, Master Kislay was studying during the pendency of Contempt Petition (Civil) No. 394 of 2009 or thereafter to the complainant-opposite party no. 2.

6. On perusal of the order dated 30.11.2010 passed in Contempt Petition (Civil) No. 394 of 2009 IN Transfer Petition (Civil) No. 195 of 2008, it appears that Hon'ble Apex Court after perusal of report of the petitioner submitted by him being the Principal of Sanskriti School, Shiv Shankar Marg, Near M.D.S.



university, Ajmer only condemned the behaviour of wife of complainant-opposite party no. 2 and her mother for creating obstacles in visiting and seeing of the petitioner in the school to his son. It is no doubt that at the time of exercising the inherent jurisdiction under Section 482 Cr.P.C. the court is not required to see the defence of the party but at the same time it is the duty of the court to see whether the impugned order amounts to abuse of the process of the court or not. As such, I find that the impugned order dated 18.03.2011 appears to be abused of the process of the court and liable to be quashed.

7. In the result, the impugned order dated 18.03.2011 passed in Complaint Case No. 2764 of 2010/ Tr. No. 3761 of 2011 is allowed and summoning the accused-petitioner, on enquiry, for the offence under Section 500 of the Indian Penal Code, hereby quashed and this application is allowed.

(Rajendra Kumar Mishra, J)

Bhardwaj/-

AFR/NAFR	
CAV DATE	
Uploading Date	08.08.2017
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