

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

**% Judgment Reserved On: 31.10.2019
Judgment Pronounced On: 05.02.2020**

+ TR.P.(CRL.) 8/2019 & CrI.M.A. 39395/2019.

KAPILA BHUDHIRAJA Petitioner

Through Mr. Kunal Kalra, Advocate

versus

DEEPAK BHUDHIRAJA & ANR. Respondent

**Through Mr. Ravinder Kumar,
Advocate for R-1.
Mr. R.K.Gupta, Advocate for
R-2.**

HON'BLE MR. JUSTICE BRIJESH SETHI

J U D G M E N T

BRIJESH SETHI, J

1. This is a petition for transfer of case titled Kapila Bhudhiraja v. Deepak Budhiraja & Anr. bearing no. 2311/2017 pending before the court of Ms. Riya Gua, Ld. M.M.-Rohini Courts, Delhi to any other District Court.

2. Ld. Counsel for the petitioner has submitted that petitioner has filed a complaint under Section 12 read with Section 17 and 23 of the Domestic Violence Act against the respondents. Petitioner is

residing in her matrimonial home i.e. property bearing No. 138, FF, Gupta Colony, New Kalyan Vihar, Delhi, since her marriage with the respondents purchased by the joint funds/income after selling another ancestral property. Petitioner is taking care of her two daughters independently without any support from the respondent No.2. The elder daughter of the petitioner is in ^{4th} class and younger daughter is hardly about months old.

3. Ld. MM on her complaint under the domestic Violence Act has appointed Protection Officer and also issued notice to the respondents. The Protection Officer has filed his report dated 17.03.2017 wherein it is reported that petitioner is residing in the suit property. Vide order dated 21.03.2017, Ld. MM has refrained the respondents from committing any physical violence against the petitioner and her minor children and the respondents were restrained from dispossessing the complainant/petitioner and her two children from the suit property till the disposal of the case.

4. It is further submitted that respondent No.1, in connivance with Respondent No. 2, has filed a suit for mandatory injunction and for recovery of mesne profit against the petitioner wherein the

respondent No.1 has sought a decree of mandatory injunction directing the petitioner and respondent No. 2 to remove themselves and their belongings from the suit property. It is submitted that under the garb of mandatory injunction, the respondent No. 1 has sought possession of the suit property. The order dated 21.03.2017, passed by the learned MM has attained finality as the respondents have not challenged the said order within the stipulated period of limitation. It is further submitted that respondent No. 2 stealthily challenged the said order dated 12.07.2017 before learned Addl. Session Judge presenting misleading facts that the learned trial court has passed an order restraining the respondents from dispossessing the petitioner and her children on 12.07.2017 instead of 21.3.2017 in order to make her appeal within the stipulated period of limitation. The learned ASJ has allowed the appeal and has set aside the order dated 12.7.2017 and has vacated the restrain order dated 21.3.2017, which was never challenged by the respondent.

5. It is further alleged that on 01.09.2018 around 1:50 p.m. when cousin brother of petitioner namely Mr. Ajay Chopra had gone to attend the matter of the petitioner, pending in the court of Ms. Riya

Gua, MM Rohini Court, Mr. Rohit Khera Advocate, Rajesh Kaushik, Deepak Bhudhiraja and other 2-3 lawyers started beating him outside the washroom. Mr. Rohit Khera in the meanwhile had taken out some sharp/pointed weapon and hit Ajay Chopra as a result of which, he received abrasions below elbow. They further threatened Ajay Chopra to impress petitioner to withdraw the case failing which they would kill Ajay Chopra and his entire family. Due to continuous punches and slaps, Ajay Chopra suffered grievous injury. All the accused persons on the instruction of Rohit Khera also snatched mobile phone of Ajay Chopra and there after they went away with the same.

6. Ajay Chopra called the police on 100 number from the mobile phone of Mr. Kunal Kalra Advocate. Due to severe beating Ajay Chopra was not able to hear from the left ear. Police arrived at Court Room number 104 and took Ajay Chopra to Dr. Baba Sahib Ambedkar Hospital. MLC of Ajay Chopra was prepared and after check-up, he was informed by the Doctor that his left Ear Drum has got damaged due to blows.

7. Ajay Chopra filed a written complaint before Chowki Incharge, Rohini Court, Delhi and when he along with his son Ankit and Rahul were sitting outside the chowki, Rohini Court, the above named accused persons with 15-20 lawyers had come near chowki and started beating Ajay, Ankit and Rahul brutally with belts, danda and pipes in order to kill them. They were beaten in the court premises and also near the gate of Chowki and in front of police officers who stood as mute spectator. Another complaint was also filed narrating the aforesaid facts. The police assured the petitioner that strict action would be taken against the accused persons. However, an FIR was registered only under 323/341/506/34 IPC i.e. Sections of IPC which are bailable in nature. It is further alleged that main accused persons are Rohini based lawyers and all of them have threatened that they would not allow the petitioner and his family members to enter Rohini Court.

8. It is next submitted that since relatives of the petitioner were beaten blue black in front of the police chowki, therefore, there is no question that petitioner can visit Rohini Court for her matters. In these circumstances, it is prayed that in the interest of justice case

titled 'Kapila Bhudiraja Vs. Deepak Bhudiraja' may be transferred to any other District Court from Rohini Courts so that petitioner can pursue her case.

9. Assailing the allegations of petitioner, respondent no. 1 and 2 have filed their respective reply. In his reply, respondent no. 1 stated that on the alleged date of incident, petitioner, her counsel as well as respondent no. 1 were absent, thus, there is no question of any kind of fight or altercation as alleged by the petitioner. It is further submitted that petitioner has concocted a false and frivolous story only to mislead and misguide the court.

10. In her reply, respondent no. 2 has stated that she is an old lady aged about 70 years, suffering from various old age ailments. It is further submitted that Rohini Courts is just one kilometre from her residence and hence it would be very difficult for her to attend hearing in any other court as she is unable to walk properly without stick and also suffers from low vision.

11. I have considered the rival submissions. Admittedly with regard to the incident dated, 01.09.2018, alleged to have happened in the precincts of Rohini Courts Complex, an FIR bearing no.

419/2018 was registered in PS Prashant Vihar under Section

323/341/506/34 IPC. The said FIR runs as under:-

“Complainant on behalf of Mr. Ajay Chopra against Mr. Rohit Khera advocate, Rajesh Kaushik advocate and Deepak Budhi Raja for badly beating me and causing me grievous hurt and also snatching my mobile phone make MI. PRO. The complainant is a law abiding citizen of the country and is resident of Q-4, Malka Ganj Market Delhi 110007. Today, around 1:50 pm when I have reached to attend a matter of my cousin sister Kapila Budhi Raja which is pending in the court of Ms. Riya Gaa, MM, Rohini Court titled Kapila Budhiraja V/S Deepak Budhiraja. Complainant went to the washroom and he came out from the washroom, Mr. Rohit Khera, Advocate, Rajesh Kaushik, Deepak Budhiraja and other 2-3 lawyers has started beating me by slapping me outside the washroom which is opposite to room no. 104 and continuously beating me by slapping and punching me. Mr. Rohini Khera, in the mean time took some sharp/pointed weapon and hit me and the result where of I received abrasions below my elbow. Mr. Rohini Khera and Deepak Budhiraja have threatened me to ask Kapila to withdraw the case, failing which he will kill me and my entire family. That Rohit Khera and Deepak Budhiraja caught hold my collar and continued to punch and slap me on my face and the result where of complainant has received grievous hurt. All the accused persons on the instruction of Rohit Khera continued with illegal act and they snatched my mobile phone and there after they went away with my mobile. At around 2 O’ clock when

Kapila's advocate Kunal Kalra came to attend the hearing and he was informed about the aforesaid incident and complainant has been made 100 number call from mobile phone of Mr. Kunal Kalra advocate. Due to severe beating, complainant is not able to hear from left ear and when police man arrived at court room number 104 on my call he took me to Dr. Baba Saheb Ambedkar hospital and MLC was prepared and further after check-up, it was informed by the doctor that the left ear drum of complainant got damaged due to blows and the result where of complainant is not able to hear from the said ear. The copy of the emergency registration card is attached here with. You are requested to immediately register an FIR against the aforesaid accused person in accordance with law and in interest of justice."

12. The main grievance of the petitioner is that due to the incident which has occurred within the premises of the Rohini Court Complex on 01.09.2018, wherein cousin of the petitioner namely Ajay Chopra was mercilessly assaulted by some persons including some practicing advocates, it is not possible for her to attend the hearing of the matter pending in the court of Ms. Riya Gua, Ld. M.M.-Rohini Courts, Delhi as there is an apprehension of threat to her life. Ld. Counsel for the petitioner has also placed on record copy of order dated 16.10.2019 passed in W.P. CrI. 3493/2018 filed by Ajay Chopra for invoking of appropriate provisions against the

accused persons in accordance with law. As per the above order, Section 325 IPC has been invoked in the FIR bearing no. 419/2018, registered at PS Prashant Vihar on the basis of medical opinion and accused Deepak Budhiraja, Rohit Khera and Rajesh Kaushik, Advocates have joined investigations and are being examined. In the said order, it is also submitted by Bar Council of Delhi that proceedings have been initiated against the delinquent advocates and necessary action would be taken in accordance with law. Though Ld. Counsel for the respondents stated that petitioner has concocted a false and frivolous story only to mislead and misguide the court but this court is of the view whether the incident dated 01.09.2018 is true or false cannot be decided at this stage. Moreover this fact also cannot be ignored that qua the incident dated 01.09.2018, an FIR bearing no. 419/2018 has been registered with PS Prashant Vihar wherein some practicing advocates are also named. Therefore, keeping in view the facts and circumstances of the case, this court finds substance in the submission of Ld. Counsel for the petitioner that she has apprehension of threat to her life and limb as well as to the persons/relatives accompanying her in case she appears in the

hearing of the case titled 'Kapila Bhudhiraja v. Deepak Budhiraja & Anr. bearing no. 2311/2017' pending before the court of Ms. Riya Gua, Ld. M.M.-Rohini Courts, Delhi and she will not be able to pursue her case in a fair and proper manner and will not be able to get justice.

13. So far as contention of respondent no. 2 that she is an old lady of about 70 years, suffering from various old age ailments and ,therefore, it would be very difficult for her to attend hearing in any other court is concerned, this court is of the view that respondent no. 2 may request the court for her exemption on medical grounds, if so required, through her counsel and the court will no doubt consider the same in accordance with law if there is truth in her submission after examining the medical documents.

14. In view of above discussion, the petition is allowed. District & Sessions Judge, North District is directed to transfer the case titled 'Kapila` Bhudhiraja v. Deepak Budhiraja & Anr. bearing no. 2311/2017' pending before the court of Ms. Riya Gua, Ld. M.M.-Rohini Courts, Delhi to the Ld. District & Sessions Judge, Central District, Tis Hazari Courts for assigning the same to a court of

competent jurisdiction. The parties are directed to appear before the Ld. District & Sessions Judge, Central District, Tis Hazari Courts, Delhi on 28.02.2020.

15. It was informed by Ld. Counsel for the petitioner that protection was provided to the petitioner by the order of the Co-ordinate Bench in W.P.(Crl.) 3493/2018. Since the case stands transferred to Central District at Tis Hazari Courts, DCP Central District is directed to carry out threat assessment and if required adequate security be provided to the petitioner while appearing in the court. A copy of the order be also sent to DCP Central District for information and necessary action.

16. Transfer petition stands disposed of accordingly.

BRIJESH SETHI, J

FEBRUARY 5, 2020

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