

Smt. Sharda Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Nov-18-2003

Reported in : 2004(1)AWC494

Judge : R.C. Deepak, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Habeas Corpus W.P. No. 26037 of 2003

Appellant : Smt. Sharda

Respondent : State of U.P. and ors.

Advocate for Def. : H.C. Dwivedi, A.G.A.

Advocate for Pet/Ap. : Babu Lal and ;Sital Rai, Advs.

Judgement :

R.C. Deepak, J.

1. The petitioner Smt. Sharda, widow of Yogendra Singh Bharti, daughter of Ratan Pal Singh, has filed this habeas corpus petition against the respondent Nos. 4 and 5 in particular with a prayer to issue a writ, order or direction in the nature of mandamus against them (respondent Nos. 4 and 5) commanding and directing them to produce and hand over her son Chinoo (corpus) before the Court, mainly

on the ground inter alia, that she and her husband Yogendra Singh Bharti could not live happily and peacefully due to bad behaviour and torture of the respondent No. 5 Smt. Ganeshwati, wife of respondent No. 5 Lekhram, who are her mother-in-law and father-in-law respectively, that her husband Yogendra Singh Bharti ultimately committed suicide/murder on 25.5.2003, that after receiving information regarding the suicide/ death of her husband she along with her father, child/son named above reached Amroha/J. P. Nagar from the house of her father where she was living with her son Chinoo, on 26.5.2003, for participating in the funeral of her husband, that she (petitioner) and her father were beaten by respondent Nos. 4 and 5, that her son Chinoo was kidnapped by respondent Nos. 4 and 5, that the life of her son Chinoo is in danger and that she (petitioner) will suffer an irreparable loss and injury in the event of her son Chinoo not been handed over to her and also that Chinoo will be deprived of her love and affection, the respondent Nos. 4 and 5 have filed a joint counter-affidavit contradicting and controverting the allegations made by the petitioner against them and ascertaining therein inter alio that the life of Chinoo is not at all in danger, that the petitioner is a young lady and that the future of Chinoo will be doomed and ruined in the event of her marriage with some other person.

2. I have heard Sri Sheetal Rai, learned counsel for the petitioner, Sri H.C. Dwivedi, learned counsel for the respondent Nos. 4 and 5, learned Additional Government Advocate for the State and perused the record.

3. The petitioner Smt. Sharda was the wife and now the widow of Yogendra Singh Bharti, the respondent Nos. 4 and 5 named Lekhram and Smt. Ganeshwati are father and mother respectively of Yogendra Singh Bharti and consequently father-in-law and mother-in-law of Smt. Sharda, Chinoo is son born to her from Yogendra Singh Bharti. He is hardly 4 and 1/2 years of age. Yogendra Singh Bharti allegedly committed suicide or allegedly was murdered on 25.5.2003, Smt. Sharda Has been living with her parents at their residence at Meerut where her son has been presently living with his grandmother and grandfather (respondent Nos. 4 and 5) named above at their residence in the district J. P. Nagar. The above facts cannot, on the basis of the record, be said to be in dispute.

4. Whether Yogendra Singh Bharti committed suicide or he was murdered, who is/are responsible/accused in either case and whether Chinoo was kidnapped by respondent Nos. 4 and 5 or not, are such questions which cannot presently be taken into consideration for any purpose whatsoever in the present petition.

5. Letters filed and marked as Annexure-1 with the petition appear to be relevant, therefore, the Annexure-1 is reproduced as under :

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dq'ky gS dq'ky pkgrs gSaa A dyvkius Qksu ij ckr dh A vk'kk ds vuq:i vki nk: fi;s gq;s cgw ds xe esa Mwcs gq;sFks A tc eSus ?kj esa cryk;k fd ;ksxsUnz eq>s esjB tkus ds fy;s dg jgs gSa]rks vkidh eEeh us ph[kuk fpYykuk] xUnh&xUnh; xkyh nsuk vkjEHk dj fn;k A ;gdgrh gS fd rw ej tk rsjs isV esa Nwjh Hkksad nwaxh] rw tgj [kk ys] rw jsy dhiVjh ij dV dj ej tk rw ej tk;sxk rks esjs cPpksa dh ftUnxh lq/kj tk;sxh A rwusesjs cPps dh ftUnxh [kjkC dj nh A rsjk Q.M dk cgqr iSlk feysxk] edku fdjk;s ijns nwxh] xkao dh tehu csp nwxh A rw xksnke esa vkSjrkSa ls v;;k'kh djrk gS A?kj dks vk/kk iSlk gh ykrk gS A rw dqRrs dh vkSykn gS A rw vkSjrkSa dk HkkMw g SA rsjh ek j.Mh gS A vkidh eEeh dks u fdllh ds fookg 'kknh dh ijokg gS] u fdllh dhlfoZI dh u fdllh dh fy[kkbZ i<+kbZ dh u ;g lksprh gS fd dksbZ ckgj tk jgk gS u;g lksprh gS fd dksbZ ckgj ls vk jgk gS u lqcg ns[krh gS u 'kke u yM+ds dh 'kjegS u yM+dh dh] cl ph[krh fpYykrh jgrh gS A xUnh&xUnh; xkfy;ka cdrh jgrh gS Aftl ?kj esa 'kfUr ugha jgrh og ?kj Qwyrk Qyrk ugha gS A jktw gkuj LVwMsUV gS]ysfdu Qsy gks x;k A esjh lkjh ykfuax tks eSus mlds ckjs esa dh Fkh Qsy gks x;hA eq>s mlds Qsy gksus dk cgqr n[k% vQlksl ,oa vk'p;Z gS A ysfdu rsjh eka dksdqN ugha A mldk fpYykuk ,oa ph[kuk rFkk lqcg 'kke vkQr mrkjuk tkjh gS A vkidheEeh us nhokyh ij dgk Fkk fd fnokyk epkxh igyk fnokyk rks jktw ds Qsy gksus dk gks x;k vki dsUnzh; folky; ds v;/kidgksdj nk: ihuk cUn ugha djrs A vkidh eEeh dk gj le; ?kj esa jaft'k djuk ,oavkidk nk: ihuk ?kj dks cjckn djds gh ne ysxk A vkidks Hkh u fdllh dh fy[kkbZ i<+kbZ,oa u fookg 'kknh dh ijokg gS A cl nk: ihdj iM+ tkuk dh vkidk is'kk gS A eq>s?kj ds gkyr ns[kdj bruh vkRe fxykuh gksrh gS fd th pkgrk gS vkRe gR;k dj yw Avkidh eEeh ,oa vkids ekb UM esa vPNh ckrsa ugha vkrh vPNk mlh dk gksxk ftldhekb UM esa vPNh ckrsa jgsaxh A vkidh eEeh dh vk[kksa dks ?kj esa esjh eksr dsQfj'rs fn[kkbZ

ns jgs gSaa A mldh tcku ls esjh ekSr dk Qfj'rk cksy jgk gS A mldsekb UM esa esjh ekSr dk Qfj'rk lek;k gqvk gS A vki 'kh?kz vfr 'kh?kz ?kj vk;sa]rFkk viuh eEeh dks vius lkFk fHk.M ys tk;sa A fQygky cgw dks ykus dh ckr fneksesha us yk;s ys[kjke flag

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tc ge Tokyk th x;sa Fks rks vki urks gekjs lkFk Fks vkSj u ?kj ij Fks A ;g esjs fy;s cgqr nq[k dh ckr gS] ysfduvf/kd nq%[k eq>s rc gksrk gS tc vkidks izkr% uk'rk dh txg nk: vkSj ijkBsfcLdqV dh txg vkids eqWg esa iku vkSj xqVdk ns[krk gq A vkidks nk: ihus vkSjeEeh ds ph[kus] fpYykus esa ?kj dh 'kkfUr Hkax dj nh A ?kj dks cjoknh ds dxkj ijykdj [kM+k dj fn;k gS A ogh ?kj mUufr djrk gS A ftl ?kj esa 'kkfUr jgrh gS A

tgk rd esjk iz'u gS A eSa cgqrgh viekfur thou O;rhr dj jgk gw A u ?kj easa esjk dksbZ dUVksy gS] vkSj u ghdkbZ ckr A eSaaa ;g eglwl djrk gw fd lHkh fj'rsnkfj;ksa esa esjk dksbZ lEekuugha gS A xkao esa Hkh esjk dksbZ lEeku ugha gS A

eSa ?kj dks dksbZ xfr ugha ns ik jgk gw Aigys cgw phuw dks NksM+dj pyh x;h] nwljs jktw gkWuj LVwMs UV Qsy gks x;k] rhljsHkkouk dks dksbZ oj ugha fey ik jgk gS] pkSFks vkidh llqjky esa vR;kf/kd viekfurgq;s rFkk ckn esa ckr Fkkuk iqfyl rd igqap x;h] vkSj tks dqN gqvk A mlls vki HkhHkyh Hkkafr ifjpr gaSa A ;g vkidh nk: ihus] cqf) ,oa foosd dk bLrseky u djus dsdkj.k rFkk vkidh eEeh ds ?kj esa 'kkfUr u j[kus ds dkj.k gqvk] vkSj vkxs bZ'ojtkus D;k gksxk] D;ksafd vHkh Hkh cnyko utj ugha vk jgk gS] Hkyk mldk gksrk gSftlds fny fneks esa Hkys vFkkZr vPNs fopkj

vkrs jgrsa gksa] tks vPNk lksprk gksA vkidh eEeh gj le; Fkkuk iqfyl ,oa eqdnesackth ds ckjs ess gh lksprh jgrh gS]dHkh Hkh mlds fnekx esa 'kfUr dh ckrsa ugha vkrh gS A

vieku lgu djus dh euq'; dh,d {kerk ,oa lhek gksrh gS A eSa le>rk gw fd vc esjh vieku lgu djus dh {kerk,oa lhek lekr gks pqdh gS A eSa vFkZghu thou O;rhr dj jgk gw A esjh le>esa vFkZghu thou dk vFkZ gS A thou dk vUr A D;ksafd eS le>rk gw fd ?kj dh 'kkfUrcuk;s j[kuk esjs cl dh ckr ugha gS A vki tc Hkh ?kj vkuk pkgsa phuw dks lFkysdj vk ldrs gSa A cgw dks fHk.M vFkok esjB esa tgka Hkh vius foosd ds vuqlkjmfr le>s A lqfo/kktud le>s NksM+ vk;sa A phuw dk fo'ks'k ?;ku j[kasA mls Bhd f[kyk;sa fiyk;sa rFkk B.M ls cpkdj j[ksa A og cgqr vPNk cPpk gS A 'ks'kBhd gS A vkidh eEeh dh rjQ ls vkidks lLusg 'kqHk vk'khokZn A vkSj cgU HkbbZ;ksadh rjQ ls vkidks ueLrs A ;kn j[kks vki rHkh lQy gksxs tc le; ,oa lnxq.k ckrksaxq.; ds :i esa jgksxs A vius cqf) ,oa foosd dk iz;ksx djds gj ,d dk;Z djksxs A

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gksxk A fQj Hkh ;fn vki jkr esa nsj rd ?kwers gks rks;g vPNh ckr ugha gS A vki jkr
esa nsj rd ?kqeuK cUn dj nsa(rFkk fnu fNius ds i'pkr~vius /kj ij gh jgs A j.kohj cryk
jgk Fkk fd cgw Qksu ij ;s dgh Fkh A vki mldslkFk ekj ihV u djsa] rFkk Qksu djrs le;
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vki esjs dks vuko';d :i ls u Lo;aQksu djs vkSj u cgw dks gh Qksu djok;sa AQksu ij
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pys x;s A eq>s yxrk gS fd 6&7 eghus cgw ds esjB jgus ds ckotwnHkh cgw ,oa
mlds ek cki us dksbZ ulhgr ugha yh AmUgsa FkksM+k lk Hkh ,glklugha gqvK fd
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jgsa gaSa A muls eq>s ;g eglwl gks jgk gS fd 'kh?kz gh,d fnu ,slk vk tk;sxk tc gekjs
fy;sa cgw ,oa mlds ekW cki ls ihNk NwMk+ukvfuok;Z gks tk;sxk] rFkk ;g gekjh rjQ
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LVsiugha gksxk A gekjs ikl vkYVjustVo jkLrk ugha gS A ysfdu blds fy;s tjk Hkh
vkicgw ds lkFk jgdj vkidks vius dks esUVyh fQftdu ,oa esUVyh :i ls vius dks
rS;kjdjuk vR;Ur vko';d gksxk A izR;sd O;fDr ,oa ckr ds nks i{k ykbV ,.M MkdZ gksrk
g SA vki vius thou ,oa ckr ls lEcFU/kr ykbV i{k gh izLrqr djsa A MkdZ ugh A
vkidsvUnj lnxq.k vkus pkfg;s vkids dk;Z foosd ,oa cqf) ls lksp le> dj fd;s gq;sizrhr
gksus pkfg;s A rHkh ge vkSj vki fdLh dfBu ifjLFkfr dk lkeuk dj ldsaxs A;w- ih- esa
vHkh rd odhyks dh LVkbd py jgh gS A 23 uoEcj rd gkbZ dks VZ ds odhyLVkbd ij
gSa A

vki tc ls iSnk gq;s gSaa A gekjslkFk gh nhikoyh eukrs jgs Fks A ;g igyh nhikoyh
gksxh A tc vki ?kj ij ughagksaxs A dksbZ ckr ughaa vki viuh lfoZl ij gSaaa] rFkk
vius NksVs ls ifjokj dslkFk gSa A lkjk ifjokj Hkh feydj bruk ekuksjatu ugha djrk ftruk
vdsyk phuw dj nsrk gS] vkSj og vkids lkFk gS A vkidk ekuksjatu dj jgk gS A

ge bZ'oj ls izkFkZuk djrs gSa fdnhikoyh vkidks 'kqHk ,oa le`f)e; gks A B.M iM+us
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dj;sa A [kqys LFkku ij ughaA mls tc Hkh nw/k fiyk;sa mcyh cksry esa gh fiyk;sa
rFkk muds [kkus ihus dkfo'ks'k ?;ku j[ksa A Qqy>M+h ,oa iV[k[ks mlls lEHkky dj
NqM+ok;sa A

'ks'k lc Bhd gS A

vkidh eEeh dh rjQ ls vkidks 'kqHkvk'khokZn rFkk leLr ifjokj dh rjQ ls phuw dks
lLusg 'kqHk vk'khokZn A

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6. The above letters, if read together would ipso facto reveal that respondent No. 5 Smt. Ganeshwati is a termagant lady. She is cruel and quarrelsome. She thinks and acts ever ignobly and never lovely. Her husband Lekhram respondent No. 4 had become completely hapless, helpless and hopeless on account of her ignoble conduct and behaviour and had no honour, respect and dignity in his family or outside even in the life time of his son Yogendra Singh Bharti. He had or has no control of any kind whatsoever over his wife Smt. Ganeshwati. This is probably the reason why he did not muster courage to say even a single word against what has been written in the letters marked as Annexure-1 against his wife in particular.

7. Therefore, the questions are whether the respondent No. 5 Smt. Ganeshwati can be expected to mend her ways and turn out to be an ideal/well behaved lady specially after the sad death of her son Yogendra Singh Bharti and also at/in her ripe age, whether her husband Lekhram can similarly be expected to have his control in any manner whatsoever over her at this age and stage and whether they (Smt. Ganeshwati and Lekhram) can be one in ideal conduct, quality and performance for giving the desired love and affection to Chinoo. These questions admit of no other answer than those in the negative. Chinoo is hardly 4 and 1/2 years of age as mentioned earlier. Smt. Sharda is his mother. Commonly speaking mother is bigger/greater than the earth and father is higher than the sky, unfortunately the father Yogendra Singh Bharti already left for heavenly abode. He has, therefore, become fatherless. Love and affection of the mother cannot be compared with that of any other human being, as slumber captures the infant's spirit, his mother places him in the bed and kisses his eyes with quivering lips, who will do so in the instant case particularly in view of the facts and circumstances involved therein. The answer to this posed question is none else than the petitioner Smt. Sharda herself. Moreover he is her present consolation and future hope because her husband is no more. In this very connection something more

may be mentioned as under for redressal of the grievances of the petitioner and respondent Nos. 4 and 5 following the death of Yogendra Singh Bharti ;

'What Death taken away

no Man can restore ;

what Heaven has blessed

no Man can punish ;

what Love has joined

no Man can divide ;

what Eternity has

build no Man can alter ;'

8. Considering the pros and cons of the case and listening to the dictates of my conscience, I arrive at the irresistible conclusion that the petitioner Smt. Sharda is entitled in all respects to her son Chinoo who should be handed over to her. Chinoo has been produced and identified and recognised by her mother Smt. Sharda herself. He is, therefore, handed over to Smt. Sharda in the Court itself. He will live with his mother Smt. Sharda until he attains the age of majority. Thereafter he will be free to live wherever he likes.

9. The court officer is directed to provide adequate security to enable Smt. Sharda to take her son Chinoo to her residence.

10. The petition stands disposed of accordingly.