

Ranjan Kumar Ghose Vs. Debarati Ghose

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Court : Chennai

Decided On : Jan-22-1996

Reported in : II(1997)DMC253; (1996)IMLJ355

Judge : Goverdhan, J.

Acts : [Contempt of Courts Act, 1971](#)

Appeal No. : Contempt Application No. 135 of 1995

Appellant : Ranjan Kumar Ghose

Respondent : Debarati Ghose

Advocate for Def. : Vedantham Srinivasan, Adv. for P.B. Ramanujam, J.R.K. Bhavanantham and R. Guarunathan

Advocate for Pet/Ap. : G. Narasimhalu, Adv.

Disposition : Application dismissed

Judgement :

Goverdhan, J.

1. The applicant is the petitioner in Application No. 7120 of 1994 in which he has prayed for an order of interim custody of minor Rahul Kumar Ghose with a direction to the respondent to hand over the minor during School Holidays and

week ends pending disposal of the Original Petition.

2. After due enquiry giving opportunity to the respondent to file a counter, an order has been passed by this Court on 7.3.1995. In the said order, it has been directed that the learned Advocates for the applicant and the respondent will have to decide the place the custody of the boy could be handed over by the respondent to the applicant either in their presence or in the presence of their representatives and vice-versa, on every Holiday and weekends. A direction has also been given to the respondent to give the custody of the minor to her husband on every Sunday about 8 a.m., and take him back on the same day at 6.30 p.m.

3. The applicant herein who is the husband, has come forward with this contempt application stating that after the said order, the copy of the same was sent to the respondent's Counsel on 10.3.1995 requesting the respondent's Counsel to instruct the respondent to hand over the minor to the petitioner on every Sunday at 8 a.m., and the applicant is prepared to pick up the minor from the residence of Mr. Somayaji, Senior Counsel of the respondent since the minor is familiar to that place. The petitioner has alleged that since Mr. Somayaji has felt inconvenient, the petitioner has requested the respondent to name any other Advocate from whose residence the petitioner could take the child and to the said letter of the Advocate for the petitioner, a reply has been received to the effect that the petitioner can come and collect the child from the residence of the respondent at Besant Nagar at 8.00 a.m., and since the unit test of the minor was to take place, the respondent requests the petitioner not to disturb the child on 12.3.1995. The petitioner alleges that this is a gross violation of the order passed by this Court and the respondent has committed contempt and therefore, the respondent should be punished. The respondent in her counter has stated that as per the oral instructions of the Court, the child was left in the custody of the petitioner on 5.2.1995 between 10.00 a.m. and 4.00 p.m. and the request not to disturb the minor on 12th March, 1995 was made so that his studies are not disturbed and since the minor is not willing to go to the house of the Advocate, the petitioner can come and collect the boy from the residence of the respondent and it cannot be considered as wilful disobedience of the order of this Court.

4. The learned Counsel appearing for the applicant would argue that when the order of this Court is specific in stating that the minor should be collected from a place which is to be fixed by consultation of the Advocates of either side, the respondent has requested the petitioner to come and collect the boy at her residence and it is a gross disobedience of the order of this Court. The learned Counsel appearing for the respondent would on the other hand argue that it is only on account of the fact that the minor was not willing to go to the houses of any Advocate, the petitioner has been requested to come and collect the boy from the house of the respondent. It is also argued by the learned Counsel that in the O.S. Appeal preferred by the respondent the order of this Court has been modified to the effect that the minor need not be disturbed every week and it is enough if the custody of the boy is handed over during vacations and during Summer Vacation of the school, the boy was with the petitioner and it cannot be stated that the respondent has committed any disobedience. The learned Counsel appearing for the applicant has fairly conceded that the minor was with the petitioner during the Summer Holidays of the school. This is an unfortunate case in which the parents are fighting for the custody of their minor son. It is no doubt true that this Court has passed an order on 7.3.1995 directing that the boy should be brought to a place fixed by consensus of the Advocates from where the petitioner should take him to his house. It has been brought to the notice of this Court that subsequently, the minor was entrusted to the custody of the petitioner in the Ashtalakshmi Temple at Besant Nagar since the minor was not willing to go to the House of any Advocate and it cannot be stated that it is a wilful disobedience of the orders of this Court. In order to establish that the respondent has committed Contempt of Court, it must be established that there is a wilful disobedience of the order of this Court by the respondent.

5. In the present case, it cannot be stated that the respondent has wilfully disobeyed the order of this Court by stating that the minor could be collected from her residence by the petitioner. It may be noted that the custody of the minor has been entrusted to the petitioner in the temple. Contempt proceedings cannot be invoked by the parties to a litigation to vindicate their personal vendetta. The Court also cannot consider that minor acts said to have been committed by a contemner is a gross disobedience of the order of the Court. The contemner in a Contempt

Application is not entitled to all defences which are available to an accused person in a criminal case.

6. When we approach the case on hand, bearing these principles in mind, taking any action against the respondent, under Contempt of Courts Act would only amount to the Court considering even a very minor act on the part of the respondent as a gross violation of the order passed by this Court. I am of opinion that the Court had to be magnanimous in considering the rival contentions of both parties while deciding the question whether the contemner has committed an act of gross disobedience. If such a magnanimous approach is made, I am of opinion that the present application by the petitioner against the respondent cannot be said to be an application taken out by the applicant for upkeeping the prestige, decorum and dignity of the Court. I can even go to the extent of saying that it is only an attempt made by the applicant to vindicate his personal vendetta against the respondent invoking the provisions of Contempt of Courts Act. I am of opinion that it cannot be approved. Considering all these aspects, I am of opinion that the applicant has failed to establish that the respondent has committed any gross disobedience of the order of this Court in order to hold that he has committed any Contempt of Court. In that view, I am of opinion that the application is without merits.

7. In the result, the application is dismissed.