A V. RAVI CHANDRAN

v.

UNION OF INDIA & ORS.

(CRL.M.P. No.3401 of 2009)

in

B Writ Petition No.112 of 2007

AUGUST 28, 2009

[TARUN CHATTERJEE AND R.M. LODHA, JJ.]

C *Constitution of India, 1950:*

Article 32 – Writ of Habeas Corpus – Marriage of the couple dissolved by New York Supreme Court with provision for alternative physical custody of their minor child on a weekly D *basis – Wife brought the child to India in violation of court order – Family Court, New York granted sole custody of child to father and issued child abuse non-bailable warrants against wife – Petition by husband before the Supreme Court of India for a writ of Habeas Corpus for custody of child – Held: Despite* E *efforts made by police officers of various States, the respondent-wife and the minor child could not be traced and their whereabouts could not be found – It is almost two years since the notice was issued but he child could not be produced – Respondent wife is said to be mentally unstable and running round with the child from one State to another –* F *In the peculiar and extraordinary circumstances, Central Bureau of Investigation may be assigned the task of tracing the minor and his production before the Court – This has become all the more necessary for the protection of health and safety of the minor and because the police authorities of* G *various States are clueless about the whereabouts of the respondent-wife – Registry of the Court is directed to write to the Director, CBI requesting him to trace the minor – For the said purpose the officers concerned of the CBI would have*

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all the powers of police carrying out search and issue non-bailable warrants if necessary and pick up the minor wherever he is found without interference from anyone and to produce him before the Court - Child and family welfare – Custody of child.

CIVIL ORIGINAL JURISDICTION : Crl. M.P. No. 3401 of 2009.

In

Writ Petition (Criminal) No. 112 of 2007.

Pinky Anand, D.N. Goburdhan, Prabal Bagchi, Attin Rastogi, S. Thananjayan, A.T.M. Sampath, Chandan Ramamurthi, Kamini Jaiswal, D. Bharathi Reddy, Anuradha Rustogi, Anitha Shenoy for the appearing parties.

The Order of the Court was delivered by

ORDER

R.M. LODHA, J. 1. Should Central Bureau of Investigation be requested to trace the minor child Master Adithya Chandran in the Habeas Corpus petition filed by the father is the question presently before us?

2. Dr. Ravi Chandran –petitioner and Vijayashree Voora – respondent no. 6 got married on December 14, 2000 at Tirupathi, Andhra Pradesh according to Hindu rites. On July 1, 2002, a son – Adithya was born out of the wedlock in United States of America. The matrimonial discord arose between the petitioner and respondent no. 6 soon thereafter. Respondent no. 6 approached the State of New York Supreme Court in the month of July, 2003 for divorce and dissolution of marriage. On April 18, 2005, the State of New York Supreme Court passed a consent order governing the issues of the custody and guardianship of the minor Adithya. The Court granted joint custody to the petitioner and respondent no. 6 and it was also

A stipulated in the order to keep the other party informed about the whereabouts of the child. On July 28, 2005, a separation agreement was entered into between the petitioner and respondent no. 6 relying on various provisions of Domestic Relations Law for distribution of marital property, spouse
B maintenance and child support. As regards custody of the minor son Adithya and parenting time, the parties consented to the order dated April 18, 2005. On September 8, 2005, the marriage between the petitioner and respondent no. 6 was dissolved by the State of New York Supreme Court. Child
C Custody order dated April 18, 2005 was incorporated in the order. Later on a consent order was passed by the Family Court, State of New York on June 18, 2007 whereby the petitioner and respondent no. 6 were to have legal and physical custody of the minor child jointly. The consent order provided that parties shall have alternative physical custody of the minor
D child on a weekly basis.

3. On June 28, 2007, respondent no. 6 brought minor Adithya to India informing the petitioner that she will be residing with her parents in Chennai. The petitioner approached Family
E Court, State of New York for violation of the order by respondent no. 6 pertaining to visitation and custody of minor child. He also filed a petition for modification of the custody order. By an order dated August 16, 2007, the Family Court, State of New York granted sole legal and physical custody of the minor Adithya
F to the petitioner temporarily and by a further order dated August 8, 2007 ordered respondent no. 6 to hand over custody of Master Adithya to the petitioner. It transpires that the Family Court, State of New York has issued child abuse non-bailable warrants against respondent no. 6.

G 4. In the month of September, 2007, the petitioner filed a writ petition before this Court praying for a writ of Hebeas Corpus for the production of minor son Adithya and for handing over the custody with his passport to the petitioner. The petitioner has alleged that the child has been illegally and
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unlawfully detained beyond his motherland, USA in blatant violation of orders of US Courts. A

5. In the Hebeas Corpus petition, the petitioner has impleaded Union of India, States of Tamil Nadu and hra Pradesh, Director General of Police of these two States, wife - Vijayashree Voora and her parents as party respondents. B

6. On September 17, 2007, notice was issued to the respondents. Subsequently the petitioner informed the Court that on March 15, 2008, the respondent no. 6 abandoned her residence in Dehradun and traveled in a rented car towards New Delhi and on the way redirected herself to Agra. The next day she was last seen at the entrance of Agra Cantonment Railway Station. Based on that, this Court issued directions on April 28, 2008 to Senior Superintendent of Police, Agra and Senior Superintendent of Police, Union Territory of Chandigarh to trace the child and produce him in this Court. C D

7. In the affidavit filed by the Senior Superintendent of Police, Agra on September 16, 2008, it is stated that for tracing the minor child Adithya and respondent no. 6, a massive search operation was carried through out Agra and all hotels, guest houses and other similar areas were checked but they could not be found residing anywhere in Agra. He also stated that through District Crime Record Bureau and all SHOs and SOs of police stations of District Agra efforts have been made to trace out minor child and her mother and their photographs have also been published along with their description in newspapers having wide circulation all over the country but no clue of their whereabouts could be found. E F

8. Shri S.S. Srivastava, Senior Superintendent of Police, Union Territory, Chandigarh has filed his affidavit on August 13, 2008. He has stated: G

"...All Station House Officers of Police Stations in Chandigarh have been issued instructions vide letter No. H

A 1057-5A/Crime Branch, U.T. Chandigarh dated 3.8.2008 in which the photographs and description of Smt. Vijayasree Voora and her son Adithya have been mentioned and they have been directed to make efforts to trace the whereabouts of the above mentioned persons
B and see if they are residing in any residential area, hotel, guest house, sarai. Though beat system all such places in Chandigarh have been got thoroughly checked and no such persons has been found to be residing in Chandigarh.

C A special look out notice alongwith the photographs Smt. Vijayasree Voora and her son Aditya has been issued vide No. 17011-17030/MOB/UT/A-III/dated, Chandigarh the 5.8.2008 in which directions were issued to all SDPO's and Station House Officers to maintain a
D sharp look out to trace out the whereabouts of the above mentioned woman and her son and to send their report on weekly basis about the details of the efforts made tc trace the above mentioned persons. A copy of the lookout notice is annexed and marked **ANNEXURE R-1** . All SHO's of
E Police Station in Chandigarh have submitted their reports after having thoroughly checked the area under their jurisdiction and the whereabouts of the above mentioned woman and her child could not be traced out in Chandigarh.

F On 8.8.2008 the photographs of Smt. Vijaysree Voora and her son Adithya alongwith their description has been got published in Times of India, one of the leading newspapers having wide circulation all over India.

G The photographs and description of Smt. Vijaysree Voora and her son Aditya have also been got displayed in Bharat Sarkar Doordarshan Kendra, Chandigarh and Delhi, TV Channels having coverage throughout the country.

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A team of police officers have been especially deputed from Crime Branch, Chandigarh Police for tracing the whereabouts of Smt. Vijayasree Voora and her son Aditya, who are regularly checking all the hotels, schools and other places where there could be possibility of finding the above mentioned woman and her child." A B

9. Parents of respondent no. 6 have filed counter affidavit. They have totally denied any knowledge or idea about whereabouts of respondent no. 6 and minor child. In the counter affidavit they stated thus: C

"11. I submit that in view of the information narrated by her about the harassment and cruelty (mental torture) caused by the petitioner she had left my house without disclosing her whereabouts and I sincerely state that I am not aware of her whereabouts and I am not able to D communicate with her.

12. I state from the annexures filed particularly annexure P-10 Colly dated 11.8.2007 refers to that in response to conversation with this respondent mentioned E in E-mail in para 'I' or after. I submit that in one of the E-mail at annexure P-10 Colly the petitioner addressed to Respondent No. 7 that:-

"I have been trying to reach Aditya for the past several weeks and Viji has completely cut me off from the F life of Aditya. Mrs. Voora (Your wife) informs me that she does not know where Viji and Aditya are"

I submit that this respondent from September itself had no knowledge or awareness of the whereabouts of G respondent no. 6 and her minor child and that from ever since she left, he has no information at all about her whereabouts nor he had any contacts or connection with this respondent, and we are not able to trace her out and her minor child. Inspite of knowing all these facts that these H

A respondents are completely oblivious and in complete darkness about her whereabouts even on today...."

10. In the affidavit filed by the Director General of Police, Tamilnadu, it is stated that the respondent no. 6 and the minor child were not found residing at No. 47, B.N. Road (North Boag Road), T. Nagar, Chennai, and on that address, the parents of respondent no. 6 are only residing.

11. The petitioner has filed a Misc. Petition (Crl. M.P.3401 of 2009) on February 23, 2009 stating therein that as per the Deccan Herald newspaper report dated February 18, 2009, respondent no. 6 and the child were last seen in Bangalore. They stayed at KES Lodge in Rajajinagar, Bangalore. On February 23, 2009, accordingly, this Court directed the Director General of Police, Karnataka and Commissioner of Police, Bangalore to trace the child and produce before him this Court on the next date. By a further order dated May 8, 2009, this Court directed the State of Karnataka and particularly, Director General of Police, Karnataka to take appropriate steps to trace the child. A copy of this order was also sent to the Chief Secretary, State of Karnataka.

12. Shri S.N.Bidari, Commissioner of Police, Bangalore city has filed his affidavit stating therein that all necessary steps required in order to trace the missing child Master Adithya Chandran and his mother Mrs. Vijayashree Voora have been taken but without any success. In the affidavit, the details of the efforts made by Karnataka Police have been set out thus:

"(2) It is submitted that the Police Inspector and his team of Rajajinagar Police Station of Banagalore City visited KES Residency, 50th Cross, 3rd Block, Rajajinagar on 5.3.2009 and the said lady and master Adithya were not found. On enquiry with one Shri Prabhakar, Manager of the said Residency, it was learnt that Smt. Vijayashree Voora, mother of the child had left the residency alongwith the child on 17.2.2009 and had not returned. .....

(3) It is submitted that the enquiry revealed that she went to Shiva Temple, Old Airport Road, Bangalore in a private Qualais Vehicle from KES Residency on 17.2. 2009. The enquiry revealed that she requested the manager for help and she was told to come after Shivarathri festival. She left her luggage in the temple and took shelter in the Manager's residence for the night. The next day i.e. on 18.2.2009, she left the temple and after two days, she collected her baggage. Thereafter, there is no information about her whereabouts and the child. The staff continued search in several places in Banagalore City, but the child could not be traced.

(4) It is submitted that the Police Sub –Inspector, Subramanaya Nagara Police station went to Chennai on 4.3.2009 alongwith his staff and enquired with Smt. A. Poornima and her husband Shri A. Ramesh R/o No. 13, North Bhoug Road, G.N. Shetty Road, Chennai- 600 017. Smt. A. Poornima sister of Vijayashree Voora said that her sister Vijayashree Voora had married one Sathya Narayana 18 years back. After 5 years of marriage, she divorced her husb and again married one Dr. V. Ravichandra (Petitioner) in a love marriage and they have one male child name Master Aditya Chandran. Five years back, both of them got mutual divorce in USA (where they were staying together_ and Smt. Vijashree Voora returned from America. At that time, she came to Poornima's residence and she and her husband advised herand even her father also advised her, but she refused to heed to their advice to reconcile with her husb and left the house and till today she had not returned to their residence. Thereafter, her whereabouts are not known. The statement of Smt. A. Poornima and her husband were recorded by the Police Sub-Inspector, Subramanyanagara Police Station. The report of the Police Sub-Inspector, Subramanyanagara Police Station is produced and marked as ANNEXURE-R-2 AND R-2a. As per the

A instructions of Police Inspector, Mahalakshmi Police Station, the Police Sub-Inspector, Rajajinagar Police Station visited Tumkur on 5.3.2009 and enquired at 1) VARIN International Residential School, Doddahosur Gate, Kunigal Road, Gulur Post, Tumkur 0572 118, 2) Prudence
B International School, Hirehalli, Next to TVS Electronics, Tumkur, 3) Maruthi Vidya Kendra, Belagumba Road, Tumkur, 4) Sri. Sri. Ravishankar Vidya Mandir, Belagumba Road, Near TUD Office, Tumkur, 5) Sri. Siddaganga Mutt, Tumkur and also enquired with the concerned persons of
C Samuka Residency, Sai Residency, Vigneshwara Comforts and showed the photo of the child, but no useful information was obtained. .....

(5) It is submitted that on 5.3.2009, Police Sub-Inspector, Srirampura Police Station visited Veda Vignan Maha
D Vidya Peeta and met Mr. Narendra Lamba, the Administrator, Art of Living International Centre and showed photo of Adithya Chandran. However, it was found that no such persons was stayng in the Ashram. .....

E (6) It is submitted that on 6.3.2009, the Poilice Sub-Inspector, Mahalakshmi Layout Police Station, Bangalore alongwith staff visited Shri Sathya Sai Gokulam at Kadugodi, Bangalore District, in search of missing boy and enquired with Mr. Srinivas, Custodian of Ashram. It
F was reported that no such persons was staying in the Ashrama. The PSI also visited Sir. Sathya Sai Institute of Medical Sciences, Whitefield and met Mr.Mohan Das, Sr. Personnel Officer and PRO who informed that no such persons, by name Smt. Vijayashree Voora or Master
G Aditya was admitted in the Hospital. The report of the Police Sub-Inspector, Mahalakshmi layout, Police Station, is produced and marked as Annexure-R5. The Asstt. Commissioner of Police, City Crime Record Bureau, Office of the Comissioner of Police, Infantry Road, Bangalore was instructed on 18.3.2009 to get the photo
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of Aditya Chandra published in the Criminal Intelligence Gazette requesting all the concerned to trace the missing child. The Addl. Director General of Police, State Crime Record Bureau, Bangalore was also requested to publish the photograph of Master Aditya Chandran in 'Talash' and to transmit the said information to all the Police Stations in the State and to trace the said missing boy as early as possible.

(7) The Respondent further submits that City crime Record Bureau on 31.3.2009 sent letter to the Deputy Inspector General of Police, State Crime Record Bureau to publish the details of the missing persons in criminal Intelligence Gazette.

(8) The Respondent further submits that on 16.4.2009 the Police Inspector, Rajajinagar Police Station, wrote a letter to the State Crime Record Bureau, Bangalore to verify and compare the particulars of the missing child in the Talash record and on comparison a nil report was sent to Rajajinagar Police Station on 17.4.2009. On 16.4.2009 the Assistant Commissioner of Police, Malleshwaram, Bangalore wrote letter to the Commissioner of Police, Bangalore requesting for publication of the missing child Master Adithya Chandran in Kannada and English "daily news papers". Further he also requested the Commissioner of Police to send the details to all the District superintendents of Police and Commissioners of Police of Hubli – Dharwad, Mysore and Railway Superintendent of Police. Further, the Asstt. Commissioner of Police. Malleshwaram, Bangalore, wrote letter to Commissioner of Police with a request to address a letter to Doordarshan to Broadcast the particulars of the missing child in Doordarshan. Deputy Commissioner of Police North Divilsion, Bangalore City had sent e-mails to all Commissioners of Police, all Range Inspectors General of Police, all Superintendents of Police including Railways all

A over Karnataka State requesting them to look out for the missing child. An e-mail is also sent to the Director, National Crime Record Bureau, New Delhi requesting for look out of the missing child. ....

B (9) The respondent further submits that the Assistant Commissioner of Police, Malleshwaram wrote a letter to All India Radio, with a request to Broadcast the particulars of the missing child on air. .....

(10) The respondent further submits that on 18.4.2009 the C Public Relation Officer in the Cadre of Deputy Commissioner of Police in the office of Commissioner of Police released press note to all the Electronic Media and Print media requesting for publication of the particulars of the missing child Master Adithya Chandran on Air. The D report regarding the Broadcast of the particulars of the missing child in Doordarshan is also received. .....

(11) It is also further submitted that on 16.4.2009 itself the details of the missing child were uploaded on Internet on E Karnataka State Police web page. The copy of the Web page is herewith produced and marked as ANNEXURE-R20. It is also relevant to submit that all relevant steps are taken to carry out the upload of the particulars of the missing child Master Adhitya Chandran on National Crime Record Bureau with a request to send information to all F the state and Union Territory and forward the information if any obtained in this regard to the Commission of Police, Bangalore.

(12) It is further submitted that the Police officials attached G to Rajajinagar Police Station sent look out notices to Bangalore International Airport Authorities, Railway Station and KSRTC Bus Stand to keep a look out for the missing child. ....."

H 13. From the narration of aforesaid facts, it is abundantly

clear that despite efforts made by police officers and officials of different States such as Senior Superintendent of Police, Agra, Senior Superintendent of Police, U.T. of Chandigarh, Director General of Police, Tamilnadu, Director General of Police, Karnataka and Commissioner of Police, Bangalore City, the minor child Adithya and respondent no. 6 could not be traced and their whereabouts could not be found. It is almost two years since the notice was issued by this Court but the child could not be produced. Respondent no. 6 is said to be mentally unstable and running round with the child from one State to another. In the peculiar and extraordinary circumstances such as the present one, we are of the view that Central Investigating Agency i.e., Central Bureau of Investigation may be assigned the task of tracing minor Adithya Chandran and his production before this Court. This has become all the more necessary for the protection of health and safety of minor and because the police authorities of various States are clueless about the whereabouts of respondent no. 6 who has been moving with the child from one State to another.

14. We, accordingly, direct the registry of this Court to write a letter to the Director, Central Bureau of Investigation requesting him to trace minor Adithya Chandran. For the said purpose, he and the officer nominated by him will enjoy all the powers of Police Officer carrying out search and issue non-bailable warrants, if necessary, and pick up minor Adithya Chandran wherever he is found without interference from any one and to produce him before this Court with his report.

15. Let the matter come up before the Court after six weeks or earlier if the minor child Adithya Chandran is traced by the Central Bureau of Investigation and produced before this Court.

R.P. Matter adjourned.