

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

% Judgment delivered on: 10th December, 2010

+ **LPA No. 878/2010**

ABDUS SABUR KHAN Appellant
Through: Mr. Jayant Bhushan, Sr. Adv.
with Mr. Amjad Ali, Mr. Anil
Agarwalla, Mr. Jagdeep Anand,
Advocates
versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Ruchir Mishra, Adv. for
Respondent Nos. 1, 2, 3 & 9

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

1. Whether reporters of the local papers be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

DIPAK MISRA, CJ

In this intra-Court appeal under Clause 10 of the Letters Patent questioning the warrantableness of the order dated 25th November, 2010 passed by the learned Single Judge in WP(C) No. 7898/2010, though on the surface level, a question is raised as to the *locus standi* of the appellant-petitioner (hereinafter referred to as 'the appellant') as a father to question the legal propriety of the order passed by the Ministry of Home Affairs (MHA), Foreigners Division, Government of India under Section 3A of the Foreigners

Act, 1946 (for brevity 'the Act') whereby the competent authority has passed an order that the respondent no.10, Ms. Shazia Zareen Sathi, the daughter of the appellant, will remain exempted from deportation proceedings, yet on a studied scrutiny and a keener scan, it would be luminescent that the father has put his obstinacy and honour in its degenerated sense at a higher pedestal in the name of parental concern totally ostracising the idea and the value that a major has the choice to get married and also a right to life and not to live in constant fear psychosis. True it is, it has been said "the family is the nucleus of civilisation", but the question that emerges for consideration is whether a daughter, after getting protection from the authority of MHA, would still remain subservient to the loud and morbid honour of her father who is embedded with his "coveted honour". Long back, Aristotle had pronounced, "Dignity doesn't consist in possessing honour, but in deserving them". As the factual matrix of the case would unfold, it would reveal that the respondent no.10 has the intense desire to get rid of the 'family skeleton' and the "myth of honour" and lead a life of her own choice.

2. The exposition of facts, as unfurled, are that the daughter of the appellant, a major, came to India on her own on a Bangladeshi passport and got married to one Zubair Khan on 13th February, 2009

and thereafter submitted a representation to the Central Government on 28th May, 2010 wherein she expressed an apprehension that if she went back to Bangladesh, her life would be in danger. The learned Single Judge perused the impugned order which showed acceptance of the apprehension expressed by Ms.Shazia Zareen Sathi and the formation of an opinion that all the provisions of the Act shall not apply to her as well as to her daughter and she would remain exempted from deportation proceedings. Upon perusal of the order the learned Single Judge held that the writ petition was not filed in the best interest of the respondent No.10 as she has a choice to marry and the plea of the father that he is concerned with the safety and welfare of his daughter is not convincing and, hence, the impugned order at the instance of the appellant is not to be interfered with.

3. We have heard Mr. Jayant Bhushan, learned senior counsel along with Mr. Amjad Ali, Mr.Anil Agarwalla and Mr.Jagdeep Anand for the appellant and Mr. Ruchir Mishra, learned counsel for the respondent Nos. 1, 2, 3 and 9.

4. Mr. Bhushan, learned senior counsel, questioning the correctness of the order, submitted that the learned Single Judge has, in a way, opined that the appellant has no *locus standi* to call in

question the order of the authority which is demonstrably erroneous. It is his further submission that as a father, the appellant has the concern and also the duty to see that his daughter, who is married to the said Zubair Khan who has criminal antecedents, is not involved in human trafficking and her life is not in total peril. The learned senior counsel would submit that the daughter of the appellant has not taken 'talaq' from her first husband and, therefore, the marriage with Zubair Khan is totally illegal and, hence, the exemption is in total disregard of the law and deserves to be axed.

5. Mr. Ruchir Mishra, learned counsel for the Union of India, submitted that the entire facts were considered by the competent authority and an order has been passed and the said order, being on the basis of the material available on record, cannot be found fault with. The learned counsel also submitted that the risk to the life of the respondent no.10 in Bangladesh is real and, therefore, the stand of the appellant that he is interested in the safety of his daughter is far from being convincing and the same having been noted by the learned Single Judge, the order deserves to be given the stamp of approval in this appeal.

6. To appreciate the submissions raised at the bar, we called for the original file wherein the representation of the respondent no.10

was dealt with and the order was passed. On a perusal of the file, we find that the respondent no.10 is a Bangladeshi national who had arrived in India on 12th February, 2009 on 'T' visa valid for 30 days and after certain communication from the Bangladesh High Commission, a report was called from FRRO, Delhi and Intelligence Bureau which found nothing adverse against Ms. Shazia Zareen Sathi. As she was staying on an invalid passport, the Ministry of External Affairs was requested to contact the Bangladesh High Commission to determine the modalities for her deportation. Eventually, as is revealed, the appellant had filed WP(C) No.12325/2009 praying for deportation of his daughter to Bangladesh in accordance with law. Mr. Zubair Khan, husband of Ms. Shazia Zareen Sathi, the respondent no.10 herein, had filed WP(Crl.) No. 965/2009 for quashment of the FIR lodged by the cousin of the respondent no.10 under Sections 366 and 342 of IPC. At this juncture, a representation was received from Ms.Shazia Zareen Sathi in November, 2009 requesting for facilitating her stay in India with her husband Mr. Zubair Khan. The Joint Secretary (F) spoke to FRRO, Delhi on 2nd February, 2010 and stated the position that if Ms.Shazia Zareen Sathi is deported to Bangladesh, her parents would cause harm to the child in her womb which raises human rights issues. The Court recorded the stand of the

Government that Ms.Shazia Zareen Sathi has also submitted a request to the Government of India for allowing her to stay in India for a long period and this Court left it at the discretion of the Government to consider her request. In WP(Crl.) 965/2009, this Court directed the investigating officer to visit Ms.Shazia Zareen Sathi on 4th February, 2010 and to file a status report. After the queries were made, this Court eventually directed the State Government to consider the request and take appropriate decision. Thereafter, as the notings in the file would reveal, the matter was considered at various levels and eventually, as is manifest, Ms.Shazia Zareen Sathi met the Joint Secretary (F) on 20th May, 2010 and informed that she is living happily with her husband in India and if she would go to Bangladesh, her life would be in jeopardy. Considering the representation and the statement, on 22nd September, 2010, the respondent no.10 has been allowed to stay in India on humanitarian basis exempting deportation/ prosecution against her and her daughter by invoking Section 3A of the Foreigners Act, 1946.

7. In this context, we may refer with profit to Section 3A of the Foreigners Act, 1946 which reads as follows:

“3A. Power to exempt citizens of Commonwealth countries and other persons from application of Act in certain cases. – (1) The Central Government may, by

order, declare that all or any of the provisions of this Act or of any order made thereunder shall not apply, or shall apply only in such circumstances or with such exceptions or modifications or subject to such conditions as may be specified in the order, to or in relation to –

- (a) the citizens of any such Commonwealth country as may be so specified; or*
- (b) any other individual foreigner or class or description of foreigner.*

(2) A copy of every order made under this section shall be placed on the table of both Houses of Parliament as soon as may be after it is made."

On a reading of the aforesaid provision, it is crystal clear that the Central Government has the power to declare all or any of the provisions of the Act or of any order made thereunder not applicable to a citizen of specified commonwealth country. There are certain riders apart from the stipulation that copy of every order made under the said Section is required to be placed on the table of both Houses of the Parliament. Thus, there are immense safeguards and guidelines inbuilt in the said provision. This Court in its power of judicial review is only required to see whether a decision taken by the Central Government at this stage dealt with the case appositely regard being had to the representation made by the daughter of the appellant or passed an order in a routine or mechanical manner. The reasons indicated therein clearly show that there has been application of mind, survey of facts, analysis of the situation and

consideration of the factual score from human rights perspective. Thus, it would be inapposite to accept the apprehension of the appellant that his daughter might be involved in any kind of trafficking. The daughter, as the facts exposit, is a major. She has a choice to lead her individual life. There may be cases where a father in certain circumstances may think of filing a habeas corpus petition in case the daughter is detained in illegal custody. But when a public authority has examined her and recorded the satisfaction that she is married to Zubair Khan and has been blessed with a daughter, the said ground also melts into insignificance. On the contrary, the apprehension expressed by the daughter before the competent authority of the department, we are disposed to think, is absolutely sanguine. She has the fear not of her life in case she is deported but also that of her daughter. When a statutory provision empowers the Central Government to take a decision and when a danger to life has been canvassed and the same has been accepted by the authority on proper scrutiny of the material, it can be stated with certitude that the decision rendered is in accord with the constitutional philosophy of India, the statutory protection and declaration of human rights. It is apt to note that a human right is a basic right, a natural right. It cannot be crucified or brought to a state of comatose because of maladroit design of a headstrong

father. It can only be said that the father has exhibited obstinacy and stubbornness in a bad cause. The father may harbour a feeling that it is the defeat of his family but a defeat of this nature is not to be given any kind of acceptance.

8. In *Sangita Rani (Smt) Alias Mehnaz Jahan v. State of Uttar Pradesh and another*, 1992 Supp (1) SCC 715 a three-Judge Bench of the Apex Court while dealing with a petition preferred under Article 32 of the Constitution of India had not only quashed the FIR taking note of the fact that the boy and the girl had already been married and the marriage had been registered in court but also cautioned the parents to accept the situation and create no problem for her daughter and her husband.

9. In this context, we may refer with profit to the decision in *Lata Singh v. State of U.P. & Anr.*, AIR 2006 SC 2522, wherein a two-Judge Bench of the Apex Court has opined thus:

“18. We sometimes hear of ‘honour’ killings of such persons who undergo inter-caste or inter-religious marriage of their own free will. There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal minded persons who deserve harsh punishment. Only in this way can we stamp out acts of barbarism.”

10. We may hasten to add though the said decision was rendered in a different context but we have referred to the same because their Lordships have shown their concern with regard to 'honour killing' and in the case at hand the apprehension expressed by the daughter before the competent authority of the Central Government speaks eloquently about the danger to life she would face if she goes back to her father in Bangladesh because of the honour which the father harbours in a different way.

11. The parental unwanted and unwarranted intervention in the lives of major children is sometimes writ large. In the name of honour-individual, family and community apart from torture murder also takes place. Honour killing cannot be countenanced in a civilized society and more so in a body polity governed by rule of law, for right to life is sacred and sacrosanct. One may treat that it is an affair of honour and he would go to any extent for the cause of his honour but by such an idea he cannot have the feeling of a victor and the sufferer at his hand a vanquished one. India, is governed by the resplendent philosophy of the compassionate Constitution of India which puts life at the greatest pedestal and in such a system an arbitrary rule, the fashionable world of honour to commit offences or to trespass into others' individual living is totally impermissible. The concept of social expulsion or suspension or

even for that matter a perverse notion of self-respect cannot be countenanced. True it is, Mr. Bhushan, learned senior counsel for the appellant urged with immense vehemence about the *locus standi* of the father and his concern but we are of the considered opinion in the present case that both the concepts are bound to collapse like a pack of cards as the facts are tell tale to fresco the picture that the appellant as a father has an agenda of vendetta and not of real concern.

12. Ex consequenti, we do not find any merit in this appeal and dismiss the same. Ordinarily, we would have imposed exemplary costs but we have refrained from doing so. We are disposed to think, a misguided father requires more of therapeutic treatment rather to face the burden of costs.

CHIEF JUSTICE

MANMOHAN, J

December 10, 2010
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