

RE SK (PROPOSED PLAINTIFF)
(AN ADULT BY WAY OF HER LITIGATION FRIEND)
[2004] EWHC 3202 (Fam)

Family Division

Singer J

2 February 2005

*Forced marriage – Young adult – British citizen apprehended thought to be
in Bangladesh – Jurisdiction of court in cases of forced marriage of an
adult*

The proposed plaintiff was a young adult British citizen, habitually resident in England, but at the time of the application present in Bangladesh with members of her family. The request for action was taken on her behalf but without her knowledge by a solicitor with expertise in child abduction and forced marriage at the request of the Community Liaison Unit at the Foreign and Commonwealth Office after receiving disquieting information from the Consular Offices in Bangladesh. In the event, the plaintiff returned to England after the judge had made orders designed to establish her true wishes.

Held –

(1) Forced marriage was an abuse of human rights. It was a form of domestic violence that dehumanised people by denying them the right to live their lives. The countries within which forced marriage was widespread were not restricted to countries of any one faith.

(2) A young woman, if a child, could be protected by being made a ward of court. An adult could not be made a ward of court, but the inherent jurisdiction of the High Court could, in an appropriate case, be relied upon to provide a remedy, being of sufficient flexibility to evolve in accordance with social and moral values.

(3) The defendants to the summons, which would be issued by way of originating summons with the court's leave, would be the parents. The purpose of the order would be to do what could be done to order the defendants where binding orders were appropriate, and to invite other persons and authorities where they were not subject to the court's orders, to arrange for the plaintiff to see an appropriate official for the purpose of establishing her true wishes. The order would include injunctions preventing relevant individuals from threatening or harassing her, or using violence against her, or causing arrangements to be made for a marriage ceremony to take place.

Statutory provisions considered

Supreme Court Act 1981

Family Law Act 1996

Cases referred to in judgment

A v A Health Authority and Others; Re J and Linked Applications [2002] EWHC 18 (Fam/Admin), [2002] Fam 213, [2002] 3 WLR 24, [2002] 1 FLR 845, FD

P v R (Forced Marriage: Annulment: Procedure) [2003] 1 FLR 661, FD

S (Hospital Patient: Court's Jurisdiction), Re [1996] Fam 1, [1995] 3 WLR 78, [1995] 1 FLR 1075, [1995] 3 All ER 290, CA

Teertha Gupta for the petitioner

SINGER J:

[1] This judgment is intended as a brief explanation of why I have decided to exercise jurisdiction in this case, which although novel is of a type which has been anticipated by commentators and practitioners who work in the field of forced marriage: where the threat or the reality of this abuse strikes at an adult. What powers if any have the courts of England and Wales and how should they exercise them?

[2] The proposed plaintiff in these proceedings as yet knows nothing about them. She is a young adult British citizen, so far as I know on the information that is available brought up and certainly habitually resident in England unless she herself has very recently voluntarily taken up habitual residence elsewhere. Her family comes from Bangladesh and this is where she now is so far as is known. They too are unaware of this application which is brought without advance notice to any proposed defendant.

[3] The request to take action on her behalf has come to Miss Anne-Marie Hutchinson of Dawson Cornwell, a solicitor with expertise in cases involving child abduction and forced marriage, from the Community Liaison Unit at the Foreign and Commonwealth Office. Consular officers in Bangladesh and London have, from a variety of sources, received information concerning the young woman who is the proposed plaintiff which, if true, is gravely disquieting. It is quite unnecessary, I think, for present purposes to go into the detail of the reasons for that anxiety or how they have been communicated. Suffice to say that if they prove to be substantially well-founded they would certainly satisfy me that there would be serious cause for concern about her capacity to control her own life and destiny at the moment. This, notwithstanding that she is an adult and is emancipated, at least in terms of English law, and should not be the subject of duress or force or be deprived of the ability to make her own decisions.

[4] There is, as I say, information which if true (and that of course is as yet untested) would lead me to believe that she may be being kept by relatives or friends of relatives and family in Bangladesh contrary to her will, and that her anticipated return to this country (the expected date for which has been seriously delayed) may be being frustrated as part of an attempt to marry her forcibly. It may transpire indeed that she may be or is a young woman in relation to whom that has already happened. In either event the activities involved to those ends would be or would have been a gross interference with her human rights and might have involved the commission of criminal offences against her. If, in truth, she were forced to marry or if, in truth, that is the outcome which she may contemplate and fear, then steps taken in furtherance of those ends would be a series of acts to which she did not consent. Indeed her very capacity to consent would have been overborne by fear, duress or threat. If, therefore, she has been through or faces the prospect of going through a ceremony of marriage with which she is, in fact, not in agreement it would be a voidable marriage, but nevertheless one which might engender irreparable and severe physical and emotional consequences for its victim.

[5] In the case of a young person (male or female) still a minor, that is to say under the age of 18, the English courts have over recent years demonstrated their capacity to act in concert with, amongst others, the Foreign and Commonwealth Office, a number of non-Governmental organisations in this country and abroad, and humanitarian and committed judges and lawyers

abroad to attempt to prevent such gross transgressions of an individual's integrity and, wherever possible, to remedy their consequences. Amongst the fruits of this co-operation are the publication last June of *Guidance on Forced Marriage from the Law Society of England and Wales* (see [2004] 126 IFL), the imminent issue by the Foreign and Commonwealth Office of a brochure designed to alert potential victims to the preventive measures and the remedies available, and the recent establishment of a new joint Home Office–Foreign Office Forced Marriage Unit (announced on 27 October 2004: see www.fco.gov.uk or www.homeoffice.gov.uk). In the press release issued on that occasion the then Home Secretary is quoted thus:

‘Forced marriage is simply an abuse of human rights. It is a form of domestic violence that dehumanises people by denying them their right to choose how to live their lives. Valuing individual citizens, their dignity and the contribution they have to make to society in their own right is a central part of our drive for strong, active communities. The appalling practice of forced marriage represents the opposite extreme and that is why Government is taking tough action to eradicate it. It is very encouraging that a large number of community and faith leaders and voluntary organisations have come forward to take a full part in raising awareness of these problems and the support that is available.’

[6] The communities within which forced marriage can take place are numerous and they are by no means restricted to communities of one faith, or to communities in or from any one part of the world. I certainly have had experience of forced marriage cases involving various religions other than Islam and with connections elsewhere than in South-East Asia. However, it is certainly to be noted and applauded that responsible Muslim bodies within England and Wales recognise and broadcast that forced marriage is un-Islamic, that it finds not the slightest vindication in the Koran, and is as unacceptable in Islam as to all other true religions.

[7] I emphasise, as needs always to be emphasised, that there is a spectrum of forced marriage from physical force or fear of injury or death in their most literal form, through to the undue imposition of emotional pressure which is at the other end of the forced marriage range, and that a grey area then separates unacceptable forced marriage from marriages arranged traditionally which are in no way to be condemned, but rather supported as a conventional concept in many societies. Social expectations can of themselves impose emotional pressure and the grey area to which I have referred is where one may slip into the other: arranged may become forced but forced is always different from arranged.

[8] This young woman, therefore, if a child, would be protected by the court, which would make orders of the sort I am making but adapted to the fact that a child can be made a ward of court. An adult cannot be made a ward of court, but the inherent jurisdiction of the High Court can, in an appropriate case, be relied upon and utilised to provide a remedy. I believe that the inherent jurisdiction now, like wardship has been, is a sufficiently flexible remedy to evolve in accordance with social needs and social values. If an adult is deprived of the capacity to make relevant decisions, then, if there is disagreement about what should be done in his or her best interests, or if there is a serious issue as to the propriety of what is proposed, recourse can be had

to the court for declaratory relief. Clear resemblances are to be discerned, in my judgment, with cases such as that of the Norwegian deprived of the capacity for autonomy by the after-effects of a stroke (see *Re S (Hospital Patient: Court's Jurisdiction)* [1996] Fam 1, [1995] 1 FLR 1075). I draw attention also, as to the scope of the court's declaratory powers in relation to those infelicitously described as 'incompetent adults', to Munby J's helpful summary between paras [37] and [40] of *A v A Health Authority and Others; Re J and Linked Applications* [2002] EWHC 18 (Fam/Admin), [2002] Fam 213, [2002] 1 FLR 845.

[9] Decisions can be made for such unfortunate persons in the light of, and guided by, what is in their best interests as objectively viewed by an independent court with an oversight of relevant information. By analogy, and appropriately it seems to me, it is within this court's power, notwithstanding that this English resident is currently abroad, to make orders and to give directions designed to ascertain whether or not she has been able to exercise her free will in decisions concerning her civil status and her country of residence. It may, of course, turn out to be the case that all is well and that she is content with whatever arrangements are currently in place. But as I say, the causes for anxiety are such and sufficiently cogent in my view to justify this court's interference in the first instance, at least to the extent and for the purpose of evaluating her circumstances.

[10] The defendants to the process, which will be issued by way of originating summons with my leave, will be her parents. It is a matter for the election of those who represent her interests whether also to include as defendants one or both of her brothers who are believed also to be in Bangladesh at present. The purpose of the order will be to do what can be done properly to order defendants where binding orders are indeed appropriate, and to invite and encourage other persons and authorities where they are not subject to this court's orders, to arrange for the plaintiff to be seen by an appropriate official at the High Commission in Dhaka for the purpose of establishing what SK's true wishes are in an environment where, it is to be hoped, she will feel able to express them. That I know to be an objective which the Foreign and Commonwealth Office will espouse as being within the consular protection that this country extends to its nationals abroad, irrespective, in the first instance, of any question of dual nationality.

[11] That is pretty much as far as the form of my order for the moment goes, but it will include injunctions preventing relevant individuals from causing or permitting any arrangements to be made for her to go through a ceremony of marriage or permitting such a ceremony to take place. I will also provide for injunctive relief restraining such persons from threatening, intimidating or harassing her, or using violence on her. Such is the strength of my anxiety, although the evidence is indirect and incomplete, that it seems to me that powers of arrest can be attached for the time being to bring home to those who receive the order the seriousness with which such plainly improper behaviour will be regarded by this court, if established.

[12] The precise whereabouts of the plaintiff are unknown and need to be established to maximise the prospect of an effective investigation of SK's wishes and circumstances. In what I hold to be a proportionate response to what I regard as the potential urgency of the situation and the seriousness of the risk, I authorise the issue of bench orders requiring the attendance of a number of relatives of the plaintiff before a High Court judge next Tuesday,

for them to be required to give information about their last knowledge of her precise whereabouts in Bangladesh or elsewhere.

[13] I will reserve the case to myself if available, because it should if possible have judicial continuity. An extract of the pertinent portions of the order I approve is annexed in case it may prove of assistance in any comparable situation, and as a draft to which improvements can undoubtedly be made.

[14] I will make no order in relation to the costs incurred in making this application thus far. There are indeed none in this case as yet, as both solicitor and counsel are acting at this stage on a pro bono basis. But I do suggest that any necessary consultation should take place so that where, as here, one government department (the Foreign Office via its Human Rights section of which the Community Liaison Unit forms part) invites lawyers to act upon information it has received, the other (the Legal Services Commission which is responsible for maintaining and developing Community Legal Service through which public funding for litigation is made available) should enable reasonable consequential applications to the court to be remunerated. The risk or threat of forced marriage seems to me to be just as critical in its significance for the individuals caught up in such situations as the completed fact of a marriage imposed by force is upon one or both its participant 'spouses'. The need for such proceedings to come before a Family Division judge is clear when the perceived threat is to an adult. Thus the sentiments (both generally as to the impact of forced marriage, and concerning public funding in particular) expressed by Coleridge J when granting a decree of nullity in a forced marriage case are apt by analogy. The case is reported as *P v R (Forced Marriage: Annulment: Procedure)* [2003] 1 FLR 661, and he said:

[17] In cases where a forced marriage is alleged the proper course is for a petition under s 12(c) [of the Matrimonial Causes Act 1973] to be brought before the court. I am informed by counsel for the petitioner that there is a real stigma attached to a woman in the petitioner's situation if merely a divorce decree is pronounced and it is desirable from all points of view that where a genuine case of forced marriage exists the court should, where appropriate, grant a decree of nullity and as far as possible remove any stigma that would otherwise attach to the fact that a person in the petitioner's situation has been married.

[18] It follows from that that those charged with the decision of whether or not public funds should be made available in these circumstances should be ready, in the right case, to grant public funding to enable such nullity proceedings to be brought. It is necessary for public funding to be made available so that these cases, which are now not rare, can be investigated by the court. They are of special significance in the community from which the petitioner originates and it is appropriate that they should be transferred to the High Court and investigated properly and fully in open court.'

Postscript

[15] What then happened is that immediately upon service with the bench orders the relatives took steps to communicate with the plaintiff and her family in Bangladesh, with the result that very promptly indeed she was

interviewed in Dhaka by a British consular officer. The outcome was that the plaintiff did return to this country and conveyed that her wish was that the proceedings should not continue, maintaining that she had no need of the court's intervention on her behalf. In those circumstances the proceedings were discontinued.

[16] Although, therefore, in this particular case it seems that the anxieties giving rise to the proceedings may have been ill-founded, their utility has been to clarify to this family (if clarification may have been needed) the importance these courts place on the right of the individual to exercise choice in this most intimate area of decision-making. There can be no doubt that a very significant number of young persons find themselves coerced into marriage each year, or subject to that threat. The count was 105 during the past year through the Islamabad High Commission alone, of whom about 20% of those seeking assistance were male teenagers or young men. It seems reasonable to suppose that these known cases may constitute a representative sample only.

[17] There is, therefore, in my view a need for it to be known by relevant professionals and amongst the relevant communities that proceedings such as these are in appropriate situations available, and that the courts are accessible to investigate the circumstances of adults as well as children. I should add that the same is true in the courts of, for instance, the Islamic Republic of Pakistan and in Azad Kashmir where the ancient writ of habeas corpus has been turned to contemporary use. In a case of suspected restraint with a view to or subsequent to forced marriage, habeas corpus is effective there to secure the attendance of children and young adults at court, so that the judge may ascertain their true wishes and, if coercion is established, ensure their release and (if they wish) their return to this country.

Annex

[after the penal notice:]

WHEREAS SK is an adult British citizen, ordinarily resident in England, travelling on a British passport and currently believed to be in the People's Republic of Bangladesh at an address the details of which are currently uncertain

AND WHEREAS this Honourable Court has reason to believe on the basis of the information presented to it that SK:

- (a) may be detained involuntarily in Bangladesh contrary to her true wishes
- (b) may be confined or restricted by third parties contrary to her true wishes
- (c) may be incapable therefore of expressing her true wishes
- (d) may be unwilling to be or to remain in Bangladesh
- (e) may have been or may become the subject of a ceremony of marriage to which she did not or does not consent, namely a forced marriage to which she lacked or would lack capacity to consent

AND WHEREAS this Honourable Court is anxious to protect and secure the well-being and best interests of SK and to ensure that she may freely express her wishes concerning her country and place of residence and concerning her marital status

IT IS ORDERED that:

- (1) SK is to contact the British High Commission in Dhaka, Bangladesh forthwith with a view to being interviewed alone, the address of which is: ...
- (2) The Proposed Defendants do forthwith upon the terms of this order coming to their attention disclose the exact whereabouts of SK to (... the Plaintiff's litigation friend, care of Messrs ...)
- (3) The Proposed Defendants do assist and allow the Proposed Plaintiff SK to visit the British High Commission in Dhaka, Bangladesh for her to be interviewed alone by an officer of the said High Commission, on a date and at a time to be agreed between the parties through the Plaintiff's litigation friend
- (4) Pending further order the Proposed Defendants shall not cause or permit SK to undergo any ceremony or purported ceremony of betrothal or marriage whatsoever
- (5) Until ... the Proposed Defendants are prohibited whether by themselves or by instructing or encouraging any other person whether in the United Kingdom or in Bangladesh from:
 - (a) threatening intimidating or harassing the Proposed Plaintiff SK
 - (b) using violence towards or upon the Proposed Plaintiff SK
- (6) Leave is granted to disclose this order and the originating summons together with the supporting documentation to the Foreign and Commonwealth Office
- (7) Liberty is granted to the Proposed Defendants to apply to vary or discharge the orders herein on 48 hours' notice to the solicitors for the Proposed Plaintiff.
- (8)
 - (a) Permission is granted to serve these proceedings outside the jurisdiction if necessary
 - (b) Personal service of a facsimile copy of this order upon any person is hereby deemed to be good service
- (9) Permission is granted to Messrs ... not to serve these proceedings and/or to serve only an edited version of the evidence thus far filed in these proceedings on the Defendants if so advised, upon the basis that this direction shall be reviewed at each hearing of this application
- (10) A Bench Order shall issue to require such of the following individuals as are adult (ie over 18 years of age) to attend court on ... to give evidence as to the current and recent whereabouts and circumstances of SK: ...

AND THIS COURT RESPECTFULLY INVITES all judicial and administrative bodies and police authorities in the People's Republic

of Bangladesh to render assistance in establishing the whereabouts of SK and in arranging for her to be placed in contact with the British High Commission in Dhaka.

Solicitors: *Dawson Cornwell* for the petitioner

PATRICIA HARGROVE
Law Reporter