

Appeal Number : **CC51726-1997**
BK (Risk – Adultery -PSG) India CG [2002]
UKIAT 03387

IMMIGRATION APPEAL TRIBUNAL

Heard at : Field House
on : 15th May 2002
Dictated : 16th May 2002

Determination Promulgated
.....2-8-2002.....

Before:-

Mr H J E Latter (Chairman)
Mr P D Burns
Mr A Smith

between

Balvir KAUR

Appellant

and

The Secretary of State for the Home Department

Respondent

DETERMINATION AND REASONS

Representatives:

For the Appellant: Ms A Weston of Counsel, instructed by Atteys, Solicitors.
For the Respondent: Mr D Buckley, Home Office Presenting Officer.

1. This is an appeal by Balvir Kaur, a citizen of India, against the Determination of an Adjudicator (Mr Mark Davies) who dismissed her appeal against the Respondent's decision made on 27th January 1997 giving directions for her removal following the refusal of her claim for asylum.
2. The Appellant arrived in the United Kingdom as long ago as 20th April 1991 with entry clearance as a visitor. She was granted six months' leave to enter. On 8th August 1991, she applied for asylum. She submitted her Self-Completion Asylum Questionnaire dated 18th November 1991 but was not interviewed until 12th December 1996. The initial basis of her claim was that her husband was a member

of Babbar Khalsa. The police came looking for her husband. The Appellant did not know where he was and the police took her to the police station. They harassed her and wanted to know where her husband was. They threatened that, if she did not present her husband in front of them, she would be arrested in his place. She spoke about this with her sister in the United Kingdom who suggested that she came to visit her. She applied for entry clearance. When interviewed, she said that the purpose was to visit her sister. She was leaving her daughter in India. She had no problems in her home area.

3. The Secretary of State clearly did not believe the account given by the Appellant. He refused her claim for the reasons set out in his letter dated 27 January 1997. The Appellant appealed against this decision and her appeal was heard by the Adjudicator on 27th August 1997. By this stage, another factor fell to be considered. In December 1994, the Appellant had met a man called Pyara Singh and a friendship developed leading to a short affair. The Appellant became pregnant and gave birth to her son, Karan Vir Singh Rai. Two months after his birth, Pyara Singh terminated the relationship because he did not wish to divorce his wife but he has continued to have contact with Karan and pays maintenance. The Appellant says that she cannot return to India because she is in fear of the authorities as the police will continue to harass her as she is the wife of someone they believe to be a terrorist (A12). She is also in fear of her husband, saying that she is certain that he will kill her and her son if they are returned to India. Her daughter, Amandip Kaur, who still lives in India, has been in contact with her father and she says that he has threatened her, saying that she must not have any contact with her mother. The Appellant also asserts that, if she returns to India, she will be ostracised and persecuted by her community because she is the mother of an illegitimate child. The domestic situation is made more complicated by the fact that Mr Pyara Singh has said that he will take proceedings to attempt to obtain a residence order if there is any prospect of Karan being removed to India with his mother.
4. Having heard the evidence, the Adjudicator did not believe that the Appellant's husband had been politically involved as alleged, nor that the Appellant had had any political involvement. He commented that at the very best, even if he were prepared to accept that her husband was involved in some political activity, he had been involved in terrorism and acts of violence which it would be legitimate for the authorities in India to investigate. However, he accepted that the Appellant had had an adulterous affair in the United Kingdom with a married man which had resulted in the birth of a child. There was no prospect of the Appellant, her son and his father forming a family group in the United Kingdom. He accepted that if she returned to India she may face discrimination but, even were it to amount to persecution, it would not arise on account of her membership of a particular social group. He accepted that the Appellant's husband in India may well be extremely unhappy about the situation but he did not accept that there would be a course of persecution by the authorities. He also commented that the Appellant's credibility had been reduced by the timing of her political asylum application which was nearly four months after her arrival in the United Kingdom as a visitor. In these circumstances, he dismissed the appeal.
5. Leave to appeal was granted, and the appeal was duly listed for hearing before the Tribunal. The hearing was adjourned pending the decision of the House of Lords in

Shah and Islam (1999) Imm AR 283. There then followed a number of delays which were not the fault of either party, but due to administrative errors by the Tribunal and the appeal was finally listed for hearing before this Tribunal on 15 May 2002. This appeal is being heard almost eleven years after the Appellant first applied for asylum. This kind of delay is wholly unacceptable. It is not in the Appellant's interest insofar as she has a genuine claim to pursue, and it most certainly is not in the public interest. The introduction of new procedures and, perhaps more importantly, more resources at least means that this kind of delay normally no longer occurs, not that this is necessarily much consolation for the Appellant, save to the extent that the change in circumstances and the passage of time (and perhaps the development of the law) puts a very different complexion on her claim. A further consequence of the fact that the decision was made in January 1997 means that the Tribunal has no jurisdiction to consider any claim under the Human Rights Act. Karan was born in May 1996. He will be six this year. He has now started school. Assuming that the witness statements are correct and he has regular contact with his father, there is clearly a strong argument that it would be disproportionate to a legitimate aim under Article 8(2) for this child to be removed to India but, as the Tribunal has said, that matter is not before us.

6. The Tribunal must now turn to the issue of whether the Appellant has a well-founded fear of persecution for a Convention reason under the Refugee Convention. The case put by Ms Weston can be summarised succinctly: the Appellant has committed adultery. The very fact of the birth of Karan proves this. The Appellant is from a simple rural background. If she returns to her home area, she will be ostracised by the community but, more to the point, will be at risk of violence from her father and family members. She will not be able to look to the Indian authorities for protection as they rarely involve themselves in domestic matters and, in any event, her position will be aggravated by the fact that the police will be even less inclined to protect her because her husband is a suspected terrorist. Although India is a very large country, it would not be reasonable to expect her to relocate because she will be returned to a situation where she will be destitute. Both she and her son would suffer unduly. Mr Buckley's response to this is that the criteria for a social group, set out by the House of Lords in **Shah and Islam**, is not fulfilled. The Appellant would be able to look to the authorities for protection as the criminal justice system is available to all in India. She would be able to go to a different area where there will be no real risk of any contact with her husband.
7. The Tribunal has been referred to reports prepared by Dr. Purna Sen from the London School of Economics and an opinion from Professor Patricia Jeffrey from the Department of Sociology at the University of Edinburgh, both dealing specifically with the situation in which the Appellant finds herself. There is also a letter from Hannana Siddiqui from the Southall Black Sisters. Dr. Sen in her report summarises the background to the Appellant's claim, and summarises her fears as being from a hostile husband who she fears would kill her, a police force which she feels will continue to harass her about her husband's activities and a community which she considers will be hostile to her condition of having an illegitimate child. The report deals with the situation facing single adult women in India and in particular the problems arising from divorce and separation. The general cultural attitude is that a woman belongs to her husband once married and this proprietorial relationship is offended by a man other than the husband having sexual relations with a married

woman. If the Appellant is not supported by her family, she will need to provide for herself and her son. There is no certainty of employment and there is the possibility that she would be cajoled or forced into dangerous work such as prostitution. She says that it is safe to conclude that a single adult female in India would have great difficulty in supporting herself financially and in absence of familial support may be destined to destitution or prostitution. So far as the willingness or ability of the police to protect women against violence, it is her view that the Indian State appears to succumb to communal pressures and to privileged religious interests. It is her view that Mrs Kaur will not only be subjected to allegations of adultery but there will be a factual basis to those claims. There will be significant social opprobrium if not absolute ostracism. She will be the subject of hostility even persecution and may well be socially outcast by her peers. The situation in which she would find herself would pose a threat from which the State authorities may not be quick or complete enough in their actions to protect her. The likelihood is that she would not be accepted back into her community and would probably be rejected by her family. Were she and her son to be forcibly returned to India, they would be at risk of violence from her husband or his family. This would be due to their interpretation of her behaviour as bringing shame and dishonour on the family. It is her view that the Indian State manifestly fails to protect women in such circumstances.

8. In the opinion from Professor Jeffrey, she expresses the view that there is a very serious risk that the Appellant will be in danger of losing her life were she required to return either to her husband's or mother's village in Punjab. She would be likely to become a victim of her husband's persecution in a context in which she could not realistically expect protection from the State. She has neither the resources nor qualifications to enable her to live safely as an independent woman. Throughout south Asia, the honour of a family is said to reside in the behaviour of its women and those who fail to meet these standards run the risk of some form of punishment such as marital violence. Women who commit adultery are extremely vulnerable to being murdered by their husbands who feel that they have been dishonoured by their wives' behaviour. In her view, it is highly improbable that the Appellant would be able to obtain protection to guard her life. Police resources will be quite inadequate to do this in any event but, more to the point, the will to protect her would probably not be there. Police in north India have a very poor record in dealing with what would be called "a domestic" in the United Kingdom. It would be quite unrealistic to expect her to call on the local police to protect her from her husband. Professor Jeffrey has provided a short update to her report dated 30th April 2002. She says that, having recently returned from eighteen months' field work in north India, she can vouch that honour killings are still common for women in the Appellant's situation and there are no grounds for supposing that the police would be able or willing to protect her adequately. She reiterates her original conclusion that there is a very serious risk that the Appellant would be in danger of losing her life if compelled to return to Punjab.
9. The letter from Hannana Siddiqui from the Southall Black Sisters makes the further point that many "disgraced" and rejected women and their children are forced to live in total destitution, vulnerable to economic and sexual exploitation. Women in both rural and urban areas have little or no access to any support services and women's groups and others complain about the State's failure to provide resources.

10. In **Shah and Islam** the House of Lords considered the definition of a social group. On the facts of that case, they accepted that the appropriate social group was women in Pakistan. In his speech, Lord Hoffman emphasised that each case must depend upon the evidence. This point is made in his comments at page 304 where he says:

“I am conscious, as the example which I have just given will suggest, that there are much more difficult cases in which the officers of the State neither act as the agents of discriminatory persecution nor, on the basis of a discriminatory policy, allow individuals to inflict persecution with impunity. In countries where the power of the State is weak, there may be intermediate cases in which groups of people have power in particular areas to persecute others on a discriminatory basis and the State, on account of lack of resources or political will and without its agents applying any discriminatory policy of their own, is unable or unwilling to protect them. I do not intend to lay down any rule for such cases. They have to be considered by adjudicators on a case-by-case basis as they arise. The distinguishing feature of the present case is the evidence of institutionalised discrimination against women by the police, the courts and the legal system, the central organs of the State.”

11. The Tribunal will deal first with the assertion that the Appellant is at risk because of the political activities of her husband. Ms Weston did not pursue this contention at the hearing and rightly so in the light of the change of circumstances in India. However, she did make the point that the Appellant’s background was such that it was even more likely that the Indian authorities would fail to protect the Appellant. The Tribunal is not persuaded by this. We see no reason to differ from the Adjudicator’s findings. It seems to the Tribunal that the political background or otherwise of the Appellant’s husband is not a relevant factor to be taken into account.
12. That said, the Tribunal accepts that there are considerable risks for the Appellant were she to return to India with her son. She is ill-educated and from a rural background where traditional values are at their strongest. The Tribunal has very little doubt that not only would the Appellant be ostracised by her husband’s family but in all likelihood by her own family as well. In the light of the evidence about the perceived role of women and their relationship to their husbands, the Tribunal is satisfied that there is a real risk that she could face reprisals from her husband. However the degree of risk is assessed, it is certainly more than a speculative risk which could be discounted. In our view, the combination of the factors we have referred to means that the Appellant would be at risk of treatment which could properly be described as persecution.
13. The next issue is whether it would be by reason of her membership of a particular social group. The Adjudicator identified the social group as “fallen women”. The Tribunal can well understand why the Adjudicator put speech marks around this phrase which has an old-fashioned ring to it now in the United Kingdom. However, the expression has more potency when looked at in the light of the background evidence as to how the Appellant would be treated in India. The issue is whether the Appellant as a wife who has committed adultery could form part of a social group. As Lord Hoffman said in **Shah and Islam**, to identify a social group one must first identify the society of which it forms a part. Although the Tribunal has had its doubts about this, on balance we have come to the view that, looking at the Appellant’s

background in rural India in the light of the social, cultural and religious mores, women in the Appellant's circumstances are identifiable as a particular social group.

14. The final issue is whether the Appellant is able to look to the authorities in India for protection. Mr Buckley submits that the Indian criminal courts are open to all and the authorities would provide protection. In general terms, the Tribunal is inclined to agree with this but we must look at the specific situation faced by the Appellant were she to return to her home area, a rural area in Punjab. There are laws in place in India to protect the rights of women: see the CIPU report April 2001 and in particular paragraph 5.3.11. But at paragraph 5.3.9 it is reported that violence against women has increased in recent years. Wife-beating is a problem cutting across all castes, classes, religions and education levels. There is domestic violence in the context of dowry disputes. At paragraph 5.3.16 it is confirmed that police are reluctant to intervene in family disputes and that crime may be ignored if the perpetrators are influential. The situation may well be improving and there are thousands of grass-roots organisations working for social justice and the economic advancement of women: paragraph 5.3.20. Nonetheless, the Appellant would be returning to an exceptionally vulnerable situation in a rural area. The Tribunal has considerable doubts whether the authorities would be either willing or able to protect her and these doubts must be resolved in the Appellant's favour.
15. It has been submitted that the Appellant could live in another part of India. In theory, doubtless this is so. However, the reality is that she would be destitute, without accommodation, without housing and with no one to turn to. The Tribunal has little doubt that it would be unduly harsh to expect her to relocate in India.
16. Accordingly, in the circumstances of this case, which perhaps are exceptional, this appeal is allowed.

**H J E LATTER
VICE PRESIDENT**