



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/07370/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 2 November 2017**

**Decision & Reasons Promulgated
On 6 November 2017**

Before

**RT HON LORD BOYD OF DUNCANSBY
SITTING AS AN UPPER TRIBUNAL JUDGE
and
UPPER TRIBUNAL JUDGE MARTIN**

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MS H K
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr Duffy, Home Office Presenting Officer

For the Respondent: Mr Draycott, counsel (instructed by Ison Harrison Solicitors)

DECISION AND REASONS

1. This is an appeal by the Secretary of State. In these proceedings we shall refer to the respondent as the appellant as she was before the FTT.
2. The appellant is a citizen of India born 21 January 1990. Her immigration history is set out at paragraphs 2, 3 and 4 of FTTJ Warnock's determination dated 30 July 2015. In short she came to this country under a Tier 4

student visa on 30 November 2010 and has been here ever since. On 24 October 2014 she claimed asylum. The basis of the claim is that she fears that if she were returned to India she would face mistreatment from her father, her husband or her husband's family because she left her husband in the UK and was responsible for his arrest.

3. The claim for asylum was refused by the Secretary of State. The appellant appealed to the FTT and the appeal was allowed on asylum grounds. Judge Warnock found that the appellant had a well founded fear of persecution. He noted that according to the Home Office Country Information and Guidance India; Women fearing gender-based harm/violence – April 2015, women in India are considered to form a Particular Social Group (PSG) for the purposes of the 1951 UN Refugee Convention. He considered that the issues in the case were whether the appellant would be at risk of attack from her husband and her own family in the event of her return to India and if so whether there would be sufficiency of protection for her taking into account the possibility of internal relocation. Having considered the evidence at some length he concluded that she would be at risk of attack, that internal relocation was not open to her and that there was not a sufficiency of protection.
4. The Secretary of State appealed that decision. The appeal was allowed by Upper Tribunal Deputy Judge Roberts in a decision promulgated on 13 April 2016.
5. The appellant applied for permission to appeal to the Court of Appeal. That was granted on 9 May 2017. On 21 July 2017 the Court, by consent, quashed the determination of the Upper Tribunal and remitted the matter back “for reconsideration of the sole outstanding issue in the Appellant’s case, namely the sufficiency of protection upon return”.
6. In granting permission to appeal Sir Kenneth Harper sitting as a judge of the Court of Appeal observed that there was force in the contention that it was not open to the Upper Tribunal to reconsider the question of relocation. That was agreed by the parties in the statement of reasons. Accordingly the issue for us is whether there is sufficiency of protection were she to be returned to her home in India without the option of relocating elsewhere.
7. The appellant married her husband in 2007 in India. There is a son of the marriage who lives with her parents in India. When the appellant first married she lived with her in laws. During that time she was the subject of violence at the hands of her husband and mother in law. She went back to her parents’ house for a time before coming to the United Kingdom with her husband. The violence continued here. In September 2014 he assaulted her resulting in his arrest and prosecution. He was sentenced to 20 weeks imprisonment. He returned to India on his release from prison.
8. Since her husband’s return to India she has been subjected to threats of violence. Her husband had gone with other men to her parents’ house to

remove her son. They told her mother that the appellant had brought shame on them by causing her husband to be arrested and receive a criminal conviction. Her husband had declared in front of everyone that he would personally kill the appellant. On one occasion he showed her mother a pistol and told her that this was for the appellant when she returns. Her father and uncles take her husband's side. Her father believes that the appellant should be beaten for being a mischievous wife.

9. It is clear that if the appellant were to return to India she could not live with her parents. Internal relocation is not an issue for us. Accordingly we have to assume that she will live in the vicinity of her home in Punjab. Not unnaturally if she did return she would seek a reunion with her son and that would make her vulnerable to her husband and her father.
10. Judge Warnock considered the ability of the state to protect the appellant drawing on evidence from a number of sources including the Home Office Guidance referred to above. In general gender based violence at the hands of family or community members is a serious and widespread problem. While it is true that there has been an improvement in the legislative framework creating new criminal offences and strengthening penalties, the problem as the UN Special Rapporteur on violence against women noted was ensuring their effective implementation and securing the allocation of financial resources to support their execution (see paragraph 1.3.13 of the Home Office Guidance). The guidance notes that victims of gender based violence may in some circumstances be unable to obtain effective state protection.
11. Mr Duffy did not concede the appeal but did concede the weight of the evidence and the terms of the Home Office Guidance. He said that if he was to make detailed submissions it would be to point to the availability of refuges for victims of domestic abuse.
12. In re-determination Judge Roberts said that there was no evidence to show that the appellant had even actually been refused protection by the authorities in India. Sir Kenneth Parker noted in his reasons for granting permission that there was considerable force in the submission that the UT proceeded on the basis that the failure of the appellant to approach the authorities in India precluded her in law from contending that she did not have sufficient protection. It was arguable that such a failure might be a proper matter to take into account depending on the circumstances but should not be a bar to pursuing the point.
13. It is true that the appellant did not seek the protection of the police when she lived in India and before she came to the UK. However it has to be remembered that the present threats against her, which are of the utmost gravity, stem from her decision to seek the protection of the state in the UK by reporting her husband's violence and seeing him convicted and serve a jail sentence. While she was clearly a victim of abuse before this episode it is that which has further enraged her husband and his family on the one hand and her father and uncles on the other. Accordingly the

appellant would not just be returning to an environment in which gender based violence is a serious problem but to one in which specific threats of very serious violence have been made against her. It is difficult to see how any police force could provide adequate protection against a background where such violence is not simply condoned by her own family but expected in retribution or punishment for her 'failings' as a wife. It is even more difficult in a country like India where there are acknowledged gaps in the protection that may be available to victims of domestic violence.

14. The appellant's vulnerability is increased as a result of her son being in India with her mother. It is of course true that she does not see him at the present time but it would only be natural that if she was to return she would seek a reunion with him. If that happened the possibility of her father or husband finding out that she was in India and locating her would be increased.
15. For these reasons we are satisfied that Judge Warnock was justified in concluding that there would be insufficient protection for the appellant on return. Accordingly we shall remake the decision by restoring the decision of the First-tier Tribunal and find that the appellant is entitled to refugee status.

Notice of Decision

The appeal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

The Rt Hon Lord Boyd of Duncansby