

CANADA / JUDGMENT

MC0-10253

COURT

Refugee Appeal Division

DECIDED

12 March 2021

Research copy typeset by Esheria. Not court-issued or certified. A source URL was not supplied in the case record.

RAD File / Dossier de la SAR : MC0-10253 MC0-10254 / MC0-10255 Private Proceeding / Huis clos
Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX
XXXXXXXX XXXX XXXXXXXXXXX XXXX Personnes en cause Appeal considered / heard at Toronto,
ON Appel instruit / entendu à Date of decision March 12, 2021 Date de la décision Panel H.
Shepherd Tribunal Counsel for the persons who are the subject of the appeal Sohana Sara Siddiky
Conseil des personnes en cause Designated representative XXXX XXXX Représentant(e)
désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION
OVERVIEW

- [1] I allow this appeal. The Principal Appellant (PA), XXXX XXXX, his wife, the Associate Appellant (AA), XXXX XXXX, and the Minor Appellant (MA), XXXX XXXX (age 4), are citizens of India.
- [2] No application to file new evidence or to hold a hearing was made. A transcript and an audio recording of the hearing are available. Summary of narrative
- [3] The PA is a Muslim from Kolkata, West Bengal, who states that he is at risk from the All India Trinamool Congress Party (TMC) and from the West Bengal police. The PA has been an active supporter of the Communist Party of India (Marxist), the CPI(M), since 1995.¹ He gave speeches, went door to door during elections, and was responsible for the XXXX XXXX. His party formed the government until replaced by the TMC in 2011. During the 2011 election, the TMC leader in his area and member of the legislative assembly, J.A.K.,² threatened to teach him a lesson after the election because of his political activities. The PA went to a journalist, A.A., on XXXX XXXX XXXX 2016, and asked him to expose the illegal activities of J.A.K.³ The PA was then arrested on XXXX XXXX XXXX 2016 and held for two days during which he was severely beaten and accused of supporting Maoist insurgents (Naxals). He was told to stop working with the CPI(M) after which he was released when his wife paid a bribe. The PA was treated by a doctor and spent two weeks in bed as a result of the injuries he sustained.
- [4] As the owner of a XXXX XXXX, the PA was told to pay protection money to the TMC by its XXXX XXXX XXXX F.A.K., in XXXX 2017. This person is the XXXX of the local TMC leader who is also in the XXXX business. When the PA did not pay, TMC thugs severely beat him at his XXXX XXXX in XXXX 2017. Although he complained to the police, none of the assailants

were arrested. The PA left Kolkata for Mumbai on XXXX XXXX XXXX 2017, to stay with his brother-in-law. After his departure, F.A.K's right-hand man, M.F.K. and his associates raped the AA when they did not find the PA at home. She received medical treatment, but did not go to the police. She joined her husband in Mumbai on XXXX XXXX XXXX 2017. The Appellants then obtained visas and came to Canada to make refugee claims. Police and TMC thugs have been harassing the PA's mother, and information about him has been given to all police headquarters in India. Refugee Protection Division (RPD) reasons for decision

- [5] The determinative issue for the RPD was an internal flight alternative (IFA). It rejected the claims for the following reasons:
- i) An IFA is available in Kerala and Uttar Pradesh; ii) Communication among police forces is not well organized and reserved for the most serious of criminal cases; iii) The accusations against the PA do not fall within the realm of serious criminality, and no First Information Report (FIR) report or arrest warrant were issued against him. He would not be the subject of interstate police search; and iv) The tenant registration program does not exist in the proposed IFA locations. Police are ill equipped and too short-staffed to carry out tenant verification. Grounds of appeal
- [6] Counsel submits that the RPD erred for the following reasons:
- i) The RPD failed to take into consideration item 10.2 of the National Documentation Package (NDP) about the Crime and Criminal Tracking Network & Systems (CCTNS), which renders the IFA very difficult;⁴ ii) The FIR is not required to register someone in the CCTNS; iii) The tenant registration system has been implemented in India according to document 14.8 of the NDP;⁵ iv) The panel made selective use of the NDP; and
 - v) The panel did not consider that the Appellants were located in Mumbai, a city which is 1,800 kilometres away from their home. Summary of Refugee Appeal Division (RAD) decision
- [7] The determinative issues for the appeal are credibility and the nature of the risk. The RPD concluded that PA is not a person of sufficient interest to the police to motivate them to look for him elsewhere in the country. The panel failed to consider evidence to the contrary, including three affidavits and a letter from the CPI(M), together with the fact that the police made the effort to locate the PA after he fled from Kolkata to Mumbai. The RPD did not make findings of fact in light of the totality of the evidence before proceeding to consider IFA as being the determinative issue. In addition, the RPD ignored evidence concerning police suspicion that the PA is associated with a violent Maoist guerrilla group. Furthermore, the RPD did not notify the Minister of this issue as required by subrule 26(1) of the RPD Rules.⁶ This claim must be sent back to the RPD because the PA was not questioned about this important issue.

- [8] The AA was allegedly raped by the agents of persecution in their search for the PA. Supporting evidence indicates that they have also targeted the PA's family. There is a serious possibility that they would attempt to get to the PA through the AA or the MA, or that the assailants would punish them in retribution for the PA's conduct. They have a well-founded fear of persecution. DECISION
- [9] The appeal of the AA and MA are allowed. I substitute my own decision that the Appellants are Convention refugees.⁷
- [10] The appeal of the PA is allowed. I send this matter back to the RPD to be redetermined.⁸

ANALYSIS

- [11] My role is to look at all the evidence and decide if the RPD made the correct decision.⁹ The RPD's fundamental error concerns its attempt to proceed to an assessment of IFAs as the determinative issue without first making findings of fact which account for all of the evidence, both oral and documentary. The panel concluded that the PA is not a person of significant interest to the police to look for him elsewhere in the country because no FIR was filed against him, and because he was released by police after payment of a bribe in XXXX 2016.
- [12] The RPD ignored evidence in its assessment. According to the affidavit of a family friend from childhood, R.F., a TMC member of the legislative assembly (MLA), J.A.K, his son (a councillor), F.A.K., and his associate, M.F.K. made trouble for the PA after the elections and M.F.K. assaulted him on XXXX XXXX XXXX 2017. These people and the police are looking for him, and have threatened his family and his mother.¹⁰
- [13] The affidavit of an old acquaintance, A.R. provides a similar summary of the facts, and adds that the PA has been accused of being anti-national.¹¹ The police have threatened the PA, his family and his mother.
- [14] The affidavit from the PA's mother states provides similar details, and adds that the MLA's goons come to her house frequently to look for the PA and have threatened to kill him and his family, even three years after he left the country. Police visited the PA's mother in XXXX 2020, and started to harass her without reason. They have accused the PA of being anti-national.¹²
- [15] A letter from the CPI(M) states that the PA and his family are victims of the TMC. J.A.K., his son F.A.K. and hooligans, including F.K. have brutally tortured him, both mentally and physically. The Appellants left India because their lives are at risk. The TMC and the police are searching for them now.¹³
- [16] The AA testified that police were among the assailants who raped her while looking for the PA after he moved to Mumbai.¹⁴

- [17] The RPD believed the PA's testimony about the XXXX 2016 assault and the XXXX 2016 two-day incarceration. Given that he was released two days later after payment of a bribe, the RPD concluded that he is not a person of interest to the police on the basis that he committed a serious crime. The documentary evidence which was ignored by the RPD indicates otherwise.
- [18] The PA was not a person of interest to the police between his XXXX XXXX XXXX 2016 release and the XXXX XXXX XXXX 2017 assault. The RPD's findings are correct with respect to this time period. However, the three affidavits and the CPI(M) letter which were ignored by the RPD indicate that police began searching for the PA afterwards on the basis that he was acting against the state (an anti-national). The RPD ignored testimony that the police located the PA in Mumbai and that the AA was raped during a search for him. It is likely that fresh allegations of involvement with Maoist Naxal insurgents led to renewed interest on the part of the police to arrest him. This factor alone is sufficient to render the RPD's decision untenable. The panel correctly concluded that the documentary evidence establishes that the police have the ability to track people of significant interest throughout the country. However, it erred by proceeding to assess an IFA without having made clear and intelligible findings of fact which account for the totality of the evidence.
- [19] The RPD had no good reason to doubt the truthfulness of the PA's testimony that he is being sought by police and members of the TMC in India on suspicion that he was associated with Maoist Naxal insurgents. Country conditions
- [20] The CPI(M) is the dominant Communist party in India, particularly in West Bengal. It was formed in 1964 by members of more radical factions of the Communist Party of India, and it has a strong presence in West Bengal, Kerala and Tripura. The party formed the government in West Bengal from 1977 to 2011. All Communist parties participate in elections with the exception of Maoists, also known as Naxalites, who are engaged in an insurgency against the state.¹⁵
- [21] The Maoist movement, also known as the Naxal movement, began in 1967 in the West Bengal village of Naxalbari as part of a revolt by farmers against the government over land reforms. This developed into an insurgency which was strengthened in 2014 when they joined the People's War Group. The use of violence by the Naxal movement is a matter of concern to the government. They engage in guerrilla warfare in order to overthrow what is perceived to be a semicolonial government which exploits and oppresses the masses. The Ministry of Home Affairs indicated in 2014 that the Naxal movement operates in 20 states, including West Bengal. Areas with a high poverty rate are the most affected.¹⁶ Assessment
- [22] The PA is being sought by authorities in India on suspicion that he is associated with the Naxal movement and implicated in a violent insurgency. Subrule 26(1) of the RPD Rules requires that the RPD notify the Minister if there is a possibility that exclusion pursuant to Article 1F of the Refugee Convention could apply. Notwithstanding evidence which indicates that the police have accused the PA of involvement in a violent guerrilla group, the RPD

failed to notify the Minister, as was required by the RPD Rules. Furthermore, the RPD did not question the PA about this important issue. Although the PA attributes risk to his work with the CPI(M), this is an established political party which participates in elections and elects some of its members to office. The RPD did attempt to establish why the PA, as a local grassroots worker, would face such a significant level of interest from the TMC and the police. As a result, I am unable to assess the nature of the risk, including the reasons for it, because the RPD did not ask sufficient questions which could provide an evidentiary basis for the assessment. The PA's claim must be sent back to the RPD for redetermination.

- [23] The AA was raped by the agents of persecution in their search for the PA. The evidence indicates that authorities continue to look for him and have threatened to harm his family if they return to India. There is a serious possibility that she would experience more physical and mental abuse from the TMC and police in the desire to obtain information about the PA or to retaliate against him. The risk is present throughout the county and state protection is not available. There is a nexus between this risk and the definition of a Convention refugee by means of imputed political opinion. She has a well-founded fear of persecution.
- [24] The MA is a four-year-old girl. When asked about danger to her, the PA testified that his daughter would be at risk because he offended the ruling party by not following their orders, and by going to the newspaper. As a result, they are angry and could hurt her because of his conduct.¹⁷ The AA testified that she fears the police because they raped her and could do it again. She also stated that there is a possibility that they would not spare her daughter.¹⁸ The documentary evidence refers to threats against the PA and his family. According to this evidence, there is a serious possibility that the agents of persecution would include the MA in their targeting of the PA, should the two of them return to India. Although this risk does not reach the level of a likelihood pursuant to section 97 of the Immigration and Refugee Protection Act (IRPA), it goes beyond a mere possibility for purposes of a section 96 assessment. The risk is present throughout the country and adequate state protection is unavailable. Risk to the MA has a nexus with the definition of a Convention refugee as a member of a particular social group which has been targeted for reasons of political opinion. She has a well-founded fear of persecution.

CONCLUSION

- [25] The appeals of the AA and MA are allowed. Pursuant to paragraph 111(1)(b) of the IRPA, I substitute my own decision that the Appellants are Convention refugees.
- [26] The appeal of the PA is allowed. Pursuant to paragraph 111(1)(c) of the IRPA, I send this matter back to the RPD to be redetermined by a differently constituted panel. DIRECTIONS TO THE RPD
- [27] The RPD is directed to notify the Minister pursuant to subrule 26(1) of the RPD Rules of the possibility that exclusion in accordance with Article 1F of the Refugee Convention may apply. (signed) H. Shepherd H. Shepherd March 12, 2021 Date 1 Exhibit RPD-1, RPD Record,

Exhibit 1, p. 102. 2 Personal identifiers have been removed, except where necessary to explain the reasoning of the decision. 3 Exhibit RPD-1, RPD Record, BOC amendment, p. 340. 4 Exhibit P-2, Appellants' Record, Appellant's memorandum, p. 20, citing Exhibit RPD-1, RPD Record, Exhibit 3, National Documentation Package (NDP) for India, (17 July 2020), item 10.2, Response to Information Request (RIR) IND105494.E. 5 Ibid., item 14.8, RIR IND106289.E. 6 Refugee Protection Division Rules (SOR/2012-256), subrule 26(1). 7 Immigration and Refugee Protection Act (S.C. 2001, c. 27), as amended, at para. 111(1)(b). 8 Immigration and Refugee Protection Act (S.C. 2001, c. 27), as amended, at para. 111(1)(c). 9 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93 (CanLII), [2016] 4 FCR 157; see also Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145 (CanLII), [2019] 2 FCR 597. 10 Exhibit RPD-1, RPD Record, pp. 281-282. 11 Ibid., pp. 332-333. 12 Ibid., pp. 334-335. 13 Ibid., p. 308. 14 Transcript of October 8, 2020, RPD Hearing, p. 29. 15 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for India, (17 July 2020), item 4.7, RIR IND105428.E. 16 Ibid., item 1.5. 17 Transcript of October 8, 2020, RPD Hearing, p. 20. 18 Ibid., p. 29.

RAD File / Dossier de la SAR : MC0-10253 MC0-10254 / MC0-10255 RAD.25.02 (January, 2020)
Disponible en français 2 Immigration and Refugee Board of Canada Refugee Appeal Division
Commission de l'immigration et du statut de réfugié du Canada Section d'appel des réfugiés
RAD.25.02 (January, 2020) Disponible en français

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

CASE PAGE <https://chat.esheria.ai/case-law/canada/internalflightalternative-refugee-appeal-division-2021--6a40c3b74cf2c72690fb34b8>

A source URL was not supplied in the case record. Consult the court's original record before reliance.

Prepared on 29 October 2026 · Esheria