

**THE HIGH COURT  
JUDICIAL REVIEW**

[2021] IEHC 321  
**RECORD NO.:2020/279JR**

**BETWEEN:**

**OPB**

**APPLICANT**

**AND**

**INTERNATIONAL PROTECTION APPEALS TRIBUNAL AND MINISTER FOR JUSTICE  
RESPONDENTS**

**JUDGMENT of Ms Justice Tara Burns delivered on 6th May, 2021**

**General**

1. The Applicant is a national of India who entered the State on 25 August 2016. He applied for international protection on 28 March 2017.
2. On 25 October 2018, an International Protection Officer recommended that the Applicant be granted neither a refugee or subsidiary protection declaration. The Applicant appealed this recommendation to the First Respondent who affirmed the negative first instance recommendation on 12 February 2020.
3. The Applicant claimed that he had a well-founded fear of persecution, if returned to India, from a particular individual named PJ who, he asserted, murdered his uncle. He also claimed a well-founded fear of persecution, from wider society, because he is gay.
4. Leave to apply by way of Judicial Review for an order of Certiorari of the First Respondent's decision was granted by the High Court on 8 July 2020.
5. The grounds of challenge with respect to each of the Applicant's claims, is that the First Respondent came to an irrational decision and/or failed to give adequate reasons regarding its decision, and that it failed to have adequate regard to the country of origin information before the First Respondent.

**Murder of the Applicant's uncle**

6. The Applicant asserted that in 2006, as a young boy, he left his family and village (Haryana) to work for his uncle who had a clothing shop in Jhiri, in Kashmir. In 2013, having married in the meantime, his parents and wife moved to Jhiri to be with him. As his uncle had no children, he had bequeathed his shop to him. Accordingly, his uncle's shop would devolve into his ownership on his uncle's death.
7. This uncle became involved in an ongoing dispute with a man named PJ, about this shop and an adjacent shop, both of which the uncle owned and had bequeathed to the Applicant. The reason for this dispute was that PJ intended to take ownership of the adjacent shop and had fake documentation asserting his ownership of it. This dispute escalated into a physical assault on the uncle in the course of which the uncle was stabbed to death by PJ. This occurred outside the uncle's shop.
8. The Applicant did not witness the stabbing, as he was in the shop when it occurred. However, another named individual did witness the stabbing and immediately ran to get

the Applicant. This man told the Applicant who his uncle's assailant was. The eyewitness subsequently went into hiding or was unwilling to give evidence against PJ. The Applicant brought his uncle to hospital. His uncle also informed him of who had stabbed him before passing away. The Applicant went to the Police station, in relation to the incident, after he left the hospital.

9. The First Respondent noted that the Applicant indicated that PJ threatened everyone to keep quiet about this: that he would kill anybody who went against him. Although, the Applicant complained to the police about PJ, the police would not pursue the case in light of the non-availability of the eyewitness.
10. The Applicant asserted that PJ and his associates were searching for him as he was PJ's biggest enemy. He moved back to Haryana, but PJ and his associates found him. He escaped to Delhi with his wife, however his family suggested that he should leave the country. He travelled to the United Kingdom in November 2015 and returned to India in January 2016. However, when he returned, he learnt that PJ and his associates were still looking for him. He remained underground in Haryana before returning to Delhi and then travelled on to Ireland.
11. The First Respondent accepted that the Applicant had an uncle who had a clothes shop in Jhiri whom the Applicant went to work for in 2006 leaving his family behind until 2013 when they joined him. It also accepted that the Applicant was to ultimately inherit his Uncle's shop. It further accepted that the Applicant's uncle was murdered by PJ and that the reason behind this was that PJ intended to take ownership of the shop from the Applicant's uncle.
12. The First Respondent rejected the Applicant's contention that PJ and his associates came from Jhiri searching for the Applicant to threaten him, in light of the distance involved: 340 miles taking 9/10 hours by road. Furthermore, the First Respondent noted that details of the threat by PJ to the Applicant in Haryana were not provided. The First Respondent also rejected as implausible that the Applicant escaped to Delhi and then to the United Kingdom for approximately one month (this is incorrect, the period of absence asserted was approximately two months) for things to quieten down, as the Applicant had only given vague assertions of the alleged threats and was not specific. It also concluded that the explanation which the Applicant gave for only learning of PJ's surname after he came to Ireland was not credible given that PJ is the reason why he fled to Ireland, and that he had reported PJ to the police. The First Respondent also noted that the Applicant had submitted minimal evidence by way of documentation to support his core claim.
13. The following is the account of the Applicant as recorded in his s. 35 interview:-

"In 2006, I went to my uncle in Jhiri in Kashmir to my uncle, LD. In 2013, I brought my wife and my parents to live with us in Kashmir. My uncle had a clothes shop. I helped him in his shop. My uncle and a man called Pali had a dispute. My uncle owned an empty shop unit next door but this man Pali forged legal documents to take it over. And they were always fighting as a result. My uncle

would not let me get involved because he said we were children. My uncle treated us like his children because he did not have any children of his own.

Pali would try to take over the shop and my uncle would fight with him. But then one day Pali came with some other men and stabbed my uncle in the stomach. I took my uncle to the hospital but he died. I went to the police station, with my dad. The police man asked if I had any witnesses, he would arrest Pali. The police did not arrest him because Pali gave the police money and told them that he was not there. Things carried and one day Pali came to my home, he gave a warning to my dad – he said you have children here, and if you go to the police again, that he would kill me. My dad was scared because he lost his brother and did not want to lose his son. I left Kashmir and went back to Haryana. I stayed there for one or two months. I went to visit my dad in Kashmir and I wanted to find out if the police had done anything. We went to the police, the policeman said they had no witness so they could not arrest him. I went back to Haryana, but Pali knew where I lived in Haryana. Pali and two men came to my village in Haryana. He threatened me and said if I came back to Kashmir, he would kill me. My dad was scared because Pali knew where I lived in Haryana.

I got a visa for London on 06 November 2015 I went to the UK with my wife. My wife stayed for one week and I stayed until 07 January 2016. I went back to Haryana. I thought everything might be okay because it had been a few months. But it was not okay, Pali found out I was back in Haryana. I went to Jhiri with my dad but the police gave us the same answer when we asked them for an update. I went back to Haryana. The police told Pali I had been to see them again and he came to my home in Haryana and threatened me again. Then my dad told me to leave. I went to New Delhi and I met a man named AR and he arranged my travel out of India”.

14. An oral hearing was held before the First Respondent, which the Court does not have an account of. However, it is noted that the findings of the First Respondent do not refer to discrepancies between the evidence given by the Applicant at the oral hearing and the written record of his s. 35 interview, with respect to the issues which it did not accept regarding the Applicant’s claim.
15. In light of this, the Court is of the view that the First Respondent’s determination that the Applicant did not provide details of the threats made to him by PJ difficult to understand having regard to the narrative provided by the Applicant relating to the three threats which were directed at him by PJ, recited above.
16. Furthermore, the Court finds the First Respondent’s determination that it did not accept that PJ and his associates would have travelled what is described as a long and arduous road journey to the Applicant’s home village to threaten the Applicant, who, in light of the First Respondent’s findings, had correctly identified PJ to the police as the murderer of the Applicant’s uncle, somewhat strange. The First Respondent appears to have lost sight of the fact that the most serious of allegations had been made against PJ, namely one of

murder, which the First Respondent accepts PJ committed as against the Applicant's uncle. Furthermore, the Applicant, on his account followed up on his complaint to the police regarding PJ, who had managed to escape the rigours of the law, thus far. Accordingly, it is far from implausible that PJ would have travelled the long journey to Haryana to silence the Applicant who was implicating him in a murder, which it looked like he got away with.

17. The same reasoning applies to the issue of the Applicant fleeing to the United Kingdom to escape PJ. It is again far from incredible that the Applicant would have left India on a visa, which is only valid for a short period of time, to escape his uncle's murderer who had unlawfully taken possession of property which the Applicant was now legally entitled to and about whom the Applicant had complained to the police.
18. It is unclear from the First Respondent's findings as to whether it accepted that the Applicant had complained to the police regarding PJ. The Court is of the view that a determination in this regard was necessary before the First Respondent could make an informed decision regarding the alleged threats from PJ. What that determination was, or indeed, whether there was such a determination is unclear from the decision of the First Respondent.
19. The First Respondent did not find the Applicant's explanation for not knowing PJ's surname before he came to Ireland credible as he had reported PJ to the police and he was the reason he had to flee India. In light of the positive findings made by the First Respondent that PJ murdered the Applicant's uncle, it seems to the Court that the significance of the Applicant not knowing the surname of PJ is of minimal importance.
20. The Court has stated on very many occasions that it is not for this Court in judicial reviewing a decision to act as an appeal Court: that the role of the Court is to consider the decision making process rather than the decision made. While the Court might disagree with some of the findings made by the First Respondent, the Court has concerns regarding how the decision in this matter was arrived at. Important issues, as identified, arise with respect to the decision making process of the First Respondent, disclosing an irrationality with respect to its findings.
21. The principal issue from the perspective of the Court's jurisdiction which vitiates the First Respondent's decision in this regard is its failure to have regard to the significance of its own findings, namely that a criminally motivated assailant murdered the Applicant's uncle to take possession of property which the Applicant was now entitled to and that the assailant was correctly identified by the Applicant as the perpetrator of the murder. In light of those findings, it is an irrational determination for the First Respondent to determine that the Applicant, who is entitled to legal ownership of the property now possessed by PJ and who has correctly identified PJ as the murderer of his uncle, is not at risk of persecution or serious harm from PJ.

### **Applicant's sexual orientation**

22. The First Respondent accepted that the Applicant was gay but did not accept that he would be subject to persecution for that reason if returned to India in light of a Supreme Court decision in India in September 2018 which decriminalised homosexual acts and emphasised the fact that members of the LGBTQIA community deserved an apology for their wrongful and disgraceful treatment by society.
23. It is a matter for the First Respondent to consider and weigh the Country of Origin information available to it. It determined that having regard to all of the Country of Origin Information before it, the change in law arising from the Supreme Court judgment and the strong expression of remorse to members of the LGBTQIA community with respect to how they were treated and viewed by society in general meant that the Applicant was not at risk of being subjected to future persecution. This was a finding which was available to the Respondent to make and an error does not arise in that regard.
24. I therefore will grant an order of certiorari quashing the decision of the First Respondent in this matter and make an order for the Applicant's costs as against the Respondent.