

Court No. - 45

Case :- CRIMINAL MISC. WRIT PETITION No. - 15795 of 2023

Petitioner :- Smt. Pushpa And Another

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Sri Nivas Yadav, Anil Kumar

Counsel for Respondent :- G.A., Chandra Prakash Garg, Rajveer Chaurasiya

Hon'ble Vivek Kumar Birla, J.

Hon'ble Vinod Diwakar, J.

1. Heard Shri Anil Kumar, learned counsel for the petitioners and Shri Abhishek Singh, learned Advocate, holding brief of Shri Rajveer Chaurasiya, learned counsel for the informant and Shri Virendra Kumar Pal, learned AGA for the State-respondents.

2. Present petition has been filed to quash the first information dated 21.9.2023 registered as Case Crime No.251 of 2023 under Section 363 IPC, Police Station-Kabrai, District-Mahoba.

3. On 9.10.2023, following order was passed by this Court:

"Heard Sri Anil Kumar, learned counsel for the petitioners, learned A.G.A. for the State and perused the record.

By means of the present writ petition under Article 226 of the Constitution of India, the petitioners are assailing the legality and validity of the F.I.R. dated 21.09.2023 registered as case crime no. 251 of 2023, under Section 363 I.P.C., Police Station-Kabari, District Mahoba.

Learned counsel for the petitioners submits that petitioners are infatuation and ultimately they have decided to marry each other. He further submits that on 12.09.2023 they have performed their marriage without any pressure in Phith Samaj Utthan Samittee Ati Prachin Budheshwar Mahadev Phith Civil Lines, Prayagraj. Learned counsel for the petitioners has annexed the Aadhar Cards regarding age of the petitioners.

We are not inclined to accept the argument of learned counsel for the petitioners. The F.I.R. was registered by respondent no. 4 Manpyare Kushwaha alleging that her daughter was enticed away by petitioner no. 2 Sachin.

In the circumstances, let the Investigating Officer of the case may produce the

girl Ms. Pushpa before the C.M.O., Mahoba for determining her age within a week. In addition to this, Investigating Officer shall also produce her before the C.J.M., Mahoba by 18.10.2023 for recording her statements under Sections 161 & 164 Cr.P.C. The C.J.M., Mahoba is also directed to organize the ossification test of the girl Ms. Pushpa through concerned C.M.O. The concerned C.M.O. is requested to determine the probable age of the girl on the date of incident i.e. 12.09.2023. All these exercise shall be completed within next ten days.

After completing all the exercise, the C.J.M., Firozabad is required to sent the statements of the girl u/s 161 & 164 Cr.P.C. as well as the report of her ossification test in a sealed cover.

Put up this case as fresh on 27.10.2023.

Till the next date of listing, as an interim measures the petitioners shall not be arrested in aforesaid case crime.

It is expected that the girl would cooperate in recording her statements under Sections 161 and 164 Cr.P.C. and ossification test.

Let a copy of this order be given to the learned A.G.A. for communication and necessary compliance within 48 hours."

4. Pursuant to the aforesaid order, learned CJM, Mahoba, has submitted its report dated 19.10.2023 placing the ossification test report and the statements recorded under Section 161 and 164 Cr.P.C. According to the Ossification Test Report submitted by Chief Medical Officer, Mahoba, dated 19.10.2023, the petitioner No.1 (Smt.Pushpa) is aged about 19 years. As per the statements recorded under Section 161 & 164 Cr.P.C., it is clearly reflected that the victim has not supported the prosecution version and has categorically stated that she knew Sachin Verma for last about four years and her family members were not in agreement with such relationship as their castes are different and, therefore, she left her house on her own free-will on 12.9.2023 and had accompanied Sachin at Jhansi and thereafter at Prayagraj where they got married and when her family members came to know about it, they filed the impugned first information report where petitioners have also stated that they have also approached this Court wherein they were granted stay order and direction was issued for the purpose of recording the statement of the petitioner No.1 under Section 164 Cr.P.C. as well as medical of the victim. She had further categorically stated that no force was used against her; she had left voluntarily and she wants to live with her husband Sachin.

5. A certified copy of the statement so recorded under Section 161 Cr.P.C., has also been sent along with the report.

6. It would be relevant to take note of Section 363 I.P.C., which reads as under:

"363. Punishment for kidnapping.- Whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

7. In view of the aforesaid submission of learned counsel for the petitioners by highlighting as per the AADHAR card, the date of birth of the victim (petitioner No.1) is 12.3.2004 and, therefore, she is major and date of birth of Sachin is 4.5.2002 and as such no offence under Section 363 Cr.P.C. is made out.

8. Per contra, learned counsel for the respondents as well as learned AGA submit that as per the High School, the date of birth of the victim is 12.3.2006 and as such she is minor. However, they could not dispute the fact that on the date of commission of offence, she was aged about 17 and a half years and has attained sufficient maturity to understand her own welfare.

9. At this stage, learned counsel for the petitioners has placed reliance upon a judgment of Hon'ble Supreme Court in the case of **Suhani vs. State of U.P.** reported in 2018 0 Supreme (SC) 1430 and judgement dated 18.7.2023 passed in Criminal Appeal No. 1898 of 2023 (P. Yuvaprakash vs. State Rep. by Inspector of Police) to submit that in all such matters Hon'ble Apex Court has directed for age determination test of the girl.

10. We find that in the aforesaid case of Suhani (supra), ossification test was directed according to which the age of the victim has come to around 19 years and under these circumstances, the petition was allowed and relief was granted to the petitioner. We also find that the facts and circumstances of the present case are almost identical in nature and the case of Suhani (supra) applies in the present case as well. A perusal of provision of Section 363 IPC would also reflect that in view of the statement made by the victim under Section 164 Cr.P.C., the ingredients of Section 363 IPC are missing and no offence under the aforesaid section is made out.

11. We are also of the opinion that in view of the ossification test as well as statement of the victim recorded under Sections 161 & 164 Cr.P.C., the chances of conviction are also low in the present case and, therefore, no fruitful purpose would be served by dragging the parties to the litigation and face criminal prosecution.

12. We, therefore, in the interest of justice, allow the present petition.

13. The impugned FIR dated 21.9.2023 in Case Crime No.251 of 2023 under Section 363 IPC Police Station-Kabrai, District-Mahoba and all criminal proceedings in pursuance thereof are hereby quashed.

14. The office is directed to reseal the documents sent along with report of the learned CJM, Mahoba dated 19.10.2023 after keeping the photocopies of such documents on record and returned the same as per procedure within ten days.

Order Date :- 27.10.2023

LN Tripathi