

Court No. - 45

Case :- CRIMINAL MISC. WRIT PETITION No. - 19385 of 2023

Petitioner :- Smt. Archana Devi And Another

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

Counsel for Petitioner :- Aditya Kumar Singh, Parijat Srivastava

Counsel for Respondent :- G.A., Dharendra Kumar Verma, Juhi Srivastava

Hon'ble Vivek Kumar Birla, J.

Hon'ble Vinod Diwakar, J.

1. Heard Shri Aditya Kumar Singh,, learned counsel for the petitioners, Shri Juhi Srivastava, learned counsel for the informant and Shri G.P. Singh, learned A.G.A. for the State and perused the record.

2. This writ petition has been filed praying to quash the first information report dated 01.09.2023, registered in Case Crime No.89 of 2023, under Sections 363, 366 IPC, P.S. Kharela, District Mahoba and not arrest the petitioners pursuant to the said FIR.

3. Submission of the learned counsel for the petitioners is that victim herself has come forward to challenge the impugned FIR by filing joint affidavit in support of the writ petition. It is submitted that as per Aadhar Card date of birth of the petitioner no.1 Archana Devi is 05.03.2005 and date of the birth of the petitioner no.2 Mohan Lal is 01.01.2001 therefore both the petitioners are major and they have married each other out of their own free will, as such no offence under Section 363, 366 I.P.C. is made out.

4. Per contra, learned AGA on instructions submits that as per High School certificate date of birth of petitioner no.1 is 05.03.2007, therefore, she is a minor on the date of incident as such offence has been committed.

5. 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 submits that in all such matters Hon'ble Apex Court has directed for age determination test of the girl.

6. In view thereof, we direct that the petitioner no.1-Archana Devi be produced before the Magistrate concerned, for recording her statement under section 164(1) and (5) of Cr.P.C. and thereafter, she shall be brought before the Chief Medical Officer concerned by the I.O. of the case who shall constitute a panel of three doctors, for her age determination test (ossification test). Both these exercises must conclude within six weeks from today.

7. It is incumbent upon the petitioners to provide all necessary assistance to the Investigation Officer during investigation, however, the petitioners shall not be arrested during this period.

8. The arrest of the petitioners shall be subject to the 164 Cr.P.C. statement of the girl and her age.

9. In the event, if it is found that she had attained the age of majority and her 164 Cr.P.C. statement favours the petitioner no.2, then the petitioners shall not be arrested till the submission of report by the police under section 173(2) Cr.P.C. OTHERWISE, the procedure of law would follow against the petitioners and the protection given to the petitioners would automatically stands vacated.

10. With this observation, the writ petition stands **disposed of**.

Order Date :- 15.12.2023

Nitendra