

Court No. - 13

Case :- APPLICATION U/S 482 No. - 7692 of 2024

Applicant :- Manoj Kumar Alias Manoj Kumar Yadav And Another
Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Home Lko. And 4 Others

Counsel for Applicant :- Rajesh Mishra

Counsel for Opposite Party :- G.A.,Atul Verma

Hon'ble Saurabh Lavania,J.

In terms of the order of this Court the applicant nos. 1 and 2 and the opposite party no. 3 (victim) along with a minor male child born on 17.07.2023 out of wedlock of the applicant no. 1 and the opposite party no. 3 (victim) are present before this Court, who have been identified by Shri Rajesh Mishra, Advocate and Shri Atul Verma, Advocate, appearing for the said parties.

Heard.

In view of facts of the case, issuance of notice to the private-opposite party no. 2 is hereby dispensed with.

The present application has been filed with following main prayer:

"Wherefore it is humbly prayed that your honor may be pleased to quash the Charge Sheet no 66/15, dated 07/11/2015 along with Criminal proceeding in ST No. 1058/2015 & FIR No. 55/2015, U/s 363, 366, 376 IPC & 3/4 & 16/17 POSCO Act, P.S. Nagram, District, Lucknow which is pending before Spl. Judge POSCO Act 2 Lucknow, District Lucknow It is also prayed that your honor may be pleased to pass any order which the Hon'ble court may deem fit in favor of petitioners."

It is stated that the applicant no. 1 namely Manoj Kumar Alias Manoj Kumar Yadav and the opposite party no. 3/victim were having an affair. At relevant point of time, the applicnat no. 1, born on 01.02.1992, was about twenty-three years old and the applicant no. 2 namely Surendra Kumar alias Surendra Kumar Yadav is friend of the applicant no. 1.

It is also stated that the victim/opposite party No.3, on her own volition, left the house of her parents on 14.05.2015 and accompanied the applicant no. 1 to Mathura and then on 22.05.2015 solemnized the marriage with the applicant no. 1 at Arya Samaj Mandir, Aliganj, Lucknow.

It is also stated that being annoyed with this relationship, opposite party No.2, father of the victim/opposite party no. 3, lodged an FIR registered as Case Crime No. 55 of 2015 under Sections 363, 376 IPC and Sections 16, 17 of Protection of Children Against Sexual Offences Act, at Police Station - Nagram, District, Lucknow. According to this FIR, the applicant no. 1 enticed away the minor daughter of the informant/opposite party no. 2.

It is also stated that during investigation the statements of victim/opposite party No.3 were recorded in terms of Section(s) 161 and 164 Cr.P.C. A perusal of these statements indicate that the victim, on her own volition, left the house of her parents on 14.05.2015 and accompanied the applicant no. 1 and thereafter on 22.05.2015 solemnized the marriage with the applicant no. 1 at Arya Samaj Mandir, Aliganj, Lucknow. As per these statements, the victim was major aged about 19 years at relevant point of time as also before the Court concerned, she indicated her date of birth as 01.01.1996.

It is also stated that the victim/opposite party no. 3 was medically examined and according to the medical opinion, the victim, at relevant point of time, was about seventeen years old. In subsequent medical examination conducted while she was in Nari Niketan her age was assessed 18 years.

It is also stated that a petition i.e. HABEAS CORPUS No. - 4839 of 2016 (Roshni Yadav Thru Her Husband Manoj Kumar Vs. State Of U.P.And Ors.) seeking custody of the victim/opposite party no. 3 was filed by the applicant no. 1 and the Division Bench of this Court allowed the said petition vide order dated 15.03.2016.

The order dated 15.03.2016 is extracted herein-under:

"1. Gist of the issue raised by way of this petition is recorded in order dated 08.03.2016. The order is extracted here-below:

"1. This petition seeks issuance of a writ in the nature of habeas corpus directing respondent no.2 facility to release the petitioner and allow her to live in her matrimonial home.

2. It has been pleaded that the petitioner got married to the deponent Manoj Kumar, of her free will. The marriage has not been accepted by respondent no.3, therefore, proceedings have been initiated vide Case Crime No.55 of 2015 under Section 363, 366 I.P.C. and Section 16/17 of Protection of Children from Sexual Offences Act, Police Station Nagram, District Lucknow.

3. It has been pleaded that the petitioner in the course of investigation of the case, gave her statement under Section 164 Cr.P.C. making it evident that she is married to Manoj ; wants to live in her in-laws house and offence has not been committed. It has been pleaded that liberty of the petitioner has been curtailed by virtue of impugned orders, without any legal cause, although petitioner is 19 years of

age, as is evident from Annexure Nos.5 and 9.

4. Issue notice to respondent no.3, also through Station House Officer, Police Station Nagam, District Lucknow, returnable on 15.3.2016.

5. List this case on 15.3.2016.

6. Respondent no.2 is directed to produce the petitioner in court.

7. Let counter affidavit be filed by investigating officer of Case Crime No.55 of 2015 (supra).

8. Respondent no.3 is also directed to remain present in court on the next date of listing."

2. Respondent No.3 alongwith his counsel is present in Court On behalf of respondent No.3, it has been argued that the petitioner is thirteen years of age.

3. The petitioner has been produced in Court by respondent No.2 and has been questioned The clear stand has been taken by the petitioner is that she is married to Manoj Kumar and wants to live in her matrimonial home.

4. So far as the case of prosecution is concerned, counter affidavit has been filed, in which it has been stated that in medical examination age of the petitioner has been found to be seventeen years In the statement recorded under Section 164 Cr.P.C., the petitioner/ prosecutrix did not support the prosecution case.

5. It has also been pointed out to the Court that another medical examination of the petitioner was conducted while in Nari Niketan and her age has been found to be eighteen years.

6. Learned counsel for the petitioner has relied on judgment rendered by this Court in Habeas Corpus No.156 of 2015; Smt. Poonam vs. State of U.P. & others, decided 17.09.2015.

7. Learned counsel appearing for the respondents-State and learned counsel for respondent No.3 have not disputed that the facts and circumstances of the case are covered by judgment rendered in Smt. Poonam's case (supra).

8. We have considered various evidences that have been brought before us and the statement given by the petitioner in Court, in context of what has been said by the Court in judgment rendered in Smt. Poonam's case (supra).

9. In Smt. Poonam's case (supra) the following relevant portion of order is extracted here-in-below:-

"21- We are coming across a large number of cases in which parent/ parents of a girl do not accept marriage of choice of their daughter, on account of different reasons, be it the caste , financial conditions, social status or religion. Although, the girl elopes with the boy voluntarily, however, criminal proceedings are initiated with

allegation of abduction, kidnapping or inducing the girl to get married. In most of such cases the complainant takes a ground that his daughter is a minor. For showing that his or her daughter is a minor, school certificates are relied upon.

22- The facts and circumstances of the present case are required to be considered in context of the law , as noticed above. While considering the same, the Court is required to take into account the most Cherished Right of a citizen of the country, which is personal liberty.

23- As noticed above, various documents have come on record indicating different dates of birth/age of the petitioner. Be that as it may, there is a conflict between the age of the petitioner determined on the basis of school documents, and the age assessed through ossification test. The Court is required to lean towards the report furnished by the Doctor, on the basis of scientific tests. This is particularly so because liberty of the petitioner is required to be protected, it being most precious Constitutional Right of the petitioner.

24- Considering the law laid down by this Court in Shaheen Parveen's case (Supra), as noticed above, it becomes prima-facie evident that the petitioner had neither been abducted nor kidnapped or induced by Suneel Kumar Singh. Rather statement of the petitioner recorded under Section 164 Cr.P.C. indicates that the petitioner had gone with Bauwa alias Suneel Kumar of her free will and voluntarily. Prima-facie, therefore, this Court concludes that offence has not been committed in context of the petitioner. Surely, the petitioner is not an accused. Under the circumstances, we are faced with a situation wherein liberty of an alleged victim has been curtailed under the direction of the Magistrate.

25- Considering the law laid down by Hon'ble Supreme Court of India in Juhi Devi's case (Supra) as extracted above, it becomes evident that in such cases reliance can safely be placed on the opinion of the Doctors in context of age of the girl, when the age recorded in school certificate(s) is at variance.

26- We have considered that there is consistency in the results of medical/ossification test reports, whereas the basis of making entry in school record in regard to date of birth, is generally not brought on record. In the circumstances, so as to consider whether a person has attained age of majority/ age of discretion in cases such as the present one, it is safer to rely on medical /scientific / ossification test reports.

27- Perusal of the judgment rendered in Smt. Reena's case (Supra), as extracted above, shows that age cannot be held to be a relevant consideration, while considering Personal Liberty of a person. A person living in India has a Right to enjoy his or her liberty, as guaranteed by the Constitution of India. Any order which curtails or encroaches upon the liberty of such a person is required to be struck down, if it is not in accordance with procedure established by law.

28- Article 21 of the Constitution of India promises every citizen that he shall not be deprived of his life or personal liberty except according to procedure established by law. Petitioner not being an accused , it cannot be held that her personal liberty has been

curtailed as per procedure prescribed by law. This is particularly so because she apparently has attained age of discretion and has asserted her right to get married of her own choice.

29- While considering a petition filed for issuance of a writ in the nature of Habeas Corpus, the writ court is not required to go into the complexities of law, once it is made evident to the Court that personal liberty of a citizen has been curtailed. A writ court cannot contemplate any limitation on its power to deliver substantial justice. Equity justifies bending the Rules, where fair play is not violated , with a view to promote substantial justice."

10. Considering the medical age of the petitioner in context of her statement that she wants to live in her matrimonial home, we are of the considered opinion that liberty of the petitioner cannot be curtailed by confining her respondent No.2 facility.

11. In view of the above, the petition is allowed. Respondent No.2 is directed to release the petitioner and allow her to live as per her own wish.

12. Let a copy of this order be released under the signature of the Bench Secretary and be conveyed to the Superintendent, State Woman Protection Home, Prag Narayan Road, Hazaratganj, Lucknow by the learned Government Advocate.

It is also stated that at present the applicant no. 1 and the opposite party no. 3/victim are living happily under one roof with one minor child born on 17.07.2023 as would appear from birth certificate of Dr. Muzaffar Hospital, Bakshi Ka Talab, Lucknow (Annexure No. 9).

It is also stated that there is no authentic/genuine evidence available with the prosecution to establish the fact that at relevant point of time the victim/opposite party No.3 was minor and having so taking note of the age indicated by the victim/opposite party No.3 herself before the Magistrate concerned as also various various pronouncements/judgments related to determination of age including the case(s) passed by the Hon'ble Apex Court **Birad Mal Singhvi Vs. Anand Purohit**, reported in (1988) Supp SCC 604, **State of Punjab Vs. Gurmit Singh**, reported in (1996) 2 SCC 384, **Suhani Vs. State of U.P. delivered on 26.04.2018 in Civil Appeal No.4532 of 2018 arising out of SLP(C) No.8001 of 2018** and in the case of **Manak Chand alias Mani Vs. State of Haryana** reported in 2023 SCC OnLine SC 1397, the opposite party no. 3/victim be considered as major at relevant point of time.

It is also stated that if the criminal proceedings are allowed to continue then in that eventuality matrimonial life of victim and the applicant as also the future of minor male child would be ruined.

On being asked on the aforesaid, the victim/opposite party No.3 , present before this Court, stated that she is living happily with the

applicant no. 1 along with minor male child.

Upon consideration of the aforesaid as also the observations in relation to determination of age rendered in the case of **Birad Mal Singhvi (Supra)**, **Gurmit Singh (Supra)**, **Suhani (Supra)** and **Manak Chand alias Mani (Supra)** as also the submissions made by learned Counsel for the parties as also the observations made by Apex Court in the case of **Ramgopal and others Vs. State of Madhya Pradesh, (2022) 14 SCC 531**, **Gian Singh Vs. State of Punjab [2012 10 SCC 303]**, **Mohd. Ibrahim Vs. State of U.P., 2022 SCC Online ALL 106**, **Gold Quest International Ltd. Vs. State of Tamilnadu, 2014 (15) SCC 235**, **B.S. Joshi Vs. State of Haryana, 2003 (4) SCC 675**, **Jitendra Raghuvanshi Vs. Babita Raghuvanshi, 2013(4) SCC 58**, **Madhavarao Jiwajirao Scindia Vs. Sambhajirao Chandrojirao Angre, 1988 1 SCC 692**, **Nikhil Merchant Vs. C.B.I. and another, 2008(9) SCC 677**, **Manoj Sharma Vs. State and others, 2008(16) SCC 1**, **State of M.P. Vs. Laxmi Narayan and others, 2019(5) SCC 688**, **Narindra Singh and others Vs. State of Punjab and another, (2014) 6 SCC 466**, **Manoj Kumar and others Vs. State of U.P and others (2008) 8 SCC 781**, **Union Carbide Corporation and others Vs. Union of India and others (1991) 4 SCC 584**, **Manohar Lal Sharma Vs. Principal Secretary and others (2014) 2 SCC 532** and **Supreme Court Bar Association Vs. Union of India (1998) 4 SCC 409** as also taking note of the nature of dispute/crime and also that if the criminal proceedings are allowed to continue then in that eventuality matrimonial life of opposite party no. 3/victim and the applicant as also the future of minor would be ruined and further, that in the given facts of the case chances of conviction are extremely bleak, this Court is of the view that no purpose would be served in keeping the proceedings pending before the trial court. Accordingly, present application is **allowed**. Consequently, the entire proceedings arising out of *FIR No./Case Crime No.*, quoted above, are hereby quashed qua the applicant.

Office/Registry is directed to send the copy of this order to the court concerned through email/fax for necessary compliance.

Order Date :- 13.9.2024

Mohit Singh/-