

Court No. - 13

Case :- APPLICATION U/S 482 No. - 8100 of 2024

Applicant :- Ranjeet Kumar Verma Alias Ranjeet Verma

Opposite Party :- State Of U.P. Thru. Prin. Secy. Deptt. Of Home And 4 Others

Counsel for Applicant :- Upendra Prakash Pathak

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania,J.

Short counter affidavit filed by Ms. Pooja Yadav, Advocate alongwith Vakalatnama on behalf of private opposite party No. 2 in the Court today is taken on record.

In view of the facts of the case, issuance of notice to opposite party Nos. 3 to 5 is hereby dispensed with.

Heard learned counsel for the applicant(s), learned AGA for the State of U.P., Ms. Pooja Yadav, learned counsel for the private opposite party no. 2 and gone through the record.

The present application has been filed by the applicants for the following main relief:-

"It is also prayed that this Hon'ble Court may become pleased to quash the Summoning Order dated 23.09.2019 passed by Learned Additional District & Sessions Judge Court No. 08 Barabanki, in Criminal Trial No. 165/2019 as well as quash the charge sheet dated 31.07.2019 and also set aside the entire proceeding of the Criminal Trial No. 165/2019 arising out of Case Crime No. 203 of 2019, Under Section 363, 366, 376 I.P.C., and 3/4 POCSO Act, Police Station-Masauli, District-Barabanki (State Vs Ranjeet Verma) pending in the court of Learned Additional District Judge Pocso Act & Rape Cases, Court No. 46, Barabanki.

It is further prayed to this Hon'ble Court to stay the proceedings of the Criminal Trial No. 165/2019 (State Vs Ranjeet Verma) pending in the court of Learned Additional District Judge Pocso Act & Rape Cases, Court No. 46, Barabanki, during the pendency of this petition."

Applicant/Ranjeet Kumar Verma Alias Ranjeet Verma and opposite party No.2/victim are present before this Court. The applicant has been identified by Sri Upendra Prakash Pathak, learned counsel for the applicant and opposite party No.2/victim has been identified by Ms. Pooja Yadav, Advocate.

It is stated that applicant and victim/opposite party No. 2 were having affair and victim/opposite party No. 2 was inclined to marry him and both were known to each other for about five years from the date of lodging of FIR in issue.

It is further stated that as per the statement(s) of victim herself recorded during investigation in terms of Sections 161 & 164 Cr.P.C., she was major aged about 19 years and she on her own volition left her parental house and accompanied the applicant to Lucknow and thereafter solemnized marriage with applicant on 06.06.2019 at Arya Samaj Sector-H (Harsh Vihar Purania), Aliganj, Lucknow (Annexure No. 3 to this application) and this marriage was subsequently registered on 07.02.2020, which is apparent from the copy of Certificate of Registration of Marriage issued in terms of U.P. Marriage Registration Rules, 2017 (Annexure No. 4 to this application).

It is further stated that the relationship of victim/opposite party No. 2 and applicant was not acknowledged/accepted by the family members of victim/opposite party No. 2 and therefore an FIR was lodged by the opposite party No. 3, father of victim/opposite party No. 2, on 12.06.2019 registered as FIR No. 0203/2019 making allegations therein so as to attract the offences as indicated under Sections 363, 366 IPC and Section 7/8 POCSO Act. As per this FIR, the applicant with the help of one Munni Devi w/o Bablu Verma enticed away the victim aged about 15 years, however, upon recovery the victim was examined and as per medical opinion, the victim at the relevant point of time was about 17 years old and as such, taking note of the same as also that there is no authentic proof to establish the date of birth of victim/opposite party No. 2 recorded in school records as also various pronouncements on the issue related to determination of age, the victim/opposite party No. 2 is liable to be considered as major at the time of incident.

It is also stated that the date of birth of the victim/opposite party No. 2 is 01.01.2000 and accordingly, it is apparent that the victim/opposite party No. 2 at the relevant point of time was major. In other words, the victim/opposite party No. 2 was 19 years old. Reference in this regard has been made to copy of Pariwaar Register annexed as Annexure No. 10 to this application.

It is also stated that taking note of date of birth indicated by the informant/opposite party No. 3, the victim/opposite party No. 2 was sent to protection home and therefore, the mother of the applicant in the capacity of mother-in-law of victim/opposite party No. 2 filed a writ petition i.e. Habeas Corpus No. 31926 of 2019 (Smt. Chhaya Devi @ Kajal Verma Thru. Nxt Friend Ramwati vs. State Of U.P. Thru. Prin. Secy. Home Lko. & Ors.) and this Court after considering the facts of the case including the opinion of doctor concerned regarding age of victim, allowed the said petition vide order dated 13.01.2020 and permitted the victim/opposite party No. 2 to live with her husband/applicant. The order dated 13.01.2020, referred, is extracted hereunder:-

"Heard Sri Devesh Kumar Verma, learned counsel for the petitioner and learned A.G.A. appearing for the opposite party nos. 1 to 4.

The present petition has been filed for the following main reliefs:-

"1. To issue a writ, order or direction in the nature of Habeas Corpus commanding the opposite parties to produce the petitioner before this Hon'ble court from the custody of opposite party No. 4 and she may

be set as her liberty in the interest of justice.

2. To issue a writ order or direction in the nature of certiorari quashing the order dated 25.06.2019 passed by the learned court Child Welfare Committee Barabanki by which the petitioner was detained in custody."

In compliance of earlier order of this Court, the detenue Smt. Chhaya Devi @ Kajal Verma has been produced by Ms. Pooja Kushwaha, Constable before this Court.

The present writ petition has been filed on behalf of Smt. Chhaya Devi @ Kajal Verma W/o Sri Ranjeet Kumar Verma through her mother in law and next friend Ramwati, on the ground that the detenue-Smt. Chhaya Devi @ Kajal Verma, is major and she married Ranjeet Kumar Verma by her own free will on 06.06.2019 as per Hindu Rites and Rituals at Arya Samaj Mandir, Sector-H, (Harsh Vihar Puraniya), Aliganj, Lucknow.

Smt. Chhaya Devi @ Kajal Verma W/o Sri Ranjeet Kumar Verma has made statement before us that she got married with Ranjeet Kumar Verma with her own free will and wants to live and perform matrimonial relations with him. However, annoyed with their marriage, the opposite party no.6 has lodged the F.I.R. dated 12.06.2019 registered as Case Crime No.0203 of 2019, under Sections- 363, 366 IPC and 7/8 of POCSO Act at Police Station-Masauli, District-Barabanki.

It is submitted by the learned counsel for the petitioners that the detenue-Smt. Chhaya Devi @ Kajal Verma has given statements Under Section 161 Cr.P.C. and under Section 164 Cr.P.C. inter alia stating therein that she has married to Ranjeet Kumar Verma with her own free will and she likes her husband-Ranjeet Kumar Verma and she wants to live with her husband-Ranjeet Kumar Verma. The statements are on record as Annexure Nos. 4 and 6 to the writ petition.

Hon'ble the Supreme Court in the case of Mrs. Kalyani Chaudhari Vs. The State of U.P. and others, 1978 CrL. L. J. 1003, observed as under:-

"No person can be kept in the protective home unless she is required to be kept there either in pursuance of the Suppression of Immoral Traffic in Women and Girls Act, or under some other law permitting her detention in such a Home.

Where the Magistrate's order mentions no provision of law under which he has passed such a direction, the order directing the girl to be kept in the 'Protective Home' suffers from inherent lack of jurisdiction. Her custody in the protective home cannot, therefore, be held to be a legal custody.

The question of minority is irrelevant as even a minor cannot be detained against her will or at the will of her father in a Protective Home. The question of giving the girl in the custody of the father also does not arise in the instant case as the father was himself instrumental in getting the girl, sent into the Protective Home through the aid of the Police."

This Court in the case of Lakshmi @ Kamini & Another Vs. State of U.P. and others, 2012 Law Suit (All) 669, held as under:-

"(8) We have repeatedly been pointing out that the victim of an offence under Sections 363, 363A or 366 I.P.C. may not be confused as an accused. She may also not be treated, if she is below 18 years of age as a juvenile in conflict with law, and the law applicable to juvenile may not be applicable to such a victim of the offence. We have also noted at some earlier occasions that even a child had its rights internationally recognized which as per cultural heritage and constitutional provisions inherently assumed the character of fundamental rights of a child and no Court could have the authority to encroach upon those rights of a child. If at all any offence is constituted by facts, no law could justify the detention of such a victim if there is a dispute of custody of the victim.

(9) We simply could not understand as to how the Courts are treating it a judicial dispute that a lady should either be with a particular person or the other, even she is 18 years of age. On account of being a citizen of India, she could have enjoyed the fundamental rights and move in whatever direction she desired if that movement was not detrimental to the Constitutional provision and national security."

In the case of Vinita Vs. State of U.P. and others, 2012 LawSuit (All) 717, it has been held as under:-

"(8) The victim of offence is not an accused. She could not be directed to be detained by any Court of law if she is above 18 years of age in a case under Section 363, 363A or 366 I.P.C. and she states that she herself had went away with the accused. Under the circumstances, it could be a simple case of elopement and in that background also, no Court could legally authorize the detention of such a lady because she being a major had a Constitutional right of freedom of expression and movement also. We want to point out that freedom of expression may taking into its ambit the right to express her desire to choose a person as her life partner and that freedom cannot be curtailed even in such a situation, as has been pointed out before us. We, as such, find that the order passed by the learned A.C.J.M., II, Budaun on 21.4.2012 in case crime No.94 of 2012 by which the petitioner was detained in Nari Niketan, Bareilly was completely outside four walls of law and the same could not be allowed to continue. We, as such, quash the said order in exercise of our powers under Article 226 of the Constitution of India and directed that the present petitioner Smt. Vinita, who is confined in Nari Niketan, Bareilly be released by the Superintendent of Nari Niketan, Bareilly forthwith so that she goes to place where she wishes to."

Taking into consideration the facts of the case, documents on record, statement given by detainee-Smt. Chhaya Devi @ Kajal Verma, the radiological age of the detainee i.e. 17 years, as determined by the Chief Medical Officer, Barabanki (annexed as Annexure No.5 to the writ petition) on 17.06.2019 and the aforesaid judgments on the point in issue, we are of the view that the detainee is major and she has right to live as per her wishes.

Accordingly, this writ petition is allowed and further directed that the detainee Smt. Chhaya Devi @ Kajal Verma, shall be released from Rajkiya Mahila Sarnalaya, Ayodhya and set free to live with her husband-Mr. Ranjeet Kumar Verma.

No order as to costs."

It is also stated that in so far as age of victim/opposite party No. 2 indicated in the school record is concerned, the same was not correctly recorded and there is no evidence to support/establish the age of the victim recorded in the school record and even if the same is taken on its face value then in view of the fact of the instant case, the benefit of the 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**, shall be extended in favour of the applicant and the opposite party no.5/victim both.

It is also stated that presently the applicant and victim/opposite party No. 2 are living as husband and wife alongwith their minor daughter namely Km. Richa Patel, who was born on 26.10.2021, which can be deduced from the facts pleaded in the present application as also Annexure No. 9 of the present application, which is birth certificate of Km. Richa Patel.

It is also stated that in the aforesaid facts and circumstances of the case, indulgence of this Court is required in the matter, as otherwise, entire matrimonial life of applicant and victim/opposite party No. 2 as also future of their minor daughter would be ruined.

Averments made in short counter affidavit filed on behalf of victim/opposite party No. 2 also supports the aforesaid. The relevant paragraphs of which are extracted hereunder:-

"3. That the deponent has loved and affection with the present petitioner and hence she has married with the petitioner on 6.6.2019 in Arya Samaj Mandir in Aliganj Lucknow and the same was annexed in the petition as Annexure no. 03.

4. That thereafter the deponent and the petitioner has got registered the marriage on 07.02.2020 and the copy of the marriage registration certificate was annexed in the petition as Annexure no. 04.

5. That the petitioner was arrested when the father of the deponent has lodged a false F.I.R. on 12.06.2019 and thereafter the statement of the deponent was recorded and in which she has clearly mentioned that she married with the petitioner on her own will.

6. That after release of the petitioner on bail he has preferred a Habeas Corpus petition Bearing no. 31926 of 2019 and this Hon'ble court has become pleased to release the deponent to live with her husband Mr. Ranjeet Kumar Verma, vide order date 13.01.2020 and the same is annexed in the petition as Annexure no. 08.

7. That during their happy Matrimonial Life they were blessed with a daughter named Richa Patel and she was born on 26.10.2021 the birth certificate of the daughter is also annexed in the petition as Annexure no. 09."

The victim/opposite party No. 2 present before this Court also made her statement in the same tune.

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 **Suhana (supra)** as also 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. 2/victim and the applicant as also the future of their minor daughter 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 *Case Crime No. 203 of 2019*, quoted above in prayer clause, 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 :- 10.9.2024

Arun/-