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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(CRL) 844/2016

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Judgment dated 18th May, 2016

AMITABH KUMAR SHAHI & ANR Petitioners

Through : Mr.Lokesh Mishra and Mr.Sameer Kumar
Ojha, Advs. for the petitioners along with
petitioner no.1.

versus

THE STATE GOVT OF NCT DELHI & ORS Respondents

Through : Mr.Rahul Mehra, Standing Counsel (Crl.)
and Mr.Amrit Pal Singh, Adv. for the
State.
SI Dharmendra, P.S. Karol Bagh.
Smt.Ujala Kumari, wife of petitioner
no.1, in person.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. Present criminal writ petition has been filed by the petitioners under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, seeking a writ of habeas corpus thereby directing the respondents to produce Smt.Ujala Kumari before this Court and grant her custody to petitioner no.1, who claims to have married Ujala.
2. As per the petition, petitioner no.1 married Ujala, daughter of respondents no.2 and 3, on 28.9.2015, at District Muzuffarpur, Bihar. Petitioner no.1 also claims that Ujala is 18 years of age. After marriage, Ujala started residing happily with petitioner no.1, however, after sometime father-in-law of petitioner no.1 (respondent no.2) father of Ujala came to the residence of petitioner no.1 and took Ujala away on the pretext that she would return after a few days. However, since the parents of Ujala did not

permit her to join the company of her husband, the petitioners were forced to institute the present petition.

3. We have heard learned counsel for the petitioners, Standing Counsel for the State, petitioner no.1 and Ujala, who are present in Court.
4. It may be noticed that on the first date of hearing i.e. 15.3.2016, Ujala was produced in Court, when she had made a statement that she does not wish to reside with her parents and wanted to join the company of her husband. We had also interacted with the parents of Ujala and Ujala in the Chamber. Petitioner no.1 had submitted that his parents and grand-father would come from Bihar and make a formal proposal of marriage to Ujala's parents. The matter was adjourned to 18.3.2016.
5. On 18.3.2016, Ujala, Amitabh and father and grand-mother of Amitabh were present in Court. We again took up the matter in the Chamber. Ujala reiterated her stand that she does not wish to reside with her parents and want to stay with her husband. The grand-mother of petitioner no.1, Amitabh, had stated that she would be ready to take the interim custody of Ujala and she would also be responsible for the well-being of Ujala in all respects. The father of petitioner no.1 had also filed a specific affidavit stating that his family is ready to accept Ujala as their daughter-in-law and support her in all respect. The matter was adjourned to 25.4.2016. On 25.4.2016, the matter was again adjourned for today as the arguing counsel for the petitioner was indisposed.
6. Today, neither respondents no.2 and 3 (parents of Ujala) are present nor they are being represented in Court. Ujala and petitioner no.1 are present in Court. Ujala submits that she is a major and she does not wish to reside with her parents as she is the legally wedded wife of petitioner no.1.
7. Mr.Mehra, learned Standing Counsel for the State, submits that in her statement recorded under Section 164 Cr.P.C., Ujala had stated that she is

above 15 years of age and has married petitioner no.1, whereas in her MLC she has given her age to be eighteen years.

8. We have again asked Ujala about her age. She submits that she is over eighteen years of age. She further submits that she was not allured, coerced or forced by Amitabh, petitioner no.1, into leaving her parental home. She also submits that she has left her parental home out of her own sweet will and prays that no action should be taken against petitioner no.1, Amitabh, who is her husband and with whom she is residing, although in the custody of the grand-mother of Amitabh.
9. The law with regard to custody of a married minor girl and guardianship of a married minor girl is well settled.
10. In the case of ***Sunil Kumar v. State NCT of Delhi And Another***, reported at 2007 (2) LRC 56 (Del) (DB), in almost similar facts, a Division Bench of this Court had noticed that the girl was not willing at any cost to join the company of her parents as she had feared that she and her husband would be harmed, and the family of the boy had unanimously accepted the girl as their daughter-in-law. The husband was, thus, permitted to reside with his wife for her well-being.
11. We may also notice that a similar issue had arisen in the case of ***Jitender Kumar Sharma v. State and Anr.***, reported at 171 (2000) Delhi Law Times 543 (DB) wherein the age of husband was below 21 years and age of the wife was below 18 years. In the said case, the husband's father and other family members had accepted the marriage and welcomed the girl as his wife. The Court in para 21 of the said judgment has held that the provisions of Hindu Minority and Guardianship Act, 1956, (in short '*the Act of 1956*') are supplemental to Guardians and Wards Act, 1890 (in short '*the Act of 1890*'). The Court observed that the definition of minor under the Act of 1956 is of the same effect as that under the Act of 1890.

The word 'guardian' has also been similarly defined in Section 4(b) with the addition of an inclusive portion, which, *inter alia*, refers to a 'natural guardian'. The Court had also observed that as per Section 6(c) of the Act of 1956 the natural guardian of a Hindu minor, in the case of a married girl, is her husband. The Court while considering Section 21 of the Guardians and Wards Act, 1890, has also held that a minor husband is competent to be the guardian of his minor wife. The Court while considering Section 13 of the Act of 1956, which suggests that welfare of the minor shall be the paramount consideration in the appointment or declaration of any person as guardian of a Hindu minor, held that the welfare of the girl would be best served, if the girl is allowed to live with her husband; she would get the love and affection of her husband; she would have the support of her in-laws who welcomed her; and she cannot be forced or compelled to continue to reside at Nirmal Chhaya or some such other institution as that would amount to her detention against her will and would be violative of her rights guaranteed under Article 21 of the Constitution.

12. In the case of ***Ravi Kumar v. The State***, reported at 124 (2005) DLT 1 (DB) similar view was taken by another Division Bench of this Court.
13. We may notice that this view has been reiterated by the Court in the case of ***Bholu Khan v. State of NCT of Delhi***, W.P.(C) 1442/2012, decided on 1.2.2013. This issue was dealt with in great detail by A Full Bench in the case of ***Court on its own motion (Lajja Devi) v. State***, reported at 2012 (193) DLT 619.
14. Further in the case of ***Vivek Kumar @Sanju and Anjali @Afsana v. The State and Another***, (CrI.M.C.No. 3073-74 of 2006, decided on 23.02.2007), this Court has noticed as under:

“There is no law which prohibits a girl under 18 years from falling in love with someone else. Neither falling in love with somebody is an offence under IPC or any other penal law. Desiring to marry her love is also not an offence. A young girl, who is in love has two courses available to her one is that she should marry with the consent of her parents after obtaining the consent of her parents. If her parents do not agree to persuade them or to wait for attaining the age of majority and then exercise her right as a major to marry the person of her own choice. However, this is possible only when the house of her parents where she is living has congenial atmosphere and she is allowed to live in peace in that house and wait for attaining age of majority. This might have been the reason in the mind of petitioner No. 2 when she told her father that she was in love and wanted to marry Sanju, but the response of father when daughter confided in him, created the fear in the mind of petitioner No. 2. Her father slapped her and told that her action would malign the religion and bring danger to the religion. He even threatened to kill her and marry her off to some rich person. When once such a threat is given to a girl around 17 years of age, who is in love, under such circumstances she has a right to protect her person and feelings against such onslaught of her relatives even if the onslaught is from her own parents. Right to life and liberty as guaranteed by the Constitution is equally available to minors. A father has no right to forcibly marry off her daughter, who is below 18 years against her wishes. Neither he has right to kill her, because she intends to marry out of her religion. If a girl around 17 years of age runs away from her parents house to save herself from the onslaught of her father or relatives and joins her lover or runs away with him, it is no offence either on the part of girl or on the part of boy with whom she ran away and married.”

15. We may notice that in this case, the age of Ujala has not been clearly established, however, since the parents of Ujala have failed to provide any proof of her age, we are inclined to give benefit of doubt to Ujala.
16. In this case, the father of Amitabh had filed an affidavit clearly stating that his family is ready to accept Ujala as their daughter-in-law and support her in all respect, and the grand-mother had made a statement in Court that she would be ready to take the interim custody of Ujala and

would remain responsible for her well-being in all respects.

17. Accordingly, having regard to the settled position of law, as laid down in the case of *Sunil Kumar* (supra), *Jitender Kumar Sharma* (supra), *Ravi Kumar* (supra), *Bholu Khan* (supra), *Court on its own motion (Lajja Devi)* (supra) and *Vivek Kumar @Sanju and Anjali @Afsana* (supra), and taking into consideration the statement made by Ujala, the statement made by the grand-mother of petitioner no.1 and the affidavit filed by petitioner no.2 (father of Amitabh) and also the submission made by petitioner no.1 that he is gainfully employed and working in a transport company, present writ petition is allowed. Ujala will continue to reside with her husband, as it is for her well-being.
18. Mr.Mehra points out that an FIR was registered against Amitabh on the basis of the complaint filed by the parents of Ujala in which case the investigation is complete.
19. Having regard to the background of this case and the statement made by Ujala in Court it will be open for the State to revisit the issue and take an appropriate decision in accordance with law.
20. Accordingly, petition stands disposed of.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

MAY 18, 2016 msr