

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.931 of 2018

Arising Out of PS. Case No.-125 Year-2017 Thana- MAJORGANJ District- Sitamarhi

Sukumari Devi, Wife of Kalewar Rai @ Ram Kalewar Rai, R/o Mohnimandal, P.S.- Mejarganj, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Sarswati Devi, Wife of Bishwanath Mahto, R/o Mohnimandal, P.S.- Mejarganj, District- Sitamarhi.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ashok Kumar Jha
For the Respondent/s : Mr. Sri Brajendra Nath Pandey

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT

Date : 07-12-2018

This revision application is directed against the order dated 15.05.2018 passed by the learned A.C.J.M.-1st, Sitamarhi in Mejarganj P.S. Case No. 125 of 2017 whereby and whereunder petition filed by the petitioner for the release of the daughter-in-law of the petitioner namely Khushboo Kumari from Short Stay Home, Sheohar, has been rejected.

2. The case in short is that O.P. No. 2 has submitted a written report to the O.P. Incharge, Suppi, Mejarganj stating that three persons forcibly took away her daughter and she identified the accused as Bijendra Rai and Amrendra Rai. It is also her case that she searched but not traced her. On the basis of the same, Mejarganj (Suppi) P.S. Case No. 125 of 2017 was



registered under Sections 363 and 366A/34 of the Indian Penal Code.

3. It appears that victim girl Khusboo Kumari has appeared and police got recorded her statement under Section 164 Cr.P.C. in which she has disclosed her age to be 20 years and stated that she had married with Amrendra Rai, son of the petitioner and she carried pregnancy of 08 months and on medical examination, the doctor has also found single live foetus of around 30 weeks on 30.11.2017 and due to pregnancy her age could not be ascertained. It further appears that the victim girl has given birth to a male child and presently she is confined in Short Stay Home along with her child.

4. The case of the petitioner is that the mother of the victim girl filed a petition on 23.12.2017 for release of her daughter in her favour and the learned Magistrate ordered for release of the victim girl in favour of her mother i.e., the informant, vide order dated 01.05.2018 but the mother of the victim girl refused to get her released from Short Stay Home. Thereafter the petitioner filed a petition before the learned court below for release of the victim girl in favour her favour as she was willing to live in the house of the petitioner.

5. It is also the case of the petitioner that the petitioner



has filed a certificate received from the Headmaster of the Primary School, Mohinimandal showing her date of birth, 10.05.2002 along with relevant page of the admission register of the school.

6. It is also the case of the petitioner that after the delivery, the Medical Board was constituted and she was found aged about 16-17 years on 17.04.2018 and as such as per the decision of the Hon'ble Supreme Court, the age between 16-17 years shall be deemed to be major.

7. Further submission of learned counsel for the petitioner is that victim girl is residing in Short Stay Home along with her child and there is none to look after them and as such for her better life as well as her child also, she should be allowed to live with the petition as she is ready to take care her and her child and the learned Magistrate has not considered the above humanitarian aspect of the matter while rejecting the prayer for release. He submits that learned Magistrate has also failed to consider, as per the statement recorded under Section 164 Cr.P.C. , that victim girl is major, but in spite of that she was not allowed to live according to her own desire. In support of her contention, the learned counsel for the petitioner has cited an unreported decision in case of *Sahebi Khatoon @ Sahebi vs.*



State of Bihar & Ors. (Cr. W.J.C. No. 991 of 2010), which has been disposed of by a Division Bench of this Court vide order dated 23.09.2010.

8. On the other hand, the learned A.P.P. has defended the impugned order passed by the learned A.C.J.M.-I, Sitamarhi and submitted that as the victim girl was minor and as the case was lodged with respect to kidnapping her and son of the petitioner is accused in that case, as such the court below has rightly rejected the prayer of the petitioner to release the victim girl in her favour. Hence, the impugned order does not suffer from any illegality and is not sustainable in the eye of law.

9. Having heard both sides and from the discussion made above, it is clear that a case has been lodged for kidnapping of the victim girl by the son of the petitioner. Thereafter, girl appeared and in her statement, she has stated that she has married with the petitioner. However, he has disclosed her age to be 20 years and girl was found pregnant having 08 months pregnancy. Later on, she delivered a male child also. It is also clear that Medical Board has assessed her age between 16-17 years.

10. In the case of **Sahebi Khatoon** (supra), as relied upon by learned counsel for the petitioner, the Division Bench



of this Court, while considering almost in a similar matter regarding custody of the victim, has observed as follows:-

“.....The petitioner being practically major, on account of her age being 16-17 years, and by adding three years as per the judgment of the Apex Court in Jaimala Vrs. Home Secretary, Govt. of Jammu and Kashmir reported in AIR 1982 SC 1297, her age should have been presumed to be 19 years which is the age of majority. Being major she was legally entitled to decide her own fate and to live with the person of her choice. In the given facts and circumstances of case, there was no reason to arrest the respondent no.6, and for sending the petitioner to after Care Home at Patnacity.

The Chief Judicial Magistrate, Katihar, without considering the legal aspect of the matter, and completely ignoring the medical report, as well as the statement of the petitioner recorded under Section 164 of the Cr.P.C, passed an order of remand of petitioner to after Care Home at Patnacity. By passing the impugned order, the C.J.M., Katihar committed illegality also for the reason that even though the petitioner was not an accused in any case, either in a police case or in a complaint case, she was treated as an accused, and sent to Remand Home, which was nothing but illegal confinement of the petitioner. There was no reason for sending her to Remand Home, when she had expressed her desire to go and live with her parents in law.

This kind of illegality is being committed repeatedly by Judicial Officers throughout the State of Bihar. In so many cases, of similar facts we have passed such orders, but still we find, similar error being committed by courts, due to which Criminal Writs, for issuance of Habeas Corpus are repeatedly being filed. In such case, confinement of writ petitioners (girls who are majors) at Remand Home is illegal confinement and fit for issuance of Writ of Habeas Corpus.

Section 483 of the Cr.P.C. imposes a duty on High Courts



to exercise continuous superintendence over the courts ; Judicial Magistrate, Subordinate to it, and to see that cases are expeditiously and properly disposed of by such Courts. In present nature of case, it seems to have been essential that a general direction be issued to all Magistrates of Subordinate Courts to exercise their jurisdiction, properly and judiciously. In exercise of jurisdiction u/S 483 Cr.P.C. all Judicial Magistrates/Chief Judicial Magistrates throughout the State of Bihar are directed to, decide such cases in the light of the decision of the Apex Court in Jaimala Vrs. Home Secretary, Govt. of Jammu and Kashmir reported in AIR 1982 SC 1297. The girl should be treated as major if she is assessed to be of an age in between 16 to 17 years as per the medical report and also as per own assessment . In such cases, instead of sending such girls to Remand Home or after Care Home, they should be released to go with the people of their choice. This order should be circulated to all Chief Judicial Magistrate and all Judicial Magistrates in the State of Bihar for proper compliance.”

11. In case of *Amitabh Kumar Shahi & Anr. vs. The State Govt. of NCT Delhi & Ors.*[W.P(CRL) 844/2016], the High Court of Delhi has also considered this aspect of the matter as held in para-17 of the judgment that law with regard to custody of married minor girl, guardianship of married minor girl is well settled:

“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, writ petition is allowed. Ujala will continue to reside with her husband, as it is for her well-being.”

12. In view of the above cases, it appears that while recording the custody of the minor girl, who is victim in a case under sections 363 and 366A of the Indian Penal Code, this Court as well as the Delhi High Court considered the different aspect of the matter, has come to the conclusion that the victim girl is entitled to live as per her own choice and furthermore, the paramount consideration while deciding the custody of the girl who has a baby child also, the welfare of the girl and baby child has to be considered, both are in After Care Home and they cannot be looked after there properly.

13. However, in this case, there is nothing on record to show that victim girl also desires to live with the petitioner and such application has also not been filed by her as such this application is disposed of with a direction to the learned A.C.J.M.-1st, Sitamarhi that if such an application is being filed by the victim girl, the court will consider the same and after hearing the parties, will pass an appropriate order in the



background of the established principles, as discussed above,
within a period of three months from the date of filing of such
application by the victim girl.

14. Accordingly, this application stands disposed of.

(Vinod Kumar Sinha, J)

sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	

