

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.583 of 2019

Arising Out of PS. Case No.-148 Year-2018 Thana- NAGARNAUSA District- Nalanda

SHAHISTA PRAVEEN Wife of Dilraj Kumar @ Bhupendra Paswan @
Upendra Paswan, D/O- Md. Arif Hussain Resident of Village - Badiha, P.S.-
Nagarnausa, District – Nalanda Petitioner

Versus

1. The State of Bihar
 2. The Director General of Police Cum Inspector General of Police, Bihar, Patna
 3. The Inspector General of Police Bihar, Patna.
 4. The District Magistrate, Nalanda
 5. The Superintendent of Police, Nalanda
 6. The Deputy Superintendent of Police, Hilsa District Nalanda
 7. The Officer-in- Charge of Nagarnausa Police Station, District Nalanda
 8. Md. Arif Hussain Son of Late Md. Waliul Haque Resident of Village - Badiha, P.S.- Nagarnausa, District- Nalanda
- Respondents

Appearance :

For the Petitioner : Mr.Lovekush Kumar, Advocate
For the Respondent-State: Mr.Sheo Shankar Prasad, SC-8

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 25-06-2019

This application under Articles 226 and 227 of the Constitution of India has been filed by the petitioner for quashing the order dated 08.01.2019 passed by the learned Additional Sessions Judge-VI, Nalanda at Biharsharif in Criminal Revision No. 518 of 2018 by which he has set aside the order dated 07.12.2018 passed by the learned Judicial Magistrate, 1st Class, Hilsa in connection with Nagarnausa P. S. Case No. 148 of 2018 registered under Section 366A of the Indian Penal Code.



2. Learned counsel appearing for the petitioner submitted that under the Muslim law, a girl having attended puberty can marry without consent of her parents and enter into contract of marriage, which is a civil contract. As per radiological, dental and gynaecological findings of the medical board and also as per her own statement before the learned Magistrate under Section 164 of the Code of Criminal Procedure (for short 'CrPC'), the age of the petitioner is within 18-19 years. Under the circumstances, the learned Magistrate while passing the order dated 11.12.2018 had rightly released the petitioner from the After Care Home treating her to be major. He has contended that while passing the impugned order, the revisional court completely failed to appreciate the report of the medical board and the statement made by the petitioner under Section 164 of the CrPC. It has erroneously held that the petitioner is a minor and has set aside the order passed by the learned Magistrate. The date of birth given in the Matriculation Certificate and Aadhar Card should not have been believed as it was given by the respondent-father of the petitioner wrongly.

3. Per contra, learned counsel appearing for the respondent no. 8 submitted that the submissions made by the learned counsel for the petitioner are erroneous. The marriage of



the petitioner has not taken place as per muslim law. He submitted that from perusal of Aadhar card, it would be evident that at the time of filing of the writ application, the petitioner was aged about 17 years. The certificate issued by the Bihar School Examination Board would show that the date of birth of the petitioner in the school register is 15.02.2002. He has further contended that in Nagarnausa P. S. Case no. 148 of 2018, on completion of investigation, the police have already submitted charge-sheet under Section 366A of the Indian Penal Code against Dilraj Kumar @ Bhupendra Paswan @ Upendra Paswan. The investigation report would also indicate that the petitioner is a minor and, thus, the order directing her release from the After Care Home was illegal. Hence, the same has rightly been set aside.

4. Learned counsel appearing for the State submitted that revisional order is in consonance with the order dated 19.09.2016 passed in CrWJC No. 683 of 2016 wherein this Court had set aside the order passed by the learned Judicial Magistrate whereby the custody of the minor was ordered to be handed over to the brother-in-law of the accused charged under Section 366A of the Indian Penal Code. He submitted that while passing the order, this Court had put reliance on the date of birth



mentioned in the matriculation certificate of the victim.

5. I have heard learned counsel for the parties and carefully perused the record.

6. The facts of the case, in brief, are that respondent no. 8 had submitted a written report before the officer-in-charge, Nagarnausa on the basis of which Nagarnausa P. S. Case No. 148 of 2018 was registered under Section 366 A of the Indian Penal Code against two accused persons, namely, Bhupendra Paswan @ Dilraj Kumar @ Upendra Paswan and Niranjana Paswan. The informant had stated in his report that his daughter (the petitioner) aged about 16 years had gone to the government hospital, but she did not return till 6 p.m.. Thereafter, he and his wife searched for their daughter, but failed to locate her. He contacted his relatives on phone and made an inquiry from them regarding whereabouts of his daughter. From them, he came to know that Upendra Paswan and Niranjana Paswan had abducted his daughter for the purpose of marriage.

7. On the basis of the aforesaid information, the Officer-in-Charge, Nagarnausa P.S. registered an FIR and took up investigation. In course of investigation, the victim was recovered. Her statement was recorded under Section 164 of the CrPC before the learned Magistrate in which she



disclosed her age as 18 years. She stated that out of her own sweet will, she had married Upendra Paswan in Patna City court and after marriage she was living with him at Panipat. She expressed her desire to live with her husband. She apprehended threat to her life.

8. After recording her statement under Section 164 of the CrPC, she was subjected to examination by a medical board which opined that her age to be between 18-19 years.

9. Thereafter, an application under Section 98 of the CrPC was filed by the petitioner before the court of Magistrate for her release. The respondent no. 8 appeared and opposed the application filed by the petitioner. He produced provisional certificate of matriculation of the petitioner wherein the date of birth of the petitioner was mentioned as 15.02.2002. He claimed that the petitioner is aged about 16 years and 10 months only and, thus, she be released in his favour.

10. After hearing the parties, the learned Magistrate, Hilsa, vide order dated 07.12.2018, directed for release of the petitioner from After Care Home.

11. Being aggrieved by the aforesaid order dated 07.12.2018, respondent no. 8 preferred revision application



before the court of session vide Cr. Revision No. 518 of 2018. The learned Additional Sessions Judge-VI, Nalanda at Bihar Sharif, vide impugned order dated 08.01.2019 set aside the order dated 07.12.2018 passed by the learned Magistrate finding the same to be erroneous on facts and law.

12. The said order dated 08.01.2019 is under challenge in the instant application.

13. From the facts noted above, it would be evident that the date of birth of the petitioner as mentioned in her Matriculation Certificate and Aadhar card is 15.02.2002. Respondent no. 8 is admittedly the father of the petitioner. He has confirmed the date of birth of the petitioner recorded in matriculation certificate as also in Aadhar card.

14. Learned counsel for the petitioner has pleaded that the date of birth given by the respondent no. 8 could not have been given precedence over the other reliable evidences. However, he does not dispute the entry made in the Aadhar Card and the Matriculation Certificate of the petitioner. As a matter of fact, while filing the present application, it is the petitioner, who has brought on record her Aadhar Card for the purpose of identification wherein the date of birth mentioned is 15.02.2002.

15. In the opinion of this Court, when the



entry made in the Matriculation Certificate was not disputed, there was no occasion for the learned Magistrate to have ordered for examination of the petitioner by any medical board for ascertaining the age. It has rightly been pointed out by the learned counsel for the State that the order passed by the learned Magistrate is in conflict with the order passed by this Court in CrWJC No. 683 of 2016.

16. The operative part of the order dated 19.09.2016 passed in CrWJC No. 683 of 2016 is as under :-

“4. Later on, medical examination was conducted and on the basis of medical examination and the statement of the victim, she was found to be major and the petition filed by the brother-in-law of the accused was allowed and custody of the victim was ordered to be given to him.

5. The Matriculation Certificate is earlier in point of time when there was no dispute regarding age of the victim. As per the Matriculation Certificate her date of birth is 16th of August, 2001. Thus, oral statement of the victim that she is 19 years old cannot be relied upon as it is a statement of interested person who wants to support her marriage with the accused. Even the medical examination report that she is major, cannot be relied upon as the medical examination is based upon opinion



and, therefore, it is not conclusive.”

17. As far as the contention of the petitioner that since she has attained puberty, she is major under the Muslim Law and, therefore, she cannot be denied her freedom of choice to marry is concerned, true, it is a matter under the Muslim Law is valid if the parties have attained puberty and satisfied all other conditions specified by law. However, a Muslim woman can not marriage a non-Muslim man. A marriage of Muslim female with a non-Muslim male is not permissible. According to Mulla, such marriage is irregular.

18. In the instant case, admittedly, the marriage of the petitioner was not in accordance with Muslim Law. That apart, section 375 of the IPC prescribes the age of consent for sexual intercourse as 18 years.

19. Thus, any person having sexual intercourse with girl child below 18 years of age would be statutory guilty of rape even if sexual activity was with her consent.

20. Under the circumstances, keeping in mind what has been held in the order passed in CrWJC No.683 of 2016, I am of the opinion that the revisional order passed by the learned Additional Sessions Judge-VI, Nalanda at Biharsharif



does not suffer from any illegality.

21. The application is dismissed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
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