

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1612 of 2019

Arising Out of PS. Case No.-7 Year-2018 Thana- MAHILA P.S District- West Champaran

Sagar Soni @ Jagdish Soni @ Jagdish Kumar Soni S/o Sri Umesh Prasad
Soni R/o Village- Ratanmala, P.S.- Bagaha, District- West Champaran.

... .. Petitioner

Versus

1. The State of Bihar through the Secretary, Department of Home and Family Affairs Bihar, Patna.
2. The Superintendent of Police, West Champaran.
3. The Suprintendent, Women Reform Centre, Gayaghat, Patna.
4. Manorama Devi S/o Late Dayashankar Baitha R/o Village- Ratanmala, P.S.- Bagaha, District- West Champaran.

... .. Respondents

Appearance :

For the Petitioner/s : Mr.
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

6 12-02-2020 This matter was taken up for consideration yesterday in Chambers. After hearing the parties who were present in-person, this Court passed the following order :-

“Pursuant to the order dated 06.02.2020, the matter is taken up in Chambers today.

Since learned counsel for the petitioner and the State are restraining from rendering their professional work in view of the call of the Coordination Committee of this Court, the matter has been taken up for consideration in presence of the petitioner namely, Sagar Soni @ Jagdish Soni @ Jagdish Kumar Soni who is present with his brother namely Pradip Soni and Madam Vandana Gupta, Superintendent, women Reform Centre, Gaighat, Patna who is present along with the lady namely, Ms. Madhu Kumari, whose release has been sought for in the present case after quashing of the order dated 20.03.2018 passed by learned Judicial



Magistrate, Bagaha, West Champaran in Mahila P.S. Case No. 7 of 2018.

Earlier this court had noticed the informant (respondent no. 4) who happened to be the mother of the lady Madhu Kumari.

The petitioner as well as his brother have submitted before this Court that the lady Madhu Kumari, who has married with the petitioner, be allowed to be released from the Women Reform Centre, Gaighat, Patna and this petitioner being husband of the said Madhu Kumari undertakes to keep her with full dignity and care as his lawful wedded wife. In proof of marriage a certificate of the temple namely Durgabagh Temple, Bettiah has been enclosed as Annexure '2'. The petitioner and his brother both are working in a Mill at Ahmadabad and they have submitted that the entire family would welcome the lady as a member of the family.

In presence of the Superintendent, Women Reform Centre, Gaighat, Patna (respondent no.3) the lady Ms. Madhu Kumari has herself submitted before this Court that she has married with this petitioner and is willing to live with him as his wife and for this purpose she should be released from the Gaighat Reform Centre where she is lying since 21.03.2018. She has submitted that she had studied only up to Class – II and she is major, which would be evident from the medical examination report dated 12.03.2018, the lady was assessed by the medical team and her age was assessed in between 19 – 20 years. At this stage, the Superintendent, Women Reform Centre, Gaighat, Patna has placed before this Court the medical report of the team which was constituted by the office of the Civil Surgeon - cum - Chief Medical Officer and examined the lady Ms. Madhu Kumari on 03.11.2018. On the said date, the medical team assessed Ms. Madhu Kumari in between 20 – 21 years.

Ms. Madhu Kumari has also informed this Court that since her stay in the Gaighat Centre neither her mother nor her father or any other



member of her family has come to meet her and that they have no concern with her.

This Court finds that earlier notice was issued to the mother (respondent no. 4) who has received the notice as per the service report of the process server and the same has been taken to be validly served. She has not entered appearance in this case. The Superintendent, Women Reform Centre, Gaighat, Patna submits that she would see the records of the Centre and will revert to this Court tomorrow to inform whether as per record the parents of the lady Ms. Madhu Kumari had ever visited the Centre to meet her.

Let this matter be listed tomorrow (12.02.2020) under the heading "For Orders" at 10:30 A.M.

The Superintendent, Women Reform Centre, Gaighat, Patna shall inform this Court as to whether during the stay of the lady Ms. Madhu Kumari, at any point of time, her parents had come to meet her.

Let the petitioner and the lady Ms. Madhu Kumari be also present along with the Superintendent, Women Reform Centre, Gaighat, Patna. Presently, the lady Ms. Madhu Kumari will go back to the Women Reform Centre, Gaighat, Patna with the Superintendent. List accordingly."

Today, Ms. Vandana Gupta, Superintendent, Women Reform Centre, Gaighat, Patna has after going through the records of the centre submitted before this Court that during stay of Madhu Kumari in the Gaighat Centre no one has come to meet her. In this regard she has submitted a letter bearing Letter No. 96 of 12.02.2020 and the same is taken on the record.

On perusal of the order passed by learned A.D.J. 1st, Bagaha in Session Trial No. 301 of 2019 it appears that he had



refused to release the lady Madhu Kumari despite her statement under Section 164 Cr.P.C. that she had married with the petitioner and wanted to go with him as also the medical certificate suggesting that she was major, because he was of the view that the school leaving certificate of the lady was containing her date of birth as 05.08.2003. In this regard he relied upon Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the 'Act of 2015') which deals with presumption and determination of age. Sub-section (2) of Section 94 states that "In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining -

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest



medical age determination test conducted on the orders of the Committee or the Board.”

It is the age recorded by the Committee or the Board which is to be the age of person so brought before it and for the purpose of the Act, be deemed to be the true age of that person.

It is crystal clear from a reading of sub-section (2) of Section 94 of the Act of 2015 that what have been stated in Clause (i), (ii) and (iii) under sub-section 2 of Section 94 are the kinds of evidences which may be looked into by the Committee or the Board when there is any reasonable ground or doubt regarding whether the person brought before it is a child or not. In this case lady Madhu Kumari was not produced before the Committee or the Board and further no age has been recorded by the Committee or the Board for purpose of the Act of 2015. She has not been declared “Child in conflict with Law”. Even under the principles of the Act of 2015 the best interest of the child is to be considered and keeping off him/her in an institutional care is to be avoided if possible. It is for this reason that the Act of 2015 provides under Section 37 that the Committee on being satisfied through the inquiry that the child before the Committee is a child in need of care and protection, may on consideration of social investigation report by Child



Welfare Officer on taking into account the child's wishes in case the child is sufficiently mature to take a view pass one or the more of the orders enumerated under Clause (a) to (h). Clause (b) and (d) thereof provide for restoration of child to the parents or guardian or family and placement with fit person for a long term or temporary one. The emphasis is on the wishes and maturity of the child in this regard.

In the aforementioned background of the facts and the circumstances of the case this Court has noticed that the lady Ms. Madhu Kumari and this petitioner have admitted that they have married to each other and Madhu Kumari has been assessed lastly by a Medical Team constituted by the Civil Surgeon, Patna on 03.11.2018 of aged about 20-21 years. This Court has also interacted with her in presence of all and she has desired to go with the petitioner and live her conjugal life with him. She looked matured in her confidence and the statement made before this Court. Even otherwise it is found that the respondent no. 4 who had lodged the FIR and because of which Madhu Kumari had to remain in the Gaighat Centre never cared to see her and even before this Court she has chosen not to enter appearance.

This Court sitting under Article 226 of the



Constitution of India, therefore, finds that to secure the fundamental right under Article 21 of the Constitution of India, the constitutional morality and the object of the Act of 2015 taking note of her wishes and maturity it is required that the lady Ms. Madhu Kumari be allowed to live her own life which she has chosen to be having married with the petitioner. As stated above she has been found to be major by Medical Team.

In the light of the discussion hereinabove, this Court is of the considered opinion that the lady Madhu Kumari must be released and she should be allowed to live as per her own desire.

This Court, therefore, sets aside the order dated 20.03.2018 passed by learned A.D.J. 1st, Bagaha and directs release of the lady Ms. Madhu Kumari from the Gaighat Centre forthwith.

(Rajeev Ranjan Prasad, J)

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