

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL WRIT PETITION NO. 689 OF 2022

Mahadev Kisan Rajput & Anr. ...Petitioners
Versus
Anil Vasant Khude & Ors. ...Respondents

Ms. Sheetal Kohad for the Petitioners

Mr. Mahindra B. Deshmukh for the Respondent No. 1

Mr. A. R. Patil, A.P.P for the Respondent No.4–State

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 7th APRIL 2022

P.C. :

1 Heard learned counsel for the parties.

2 Rule. Rule is made returnable forthwith, with the consent of the parties and is taken up for final disposal. Mr. Deshmukh waives service on behalf of the respondent No.1. Learned A.P.P waives notice on behalf of the Respondent No.4–State.

3 By this petition, the petitioners have impugned the orders dated 16th August 2021 and 1st January 2022 passed by the learned Judicial Magistrate First Class, Vita, below Exhibits 1 and 21 in Criminal Miscellaneous Application No.120/2021, by which, the learned Judge issued search warrant and directed the PSO, Vita Police Station to take search of the respondent No. 1's wife-Aishwarya (daughter of petitioners) as well as the order dated 27th October 2021 passed by the learned District and Additional Sessions Judge, Sangli, in Criminal Revision Application No. 42/2021, by which, the learned Judge was pleased to confirm the order passed by the learned Judicial Magistrate First Class, Vita.

4 Learned counsel for the petitioners submits that Aishwarya was never confined by the petitioners nor was she married to the respondent No. 1. She submits that Aishwarya is married and is pregnant and the said marriage was voluntary and without coercion or force. Having regard to the same, the impugned order issuing search warrant and the order confirming the same, be quashed and set-aside.

5 Learned counsel for the petitioners has tendered an affidavit of Aishwarya dated 29th March 2020, which is duly notarized. The same is taken on record. A copy of thereof is served on the learned counsel for the respondent No. 1.

6 Learned counsel for the respondent No. 1 vehemently opposes the petition. He submits that no interference is warranted in the impugned order passed by the trial Court and confirmed by the Sessions Court. He submits that Aishwarya was married to the respondent No. 1 in a temple on 27th July 2021. Learned counsel has filed an affidavit-in-reply of the respondent No. 1, which is on page No. 52 onwards. To the said affidavit, the respondent No. 1 has annexed the Marriage Certificate dated 27th July 2021, memorandum of marriage issued by the Priest of Shri Krishna Mangal Karyalaya, Alandi, photographs and the complaint made by him to the Police. According to the learned counsel for the respondent No. 1, the respondent No. 1 had got married to Aishwarya on 27th July 2021 and that both, he and Aishwarya had executed affidavits stating therein that they had given their free consent to the marriage. He has further stated in para 8 that due to their predicament since they were secretly married they collected

photographs of the marriage ceremony that took place at Alandi. He further submits that as Aishwarya had married the respondent No. 1-accused against the wishes of the petitioners, they stayed in Pune City till 10th August 2021 and thereafter, on the same day they came to Vita and stayed in a hotel at Vita, when the police came to the hotel and took Aishwarya from his custody, against the wish and will of Aishwarya. The said incident is stated to have taken place on 11th August 2021. He states that the petitioners had confined Aishwarya against her wish and will and that she was forcibly detained by the petitioners. He further submits that the petitioners could not have got Aishwarya married to somebody else, during the subsistence of her marriage with the respondent No. 1.

7 Perused the papers. According to the respondent No. 1, he was married to Aishwarya on 27th July 2021. The said marriage is stated to have taken place in a temple. The respondent No. 1, to the affidavit, has annexed the Marriage Certificate and Memorandum of Marriage issued by the Priest, photographs, etc. in support of the same. According to the respondent No. 1, on 11th August 2021, the police, at the behest of the petitioners, who were against the said marriage, forcibly took Aishwarya

from his custody, pursuant to which, the respondent No. 1 filed an application under Section 97 of the Code of Criminal Procedure (`Cr.P.C`), seeking issuance of search warrant. Pursuant thereto, the learned Judicial Magistrate First Class, Vita, District Sangli vide order dated 16th August 2021 passed in Criminal Miscellaneous Application No.120/2021 allowed the said application. The operative part of the said order reads as under:

“1. Issue search warrant to P.S.O., Vita police station directing him to take search of wife of applicant namely Aishwarya Anil Khude (Aishwarya Mahadev Rajaput) with the opponents nos. 1 to 4 and to produce her before this Court, if the P.S.O. finds that the wife of applicant is wrongfully confined by the opponents.

2. Search warrant be returned to this court on or before 18.08.2021.”

8 The petitioners who are the parents of Aishwarya challenged the order before the learned Sessions Judge. The learned Sessions Judge confirmed the search warrant issued by the trial Court. Again, the respondent No. 1 filed an application on 15th November 2021 and sought re-issuance of search warrant. The learned Judge issued the search warrant on 1st January 2022. All the aforesaid orders have been impugned in the present petition.

9 When the matter came up before this Court for the first time on 9th March 2022, having regard to the statement made by the learned counsel for the petitioners that Aishwarya was married and that they were ready to get their daughter to this Court instead of the Court of the learned Judicial Magistrate First Class, Vita, the impugned order dated 1st January 2022 passed by the learned Judicial Magistrate First Class, Vita, was stayed. The learned counsel for the petitioners had made a statement that Aishwarya would be produced before this Court on 16th March 2022 at 2:30 p.m.

10 Accordingly, the matter was kept in Chambers on 16th March 2022 at 4:30 p.m, when Aishwarya was interviewed. On interaction with Aishwarya, she disclosed that she is married to Sachinsing and is five months pregnant. She disclosed that she is happy and has no grievance against her husband-Sachinsing; that she is happily married and staying with him on her own volition and that she was not wrongfully confined either by her husband or the petitioners i.e. her parents. Thereafter, the matter was posted on 17th March 2022. What transpired on 16th March 2022, has been set out in the order dated 17th March 2022. On the said date, learned counsel for the petitioners produced documents to show the

marriage of Aishwarya with Sachinsing; confirmation of her pregnancy and change of name of Aishwarya in the Aadhar Card records. Learned counsel for the petitioners had also submitted that the petitioners did not want Aishwarya to remain present before the trial Court, having regard to the fact that she was married and that everybody in the village would know about the case, thus disturbing her married life. Pursuant thereto, the learned counsel had stated that Aishwarya was ready to file an affidavit in this Court.

11 Accordingly, today, learned counsel for the petitioners has tendered an affidavit of Aishwarya. In the said affidavit, she has stated that she is married to Sachinsing on 16th September 2021 and is happily residing with him and that she is 5 month's pregnant; that she is residing with her husband Sachinsing on her own volition and is not wrongfully confined either by her parents or by her husband. She has also stated that as she was in the early stages of pregnancy, the petitioners did not produce her before the trial Court, as the doctor had advised her not to travel. The said affidavit is taken on record.

12 It is also pertinent to note that whilst issuing search warrant, the trial Court has stated that Aishwarya be produced before the Court, if the PSO finds that the respondent No. 1's wife is wrongfully confined by the opponent. From what was disclosed by Aishwarya and what is stated in the affidavit i.e. she has not been confined by the petitioners. It cannot be said that Aishwarya was wrongfully detained by the petitioners or any other person.

13 Considering the aforesaid, the impugned orders dated 16th August 2021 and 1st January 2022 passed by the learned Judicial Magistrate First Class, Vita, below Exhibits 1 and 21 in Criminal Miscellaneous Application No.120/2021 as well as the order dated 27th October 2021 passed by the learned District and Additional Sessions Judge, Sangli in Criminal Revision Application No. 42/2021, are quashed and set-aside.

14 Rule is made absolute in terms of prayer clause (a).

Application is disposed of accordingly.

15 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.