

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1262 OF 2024

Shamshad Ahmad @ Sham .. Petitioner
Versus
The State of Maharashtra & Ors. .. Respondents

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Mr.Siddharth Singh i/b Mr.Sanjay Singh for the Petitioner.
Ms.Neha Patil for the Respondent No.3.
Mrs.M.M.Deshmukh, A.P.P. for the State/Respondent.
Petitioner and corpus present.
PSI Seema Khan from D.N.Nagar Police Station, present.

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CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 19th AUGUST, 2024
(IN CHAMBER)

P.C:-

1. The Petitioner, aged 30 years, came in contact with the Corpus, Sapnaben Punabhai Jamod, when he was residing in Surat. Their friendship blossomed into love and they decided to solemnize the marriage, being conscious of the arduous journey to be undertaken by them, as they belonged to different religions.

This was the specific reason that on her own will, the Corpus and the Petitioner travelled to Mumbai, for they feared that they will not be able to solemnize their marriage in Surat.

The Corpus, accompanied by the Petitioner, arrived in Mumbai on 08/03/2024 and stayed with him, till they performed the marriage ceremony as per Hindu Vedic rights and customs on 11/03/2024 at Shree Ram Mandir, Nirmal Nagar, Khar(W), Mumbai. The declaration of marriage under the signature of the Petitioner and the Corpus in a notarized form, annexed to the Petition, is the evidence of their marriage along with certain photographs of the couple, tying the nuptial knot . In addition, the receipt issued by the Trust, where the marriage was performed, is also produced as a proof of marriage.

2. The Petitioner, who belong to Muslim religion, has specifically pleaded in the Petition that he is acquainted with the teaching of religion of Hinduism and, therefore, he renounced his religion and embraced of Hinduism on 09/03/2024 and his converted Hindu name is 'Sham' and he has placed on record an affidavit of the Priest dated 09/03/2024 to that effect.

According to the Petitioner, the Respondent No.4 came to their residence on 12/03/2024 in search of his wife and they were asked to attend D.N.Nagar Police Station, where the Corpus gave a statement that on account of her will, she had performed the marriage with the Petitioner as per Hindu rites and customs, and she is residing with him as his wife.

The brother of the Corpus, who was also present with the police, informed the Petitioner and the Corpus that her father was admitted in the hospital at Surat, and his health was deteriorating and purely on humanitarian grounds, the

Petitioner allowed the Corpus to accompany her brother, as he was equally concern about her family members. He was assured that the Corpus would be returning soon.

3. The Petitioner, thereafter, attempted to contact her, but her phone was found switched off and he did not receive any positive response from her family members. At one instance, when the Corpus picked up her phone, she narrated that she was deceived and was being pressurised, not to maintain any relationship with him.

Immediately i.e. on 20/03/2024, he filed a written complaint before D.N.Nagar Police Station, narrating that his wife was removed from his custody by deceit. In the Petition, it is the specific pleading of the Petitioner that the Corpus is in illegal custody of Respondent No.3 and therefore, he was constrained to file the Petition, requesting the Court to issue a writ of Habeas Corpus, seeking her production before the Court.

4. On 05/08/2024, we directed Inspector of D.N. Nagar Police Station to trace the Corpus with the help of Respondent No.4 and we also issued notice to Respondent No.3, by making the same returnable on 19/08/2024.

In compliance, the Corpus is produced before us, when the matter was called out and with her family members around, we realised that she was not able to express her will, though she was represented by a Counsel. Therefore, we deemed it appropriate to take the matter in chamber at 5.45 p.m., after our usual court business was over.

5. When we met the Corpus in the chamber and assured her not to fear anyone and expressly speak about what she desired, and what was the background in which she was moved to Surat, she freely interacted with us and narrated the background facts and circumstances. She sought sometime to think over, as she was under an impression that if she decided to go with the Petitioner, her family would be arrested or detained.

We cleared her impression by informing her that she is an adult, and therefore she can take her decisions on her own, and if she decide, to accompany the Petitioner, no action will be initiated against her family members.

Once she received this assurance, she promptly chose the path leading her to Shamshad, the Petitioner, as she expressed that she was confident that she would be happy in his company and it is, because of her love towards him, she had performed the marriage.

When we confronted her with the different religion professed by her, she made it clear to us that the Petitioner never asked her to convert her religion, but he was agreeable to follow Hindu religion, and therefore, she did not apprehend any problem on this count.

She also informed us that when she was staying with her family, she was not subjected to any coercion or force, but she did not openly maintain any contact with the Petitioner all the while.

After sometime, she, however, clearly told us that she is desirous of accompanying Shamshad, and therefore, when we called her brother and father in the chamber, she revealed her stand to them.

Apparently, they were stirred and told her that from this moment, she is dead for them.

An attempt was also made to make her talk to her mother on mobile phone, but once she made her mind, she was not ready to get ruffled by what was told to her by the other family members, who were present in the chamber, and also on account of the conversation which she had with her mother.

6. We also called Shamshad, the Petitioner, in the chamber who was delighted to meet the Corpus, as according to him, no contact was established with her after she left for Surat. We also enquired about his financial status and stability, and could gather that the Corpus had full knowledge about his family, his financial status and the loss, which he had sustained in the business.

7. With this background, the Corpus has expressed to us that she is ready and willing to accompany him, though some attempt was made by her father and brother, by informing her that from this moment, they have discarded her as a member of their family, and she shall keep no ties with them, she remained firm on her decision and she made it clear to her brother, in our presence, that she want to accompany Shamshad.

8. Once the Corpus was produced before us and she expressed her desire to accompany the Petitioner, she being major, capable of taking her own decisions for herself, it was our duty to honour her decision.

It was almost for two hours, we had interacted with her in presence of Shamshad as well as her family members, and when she was clear about the course of action, which she wanted to follow, we permitted her to be with Shamshad, the Petitioner, by directing D.N.Nagar Police Station to follow the proper procedure, before she was allowed to be in the company of the Petitioner.

At this stage, we must also clarify that the Corpus was not unlawfully detained by her family members, but as she had revealed to us that she was not sure of the choice, which she had to make, in choosing between her family or Shamshad with whom she shared a relationship of love for last two years, she continued to be with her family members at Surat. However, we must also add that they are not liable for any action, once she has made up her mind to move out of her parental home.

9. We have witnessed the Corpus making a decision of her free will truly making the belief, 'Love triumphs over all', come true.

Without going into the legality or validity of the marriage between the couple, both being major and capable of taking their own decisions, once the Corpus has made it clear to us, as well as her family members that she wanted to accompany the Petitioner and reside with him, we had only assisted her in converting her will and wishes.

In the result, we pass the following order.

: **ORDER** :

(a) Writ Petition is allowed.

(b) Upon the production of the corpus Sapnaben Punabhai Jamod, we issue writ in the nature of mandamus to hand over her custody to the petitioner, as she expressed her desire to continue her habitation with him, pursuant to the marriage that is performed, without going into the legality or otherwise of the marriage that is solemnized by the petitioner with the corpus, but since it is her desire to be with the petitioner.

Police Inspector, D.N. Nagar police station, Mumbai who has produced the corpus is directed to hand over her custody to the petitioner forthwith.

(MANJUSHA DESHPANDE,J.)

(BHARATI DANGRE, J.)