



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO.902 OF 2023

Komal Sanjay Bhoyar
Aged about 19 years, Occ: Student,
R/o Ubda, Tq. Samudrapur,
Dist. Wardha

....PETITIONER

...V E R S U S...

1. The State of Maharashtra,
Through Police Station Officer,
Police Station, Mangrul Dastgir,
Tq. Dhamangaon Railway, Dist.
Amravati.

2. Mahesh Govindrao Shelke,
Aged about 30 years, Occ: Labour
R/o Ward No.1, Dighi (Mahalle),
Tq. Dhamangaon Railway,
Dist. Amravati.

...RESPONDENT

Shri S.P. Bhandarkar, Advocate for petitioner.
Ms Kavita Bhondge, APP for respondent no.1/State.
Ms L.G. Tiple, Advocate for respondent no.2.

CORAM:- M.W. CHANDWANI, J.
DATED : 9th FEBRUARY, 2024.

ORAL JUDGMENT:

. **Rule.** Rule made returnable forthwith. Heard finally
with consent of the learned counsel for the parties.

2. The petition challenges issuance of search warrant
under section 19(1) of the Code of Criminal Procedure (for short,
'Cr.P.C.') before the learned Judicial Magistrate First Class (JMFC),

Dhamngaon Railway, District Amravati in Misc. Cri. A. No.329/2023.

3. The respondent filed an application under section 97 of the Code of Criminal Procedure before the learned JMFC, Dhamngaon Railway contending that the respondent married the petitioner on 05.12.2023 at Shiv Vaidik Vivah Mangal Karyalaya, Nalwadi, Wardha. On the date of marriage itself the mother alongwith her uncle had been to the house of respondent and on the next day the petitioner was taken away by them on the pretext of Satyanarayan Puja at their home. However, later on the petitioner had called the respondent stating that her parents are torturing her because of the marriage and they are not allowing the petitioner to come back to join the company of the respondent. The learned JMFC by the impugned order issued search warrant under section 97 of the Cr.P.C. and directed the Police Station Officer of Mangrul Dastagir to search the petitioner and produce before the Court. Feeling aggrieved with the said order, the petitioner herself approached this Court challenging the issuance of search warrant.

4. On 21.12.2023, this Court (Coram: Anil L. Pansare, J.) interacted with the petitioner and observed as under :

“6. Accordingly and in order to understand the controversy, I have interacted with the petitioner in the chamber. The interaction leads to the conclusion that the petitioner is willingly residing with her mother.”

5. It is contended on behalf of the learned counsel for the petitioner that in the wake of the statement made by the petitioner that she is willingly residing with her mother, there is no question of any confinement which amounts to offence as enumerated under section 97 of the Cr.P.C. therefore search warrant issued by the learned JMFC be quashed.

6. Per contra, learned counsel for the respondent submits that the petitioner herself sent her location after she was taken away by her mother and also informed the respondent that she was tortured, therefore, the application before the learned JMFC was made. According to her, the petitioner is a legally married wife of the respondent and she has been forcibly taken away.

7. Considering the satisfaction recorded by the learned Judge of this Court vide order dated 21.12.2023, it is crystal clear that the petitioner is residing with her mother willingly therefore, there is no confinement of the petitioner. In the wake of this, the warrant issued by the learned JMFC does not stand and is set

aside.

8. In the wake of above, the petition is allowed. The impugned order dated 13.12.2023 passed by Judicial Magistrate First Class (JMFC), Dhamngaon Railway, District Amravati in Misc. Cri. A. No.329/2023 is hereby set aside.

Rule made absolute in above terms.

JUDGE

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