



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

CRIMINAL WRIT PETITION NO.381 OF 2024

Furqan Khan Abdullah Khan

..vs..

State of Maharashtra and ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Abdul Subhan Advocate a/w Shri Mirza, Advocate for the
petitioner.

Ms. T.H. Udeshi, Addl.P.P. for the State.

Shri S.G. Karmarkar, Advocate for parents of respondent no.6.

CORAM: VINAY JOSHI AND MRS.VRUSHALI V. JOSHI, JJ.
DATED : 30/04/2024.

. The matter is taken before us at 12.20 p.m. The girl is brought today from shelter home by respondent No.7 with the aid of police. She is 21 years of age.

2. Learned Counsel Mr. Karmarkar undertakes to file memo of appearance for the parents of the girl and he wanted to make submissions in resistance of this petition.

3. We have asked the girl whether she got married with the applicant, on which she answered in the affirmative. When we ask as to where she desires to live. Though she understood the question, she took time, but did not answer our question.

4. Both side have requested that the girl can be heard in chamber. The matter be taken up at 2.30 p.m. in the chamber.

5. In the meantime, the police shall see that

nobody from either side shall interact with the girl.

6. Learned Counsel Mr. Karmarkar urged that parents be allowed to interact with the girl.

7. We desire that nobody should pollute the girl. Hence, till we interact at 2.30 p.m. in chamber, nobody shall be allowed to interact with the girl.

In the afternoon session at 2.30 p.m.

8. Today, in first session, the matter is came before us at 12.20 p.m. Respondent no.7 The District Women and Child Development Officer, Yavatmal has produced the girl aged 21 years before the Court.

9. This is a writ of Habeas Corpus filed by the petitioner claiming to be married with the girl on 20.04.2024. It is his contention that from the date of marriage, the girl was living with him however at the behest of her parents with the aid of Police, she was taken away and housed in the custody of Respondent no.7.

10. Learned Counsel Shri Karmarkar has appeared for the parents of girl and submitted that the petition is not maintainable since the petitioner has alternate remedy before the Magistrate to seek for search warrant in terms of Section 97 of the Code of Criminal Procedure. He has submitted that, though the girl is major she is immature and thus, she be handed over in the custody of her parents to think over the matter.

11. Considering the sensitivity of the case and caste

barrier between the husband and wife, we have interacted with the girl in Chamber to know her wishes. Our entire endeavour was that she should not be under anybody's pressure while expressing her desire. It reveals that due to caste differences, both sides are claiming the custody. At one side, the petitioner husband wants her custody by stating that his wife erstwhile Hindu has converted and followed the Muslim religion and she married with him as per the Muslim Customary Rites on 20.04.2024. He has also produced the document showing that in presence of religious priest, the marriage was performed. On the other hand, the parents who are not agreeable with the marriage urged to handover the custody of the girl.

12. In earlier session, we asked the girl about her wish. She kept quite and did not answer anything. The said behavior gave us the sense that she may be under pressure that is why we have heard her in Chamber. In our interaction, we have noted that girl is not firm hence we tried to convince her that if she is not sure she should take some time to think over.

13. During interaction, the girl stated that in reality she has married with the petitioner and she desires to live with him. Moreover, she expressed that to secure her rights in future, her marriage shall be performed under the Special Marriage Act, 1954.

14. The girl has specifically stated that she do not want time but she desire to live with the petitioner husband. Communal and caste differences carries no

meaning before the Law and particularly, the wishes of adult lady. The girl once-again reiterated that she desire to live with the petitioner husband. The petitioner through his Counsel has submitted that genuinely he wanted to reside with the girl that is why he has married and he is also ready to perform the marriage under the Special Marriage Act.

15. In view of the above, the petitioner being major lady, she is free to live wherever she desire. We direct the Police and Respondent no.7 to set her free so as to adopt the way, which she wishes.

16. We direct both the sides that nobody shall bother the girl failing which this Court will be constrained to take appropriate action, which is permissible under the Law.

17. The petition stands disposed of in above terms.

Later on at 4.50 p.m.

18. Once-again learned Addl.P.P. submitted that the girl had changed her mind and now, she expressed that she desires to live with her parents. In earlier part of the order, we have clarified that she being a major, she is free to go anywhere. Before sometime she expressed that she wanted to live with her husband (the Petitioner) but now, she again reverted to us stating that she wanted to live with her parents. As we clarified that she being a major she has right and choice to live wherever she desire. However, we have taken a note that number of family members from both sides are attending the

proceedings and thus, we are scared about the safety of the girl.

19. At this stage, learned Counsel Shri Mirza appearing for the petitioner has submitted that the girl may be under pressure so she be kept in the custody of Respondent no.7. The girl has already shown her reluctance to stay in the custody of Respondent no.7. She being major we cannot curtail her liberty by confining her unless there are compelling circumstances. Now, the girl wishes to stay with her parents and according to us, that is the safe place for her and therefore, we do not consider the submissions made by the learned Counsel.

20. In view of the above, we permit the girl to reside with her parents as she disires. Since the parties have made a prestige issue, we direct the concerned Police to escort the girl to the house of her parents and take care that she should not be bother hereinafter by either of them.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)

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