
(2008) 08 GAU CK 0014
In the Gauhati High Court
Case No : Writ Petition (C) No. 23 of 2008

Abdul Hussain Brabhuiya

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 29-08-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 366A

Citation : (2010) 1 GLD 657

Hon'ble Judges : Aftab H. Saikia, J

Bench : Single Bench

Judgement

Aftab H. Saikia, J.—Heard Dr. B. Ahmed, learned Counsel appearing on behalf of the petitioner/Abul Hussain Barbhuiya and Mrs. A. Devi, learned Counsel representing the respondent Nos. 9 and 10 as well as Mrs. T. Khro, learned State counsel, State of Nagaland appearing on behalf of respondents Nos. 6, 7 and 8. Also heard Mr. P.S. Deka, learned State counsel, Assam representing the respondents Nos. 1, 2, 3, 4 and 5.

2. Upon meticulous scrutiny of the entire pleadings in the instant Habeas Corpus petition accompanied by all the related documents including the statement of Laxmi Pradan @ Priya Begum (hereinafter referred to as "the girl") made u/s 164, Cr PC appended to this petition and also having heard the learned Counsel for the parties, it reveals that the petitioner, having fallen in love with the girl, tied in wedlock with the girl and to this effect both of them entered into a Marriage Declaration executed on 8.10.2007 wherein the girl declared that she would use Muslim name as Priya Begum (as evident from the said Marriage Declaration in Annexure 1 to this Habeas Corpus petition). It also appears that prior to such declaration (Annexure 1), they were married earlier and the same is evident from the Marriage Certificate dated 15.12.2006 as well as the Social Marriage executed on 8.4.2007 (Annexures 2 and 3 to this Habeas Corpus petition respectively). After such marriage, the petitioner and the girl used to live

together as husband and wife in the petitioner's hometown at Hailakandi wherein they stayed for more than one month.

3. Meanwhile, one Santosh Pradhan, the respondent No. 10, the brother of the girl, who hailed from Dimapur, lodged an "ejahar" with the Hailakandi Police being registered as Hailakandi P.S. Case No. 257/2008 on 25.5.2008 alleging that his younger sister aged about 17 years was forcefully taken from Dimapur by the petitioner and having been informed by reliable source, he came to know that both the petitioner and his sister was living at Hailakandi and accordingly he requested the police to recover his sister from the custody of the petitioner and to take necessary action against the petitioner.

4. Pursuant to such information, Hailakandi Police Station started investigation, arrested the petitioner and recovered the girl from the house of the petitioner at Bhajantipur Part I under Hailakandi Police Station. Both the girl and the petitioner were medically examined in S.K. Roy Civil Hospital, Hailakandi by the police and the same is evident from the Forwarding Letter dated 28.5.2008 (Annexure 5 to this Habeas Corpus petition) issued by the S.I. of Police, Hailakandi Police Station and subsequently the girl was forwarded to the Court of learned Chief Judicial Magistrate, Hailakandi for recording her statement u/s 164, Cr PC.

5. Thereafter, the learned Additional Chief Judicial Magistrate, Hailakandi on 28.5.2008 recorded the statement of the girl u/s 164, Cr PC. In her statement, the girl mentioned that she was aged about 20 years. It will be pertinent to quote herein the statement of the girl which reads as under:

IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE HAILAKANDI G.R. No. 664/2008 : Hailakandi P.S. Case No. 257/2008 State v. Abul Hussain Barbhuiya...accused

The deposition of witness u/s 164, Cr PC aged about 20 years, taken on oath or solemn affirmation under provision of the Indian oaths Act X of 1878, before me C. Das, Addl. CJM, Hailakandi on 28.8.2008 of this day of ...My name is Ms. Priya Begum @ Lakhmi. My father's name is....W/o Abdul Hussain Barbhuiya, I am by caste....My Mouza is at....Police Station is....District....I reside at present Ratanpur Ghat in Mouza....Police Station Hailakandi, Dist-Hailakandi, where I am Tailor.

On Oath:

I was born in Dimapur. About 3 years ago I got involved in love with Abul Hussain. I passed Matriculation examination last year. From my Matriculation Certificate it will be revealed that my present age is 20 years.

In the month of October last year Abul Hussain married me in the Court. The social marriage took place in December and after marriage I have been living with Abul Hussain, who is a Tailor Master in Dimapur.

Thereafter, I asked Abul to take me to Hailakandi and now myself and Abul are living in Hailakandi in his house. The police took me here because we were living together. Abul did not kidnap me. I have come with my own volition....,

R.O. @ A.C. Sd/-illegible 2905008 Addl. C.J.M., Hailakandi

6. From a bare perusal of the above statement made u/s 164, Cr PC, it candidly transpires that as per the statement of the girl, she was having love affairs with the petitioner for last 3 years and she passed her Matriculation examination and from her Matriculation Certificate it would reveal that she was aged about 20 years. It was further stated that the petitioner married her in the month of October last year in the Court and thereafter social marriage between the petitioner and the girl was solemnized. She also empathetically stated that the petitioner did not kidnap her and she came with the petitioner at her own volition.

7. We have also carefully gone through the Provisional Certification of Secondary School Examination of National Institute of Open Schooling (Annexure 7 to this Habeas Corpus Petition). In the said Certificate, the date of birth of the girl was recorded as 10.4.1989. That being so, the age of the girl as on today is 19 years 4 months 19 days.

8. Taking into the account the statement of the girl recorded u/s 164, Cr PC on 28.5.2008 and the date of birth recorded in the Provisional Certificate above mentioned, the age of the girl appears to be contradictory. Perhaps for such reason, the learned Chief Judicial Magistrate, Hailakandi in G.R. No. 664/2008 arising out of Hailakandi Police Station Case No. 57/2008 as already noted above, vide order dated 28.5.2008, sent the girl for ossification test before the Medical Board at G.M.C. Hospital. For that purpose, she was also sent to the State Home for Women at Guwahati as because such institution was not available at Barak Valley Pursuant to the order dated 28.5.2008 passed by the learned Chief Judicial Magistrate, Hailakandi, the girl was kept in the State Home for Women, Jalukbari, Guwahati to produce before the medical board. But the girl, instead of facing the Medical Board for her ossification test, preferred not to appear before the Board and made an application before the respondent No. 2, the Superintendent, State Home for Women Jalukbari to allow her to go with her mother/respondent No. 9. In turn, respondent No. 2 sent the said application to the learned Chief Judicial Magistrate, Hailakandi vide communication dated 2.6.2008. On such application/communication, the learned Chief Judicial Magistrate, Hailakandi by his order dated 4.6.2008 allowed the mother of the girl, Smt. Tribeni Pradhan/respondent No. 9 to take Zimma of the girl and directed to produce the girl as and when required by the Court after execution of a Zimmanama of Rs. 5,000/-before the Superintendent of State Home for Women, Jalukbari, Guwahati/respondent No. 2.

9. In compliance of the above order, respondent No. 2 released the girl vide order dated 6.6.2008 to go home with her mother/PW 9 and accordingly, the girl left Guwahati with her mother without having done her ossification test.

10. Nonetheless, it also reveals from Annexure 13 appended to the instant Habeas Corpus Petition that the girl was sent for ossification test to Hailakandi Civil Hospital on 28.5.2008 itself and the Medical Officer in his comment dated 2.8.2008 opined that the girl was aged above 18 years.

11. As reflected in the order dated 28.8.2008 of this Court, the girl along with her mother appeared before this Court and we have talked to both the petitioner and the girl in Chamber in an attempt for causing reconciliation between the parties. The boy was willing to take the girl back being his wife but the girl refused to go with the petitioner and she wanted to go with her mother to pursue her further study.

12. On pointed query about her marriage, she also told that the marriage was a mistake as the same was done in allurement and inducement. However, surprisingly, when the girl was examined u/s 164, Cr PC on being produced by the police after she was recovered from the custody of the petitioner, she did not even whisper before the Court that she was ever either allured, compelled and induced to marry the petitioner. Amazingly, in her statement u/s 164, Cr PC as quoted above, she made the statement voluntarily before the Court that she was aged about 20 years and she was in love with the petitioner for last 3 years. Further she categorically stated that the petitioner did not kidnap her and she came with the petitioner on her own volition.

13. An affidavit has been filed on behalf of the State of Nagaland/Respondents Nos. 6, 7 and 9 as regards the production of the girl. However, no affidavit has been filed on behalf of Respondents Nos. 9 and 10 countering the averments and statements made in this instant petition.

14. It is pertinent to mention herein that vide order dated 28.5.2008 as notice above, the Court of the learned Chief Judicial Magistrate, Hailakandi directed to hold ossification test as the same was necessary to ascertain the age of the girl and accordingly she was sent to the State Home for Women, Jalukbari, Guwahati/Respondent No. 2. However, the subsequent order dated 4.6.2008 passed by the learned Chief Judicial Magistrate, Hailakandi releasing the girl from the State Home for Women, Jalubkari would go to show that the said order has been made redundant as the girl refused to go for such ossification test and as a result, she was given custody to her mother/PW 9 by Respondent No. 2. Under such circumstances, the interim order passed on 13.8.2008 staying the order dated 28.5.2008 has been made absolute.

15. Today also we have talked to the girl through her counsel Mrs. A. Devi and she has declined to go with the petitioner though she is the married wife of the petitioner.

16. Be that as it may, since the girl appears to be a major and she wants to go with her parents, we are of the considered view that the ends of justice would be satisfied if the girl is allowed to go with her parents. It is ordered accordingly.

17. At this stage, Dr. Ahmed, learned Counsel for the petitioner has submitted that the learned Chief Judicial Magistrate, Hailakandi vide order dated 13.6.2008 (Annexure 15 to this petition) on the prayer of Hailakandi Police ordered for transferring Hailakandi P.S. Case 257/2008 to West P.S. Dimapur, Nagaland. Now, the petitioner, according to the learned Counsel, apprehends that he would be unnecessarily harassed and tortured by the police for the alleged offence u/s 366-A registered in the above police case by the Nagaland Police and accordingly he has requested that the interim order dated 13.8.2008 passed by this Court staying the order dated 13.6.2008 may be made absolute.

18. We have heard learned Counsel for the parties including the learned state counsel, Assam and Nagaland on this prayer. It appears from the record so placed before us by Mr. P.S. Deka, learned state counsel, Assam as well as the letter dated 8.6.2008 (Annexure 14 to this Habeas Corpus petition) wherein Hailakandi Police made a prayer to the learned Chief Judicial Magistrate, Hailakandi for transferring the case to West Police Station, Dimapur, Nagaland as the place of occurrence fell under the said police station, that the learned Chief Judicial Magistrate, Hailakandi vide order dated 13.6.2008 passed in G.R. No. 664/2008 transferred the case to the Officer-in-Charge, West P.S., Dimapur, Nagaland with a direction to move concerned learned Court for issuance of production warrant for taking the accused persons from Hailakandi to Dimapur. It is clearly noticed that no such request has been made by the Nagaland Police. Even the complainant also did not prefer any such application for transferring case to Nagaland. Pertinent to note that the complainant/respondent No. 10 did not lodge any complaint or "ejahar" before Nagaland police at Dimapur rather he came down to Hailakandi and staying in the house of one Arup Bhattacharjee he lodged the instant complaint with Hailakandi Police Station. Dr. Ahmed had contended that the said action has been taken by the police only to arrest and harass the accused on the basis of the FIR lodged by the complainant and, if the said action is allowed to be acted upon, the petitioner would be unnecessarily harassed in his production on arrest.

19. Taking into account the factual circumstances in its entirety and upon consideration of above submission of the learned Counsel for the petitioner, we are inclined to make the interim order passed on 13.8.2008 staying the order dated 13.6.2008 absolute. Accordingly, the earlier interim order dated 13.8.2008 staying the order dated 13.6.2008 is hereby made absolute. However, it is made clear that Hailakandi Police shall have liberty to proceed with the investigation of the case. We have passed this order in the interest of justice as well as under the power vested upon us under Article 226 of the Constitution of India.

20. Be it also noted herein that no application has been preferred by any of the respondents for alteration/modification or cancellation of the interim order passed on 13.8.2008 staying the order dated 13.6.2008.

21. In view of what has been discussed, stated and observed above, this Habeas Corpus petition stands disposed of. No costs. Petition stand disposed.