

(1998) 03 AHC CK 0060

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 637 of 1998

Arvind Kumar and Anr.

APPELLANT

Vs

Addl. Chief Judicial Magistrate Maha Maya Nagar & Anr.

RESPONDENT

Date of Decision : 19-03-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1
Constitution of India, 1950 — Article 226

Citation : (1998) 03 AHC CK 0060

Hon'ble Judges : S.K.Phaujdar, J and J.C.Mishra, J

Final Decision : Dismissed

Judgement

1. The present writ petition was filed under Articles 226/227 of the Constitution of India with a prayer for issuance of a writ, order or direction in the nature of certiorari to quash the FIR as per Annexure4 to the writ petition. There was a further prayer for a writ of mandamus upon the opposite parties directing them not to arrest the petitioners.

2. The FIR in question, as per Annexure4, related to case Crime No. 425 of 1997 under Sections 363 and 366, IPC, P.S. Kotwali Hathras, District Mahamaya Nagar. The maker of the FIR was one Ashok Kumar son of Ganeshi Lal Verma and two persons viz. Arvind Kumar alias Babloo and Umesh alias Banda were named as accused in that FIR. The alleged kidnapping of the petitioner, Renu Verma, on 29/11/1997 was the subjectmatter of the FIR and this Renu was described as a girl of 15 years.

3. In the opening paragraph of the present writ petition it was stated that this was the first writ petition before the Hon'ble High Court concerning the cause of action and no other writ petition had been filed earlier to it. On merits of the case it was stated that there had been a talk of marriage between Arvind and Renu at the level of their fathers, but the negotiation could not be fruitful due to certain misunderstanding. Arvind and Renu, however, were ready to marry each other and then went through a marriage on 20/12/1997 and a certificate of marriage

under the Arya Marriage Act was appended to the writ petition. Prior to the marriage there had been an alleged medical examination of the girl, who had opined that she was of 18 years, on 17/12/1997. It was urged that the FIR made out no offence and as such quashing of the FIR was necessary.

4. Sri J. P. Singh appeared for the complainant when the matter came up before us for the first time on 11/3/98. The petitioners were represented by Sri Y. S. Saxena. On 11/3/98 itself, Sri Singh indicated that the petitioners had filed an earlier writ petition before this Court vide No. 67 of 1998. The matter was directed to be put upon 16/3/98 with the records of the aforesaid writ petition. On that day, however, the earlier writ petition was not traceable, but a certified copy of the order dated 13/1/98 was placed by the complainant before us to show that the writ petition was withdrawn after some arguments and was disposed of on withdrawal. The order did not indicate if any liberty was craved or given by the Court to the petitioners to file the petition afresh. We placed the matter again at 10.00 a.m. on 17/3/98 for the petitioners to indicate if the withdrawal would or would not be a bar to the second writ petition. When the matter was called out, the learned Counsel for the complainant only appeared before us and he placed a decision of the Supreme Court as AIR 1987 SC 88, *Sarguja Transport Service v. State Transport Appellate Tribunal, Gwalior and others*. It was clearly indicated herein that the rule of public policy, as contained in Order XXIII, Rule 1 of the Code of Civil Procedure, applied to writ petitions also barring habeas corpus petitions and the Supreme Court observed that a petitioner after withdrawing a writ petition filed by him in the High Court under Article 226 without the permission to institute a fresh petition cannot file a fresh writ petition in respect of the same cause of action in the High Court under that Article.

5. There is no denial that the earlier writ petition was filed for quashing the FIR and the present two petitioners were petitioners in the earlier petition also. It is unfortunate that not only the filing of the earlier writ petition was suppressed but a statement on oath was made in the opening paragraph of the writ petition to impress upon the Court that no earlier writ petition had been filed in this Court. This statement was made, as per the affidavit, as true to the personal knowledge of the deponents, Arvind Kumar and Renu Verma. The present writ petition does not lie at the instance of these two petitioners as their earlier writ petition for the same relief was withdrawn without any leave to file it afresh. The present writ petition, accordingly, stands dismissed¹.

6. The matter may not stop here. By their own action in suppressing the facts of filing an earlier writ petition, the petitioners have made themselves liable for a two pronged action. Firstly, they may be awarded exemplary costs for having attempted to defraud the Court, and, secondly, they may be punished for swearing a false affidavit. Unless some stringent measure is taken, such malpractices would continue to be practised. While dismissing the writ petition we direct that both the petitioners will have to pay a cost of Rs. 5,000/ for having tried to hoodwink the Court by suppression of facts. This amount is to be

realised from them jointly or severally as arrears of land revenue and the Registrar of this Court will take necessary steps wards realisation of the same, if the costs awarded are not paid within a month from today. For the second aspect of their, malpractice, we feel no separate action need be taken in view of the cost imposed on them. Petition dismissed.