

(2002) 01 AHC CK 0195

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 44 of 2002

Bobby and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-01-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 154, 157, 161, 164

Penal Code, 1860 (IPC) — Section 266, 363, 366

Citation : (2002) CriLJ 2227

Hon'ble Judges : S.R. Singh, J; R.K. Dash, J

Bench : Division Bench

Advocate : Nasiruzzaman, for the Appellant; A.G.A., for the Respondent

Final Decision : Disposed Of

Judgement

1. These two petitioners arraigned as accused for the offence punishable under Sections 363 and 366 I.P.C. in case crime No. 321 of 2001 P.S. Sirsaganj District Firozabad have filed this writ petition under Article 226 of the Constitution seeking quashing of the FIR and restraining the police to arrest them in the aforesaid case. Briefly stated the prosecution case as borne out from the FIR, copy whereof at annexure-5, is that on 12th November, 2001 Km. Sangeeta aged about 14 years daughter of Sanjeev Kumar, the informant had been to market during day hours but did not return. A search was made in course of which two persons namely, Sunil and Shivkant disclosed that they had seen Sangeeta going with the present petitioners. The informant made a written complaint to the police on the basis of which the aforesaid case has been registered under Sections 363 and 266 I.P.C.

2. The case of the petitioners as stated in the writ petition is that the informant, father of Sangeeta was tenant under their father and both the families had cordial relationship. Both Javed Khan and Sangeeta were intensely lovelorn which drove them to a marriage. According to the petitioner, the marriage was

performed on 15th November, 2001 and "Nikahnama" was executed accordingly. Besides, on the legal advice both of them entered into a written agreement admitting marriage and this agreement was preceded by a certificate issued by the Chief Medical Officer, Etah who upon examination certified. Sangeeta to be aged about 19 years.

3. Learned Counsel appearing for the petitioners strenuously urged that in view of the background facts as narrated in the writ petition that Sangeeta is a major girl being ages 19 years as opined by the Doctor and she having married to petitioner No. 1 on her free will, investigation taken up by the local police pursuant to the FIR lodged by her father should be brought to a halt and the whole criminal proceedings should be quashed. Per contra, learned A.G.A submitted that it is too early to accept the defence plea that Sangeeta is major and that she left the parental home and married to petitioner No. 1 on her own volition. He further contended that medical certificate produced by petitioner No. 1 in support of age of Sangeeta cannot be accepted on its face value when the investigation is in embryo.

4. Undisputedly the allegations as made in the FIR, copy whereof at annexure-5, prima facie make out a cognizable offence requiring investigation by the police. It is the settled position of law that at the time of registration of a case pursuant to the report, the police cannot go into the correctness or otherwise of the allegations made therein. Therefore, when the report reveals commission of a cognizable offence, it is obligatory of the concerned police officer to register a case and then proceed with the investigation if he has reason to suspect that an offence has been committed. The expression "reason to suspect of commission of a cognizable offence" as appearing in Section 157 is not there in Section 154 Cr.P.C. therefore, when any information regarding commission of a cognizable offence is received, the Officer-in-Charge of the concerned police station cannot refuse registration of a case. In that view of the matter, the allegation in the present case being that Km.Sangeeta was minor when she was enticed away by the petitioners and this being a cognizable offence, it is incumbent upon the police to investigate the same.

5. The defence plea that Km. Sangeeta was major at the relevant time and that she left her parental home on her own opinion and married to petitioner No. 1 cannot be accepted on its face value and the whole criminal proceedings and the FIR cannot be quashed. It has come to our notice that in large number of cases of this nature, the accused having kidnapped a girl approached the Chief Medical Officer to obtain a certificate as to the age of the girl and being armed with such certificate moved that Court to direct the Chief Judicial Magistrate or any other Magistrate to record the statement of the girl u/s 164 Cr.P.C. and then quash the F.I.R.

6. Recording of statement of witness u/s 164 Cr.P.C. and examination of the victim girl by the Doctor for ascertaining her age by ossification test are parts of investigation. The function of the Court and investigating agency are well defined

and well demarcated. No one should tread over the jurisdiction of the other. It has been well settled by a decision of the Apex Court in *Jogendra Nahak and Others Vs. State of Orissa and Others*, that statement of a witness u/s 164 Cr.P.C. cannot be recorded by the Magistrate unsponsored by the investigating officer. So far issuance of certificate of age of the victim by the Chief Medical Officer is concerned, it is contended by the learned A.G.A. that such certificate is issued on the basis of the letter No. 4362 dated 26th August, 1986 of the Secretary, Health Department, Government of U.P. The said letter has been brought to our notice where in paragraph 1(d), it is provided that Chief Medical Officer can issue age certificate as mentioned therein. The said Government Order in our opinion, is being misused and misapplied by the Medical Officer and he being hand-in-gloves with the kidnapper issues certificate of age of the victim girl to protect him from the criminal proceedings. It is not the intention of the State Government that Chief Medical Officer without ascertaining the necessity of age certificate can examine a girl at the behest of the kidnapper/abductor and issue such certificate. In the present case, it appears from the certificate, copy whereof at annexure 3, that Chief Medical Superintendent, Etah on the basis of x-ray report opined that Sangeeta was aged about 19 years. A photograph of a girl to whom the Medical Superintendent identified as Sangeeta is attached to such certificate. The x-ray was conducted by the Radiologist District Hospital, Etah. Questions arise as to who met the expenses of the x-ray, in as much as, whether x-ray was done at the State's expense or at the expense of Sangeeta or somebody else and further who identified the girl to the Radiologist whose x-ray was done. In other words, whether in fact Sangeeta appeared before the Radiologist and her x-ray was done or someone else impersonated herself as Sangeeta. In a case under Sections 363 and 366 I.P.C., determination of age of the victim girl is one of the main factors to bring home the charge to the accused. It is, therefore, the duty of the investigating officer to get the victim girl examined by the doctor by way of ossification test and in that process no one can complain the identity of the girl.

7. Taking all the above aspects into consideration, we are of the view that issuance of such certificate by the Chief Medical Superintendent, Etah (annexure-3) either on asking of Sangeeta or Bobby alias Javed Khan, petitioner No. 1 amounts to interference with the process of investigation. We, therefore, feel it expedient to give the following directions to be followed before issuing age certificate of a girl if asked for:

- i) That as and when an application is filed by a girl or anybody else on her behalf for issue of age certificate, the Chief Medical Officer/Superintendent concerned shall ask for an affidavit of the applicant indicating the necessity of such certificate and whether any report has been made to the police alleging kidnapping/abduction;
- ii) that the police station under which the girl usually resides with her parents shall be noticed to inform as to whether any case has been registered alleging

kidnapping/ abduction of the girl;

iii) that the parents and in their absence near relations of the girl shall be noticed at the expense of the petitioner to appear at the time of medical examination. If it is reported by the police that on the basis of a complaint, FIR has been registered under Sections 363 and 366 I.P.C. or for any other offence, the Medical Officer shall refuse to examine the girl and issue certificate of age.

8. The directions as aforesaid shall be strictly followed by all the Medical Officers of the State and any violation thereof may entail serious consequence. The Principal Secretary of Health Department, Government of U.P. is directed to communicate this judgement to the Chief Medical Officers/ Chief Medical Superintendents for compliance.

9. Coming to the present case, we are of the considered opinion that the FIR in case crime No. 321 of 2001 P.S. Sirsaganj District Firozabad under Sections 363 and 366 I.P.C. cannot be quashed. It is, however, provided that arrest of the petitioners shall be stayed for a period of six weeks from today within which they shall produce Km. Sangeeta before the Investigating Officer who shall get her medically examined by way of ossification test for ascertaining her age besides recording her statement u/s 161 Cr.P.C. On receipt of the medical report, the investigating officer will be free to proceed with the investigation in the manner as provided under law.

10. With the above observation and direction, the writ petition stands finally disposed of. Registry is directed to send a copy of this judgment to Principal Secretary, Health Department, Government of U.P. for compliance.