
(2009) 02 SC CK 0120

In the Supreme Court Of India

Case No : Criminal Appeal No. 296 of 2009 (Arising out of S.L.P. (Criminal) No. 4243 of 2008)

Chandrika Prasad Yadav

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 13-02-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 34, 366A, 380

Citation : AIR 2009 SC 1719 : (2009) AIRSCW 1265 : (2009) 2 KLJ 426 :
(2009) 2 SCALE 655 : (2009) 4 SCC 415 : (2009) 2 Supreme 113

Hon'ble Judges : S. B. Sinha, J; Mukundakam Sharma, J

Bench : Division Bench

Advocate : Rajiv Shankar Dvivedi, Rashid Izhar and Praveen Kr. Singh, for the Appellant; Vimla Sinha and Gopal Singh, for the Respondent

Final Decision : Allowed

Judgement

Mukundakam Sharma, J.—Leave Granted.

2. Appellant herein filed a complaint before the Chief Judicial Magistrate (for short 'CJM'), Hajipur on 07.02.2008 u/s 366A, 380 read with Section 34 of Indian Penal Code (for short 'IPC') alleging that his daughter Ruchi Kumari (hereinafter referred to as 'victim') aged about 14 years of age had been enticed and thereafter kidnapped by one Sanjeev Kumar (hereinafter referred to as 'accused'), an Uncle of the victim aged about 20 years with the intention to marry her. It was stated in the complaint that the said incident took place on 03.02.2008 at 4:00 pm, when the victim had gone to collect wood for cooking: It was further stated that the accused, thereafter, by breaking the lock had also taken away a gold chain of 2. bhar, valued at Rs. 40,000/-, an earring of 1 bhar, valued Rs. 10,000/-, a silver anklet of 10 bhar, valued at around 2,500/- and cash Rs. 10,000/-. Two uncles of the accused namely Aurun Rai and Vinit Rai were also named in the said complaint for assisting the accused in the alleged

Kidnap.

3. Cognizance of the complaint was taken and during investigation the victim was recovered. The statement of the victim was recorded u/s 164 of the Code of Criminal Procedure, 1973 (for short 'CrPC') and she was sent for medical examination. The accused was also arrested.

4. Subsequently, the complainant-appellant filed an application for seeking custody of her minor daughter. However, the girl desired to go with her alleged accused husband who was arrested. The learned CJM vide order dated 07.03.2008 directed that the victim be sent to the Nari Suraksha Grih (Woman Protection Home), Patna for safety till the next date, as it was expected that by that time the medical report could also be received. But the medical report was not produced in court and therefore the learned CJM extended the period of stay of victim at the Woman Protection Home.

5. Aggrieved by the aforesaid order of the learned CJM extending the period of stay of the victim at the women protection home and not granting her custody to the complainant-appellant, he filed a writ petition before the Patna High Court seeking issuance of the writ of Habeas Corpus. Notice was issued in the said writ petition. However after hearing the parties, the Patna High Court by a judgment and order dated 07.05.2008 dismissed the said writ petition by holding that since the daughter of the complainant is kept in a protection home pursuant to an order passed by the CJM, the writ of the aforesaid nature, as prayed for, is not maintainable and is also misconceived.

6. Being aggrieved by the aforesaid order the present appeal is preferred before us challenging the aforesaid impugned order contending inter alia that the custody of a minor girl could not have been denied to a natural guardian i.e. the father on the alleged ground as stated in the impugned order. It was submitted that the ground stated in the order of CJM to the effect that the medical report is awaited is also not a valid ground for denying custody of the minor girl to the appellant who is the natural guardian.

7. Notice was issued to the parties by this Court. On the day when the matter was listed before the court a statement was made by the learned Counsel appearing for the appellant that even the minor victim girl, namely, the daughter of the appellant has also now shown her willingness to go to her parents home from the Nari Suraksha Grih. Thereafter it transpired that the said victim girl, namely, Ruchi Kumari along with three other girls was missing from the said after care home.

8. On 12.8.2008 the Superintendent, Nari Suraksha Grih, Gai Ghat, Patna lodged an information with the Station House Officer, Alamganj Police Station contending inter alia that on the previous night, i.e. on 11.8.2008 at about 10.30 p.m. lady constable Janki Devi and lady home guard Saraswati Devi who were on duty informed that Nibha Devi alias Minta Devi, Reena Kumari, Ruchi Kumari and Meera Kumari were found missing and that the male constables posted as

security in the home were sent out to trace them out but the said four inmates could not be found anywhere. The said intimation was also given to the court upon which an order came to be passed by this Court on 05.11.2008 directing the Senior Superintendent of Police, Patna District to take all steps to trace out Ruchi Kumari, the daughter of the appellant and to produce her before this Court on 04.12.2008. It was also ordered that by the said date the Superintendent of Nari Suraksha Grih, Gai Ghat, Patna would send a report to this Court as to the circumstances in which Ruchi Kumari and other three girls ran away from the said protection and care home. The Member Secretary of the Bihar State Legal Services Authority was also directed to visit the said Nari Suraksha Grih, to peruse the records of the said Suraksha Grih and submit a report with regard to the disappearance of the said girls.

9. Pursuant to the aforesaid order, the Member Secretary of the Bihar State Legal Services Authority has submitted a report, in which she has stated that she visited the Nari Suraksha Grih on 14th November, 2008 and again on 29th November, 2008. During the aforesaid visit she had investigated and checked the Entry Register along with all other connected records with respect to the four inmates viz., Ruchi Kumari, Meera Kumari, Nibha Devi and Reena Kumari. She had mentioned in the said report that during the course of her inquiry she has come to learn from the Superintendent of Nari Suraksha Grih that the aforesaid four girls fled away from the protection home on 11.8.2008 at 10.30 p.m., regarding which she submitted an information to the local police station, the Sub-Divisional Officer, Patna City, Patna and the Director, Social Welfare Department, Government of Bihar, Patna. According to the Superintendent no attempt was made by the police at once to trace out the said girls and, therefore, she filed the complaint in writing on the next date.

10. The aforesaid report of the Member Secretary of the State Legal Services Authority, which we have very carefully perused, depicts a miserable picture regarding the functioning and governance of the said women protection home. It is disclosed that registers were not properly maintained and that there is also no check on entry inside the said home. It is stated in the said report that the aforesaid four girls fled away on 11.8.2008 by jumping over the rear wall of the Nari Suraksha Grih which was of 12 feet height and that fleeing of such girls from that home is a regular feature and practice. Our attention was also drawn to the fact that the Superintendent of the said home was earlier transferred due to several complaints regarding the administration of the said home. The report indicates that there is lack of sufficient security guards inside the said home and also lack of staff. The father of the victim girl, appellant herein also filed an additional affidavit stating that his daughter disappeared from the women care and protection home on 11.8.2008. He has made a grievance that the police officials at Patna were not interested to trace out the victim and rather they are pressurizing him to withdraw the case. He had also complained of receiving threats from the police as also from the State.

11. When the matter was taken up in the court, counsel appearing for the appellant made an oral statement that the minor son of the appellant was picked up by the police and that he has not been released. It was stated that the police picked up his 16 years old son Mintu Kumar and thereafter his son had not returned. The said statement was reiterated in an additional affidavit filed by the appellant. He had stated that he is a Government servant and is now posted in the office of the Executive Engineer, P.W.D., Bihar. He had also stated in his affidavit that he had sent the details of complaint to the National Human Rights Commission, New Delhi, the Director General of Police, Bihar and the Chairman, Legal Services Authority, Bihar. He has reported that the police was not interested in tracing out his daughter and rather they are trying to penalize him and his family for approaching the court of law.

12. Pursuant to the order of this Court a status report is filed by the police wherein it is stated that the police tried to contact the father and maternal uncle of Ruchi Kumari but they could not be located. It was also stated therein that the son of the appellant, namely, Mintu Kumar aged 19 years was taken to the police station Alamganj and was questioned about the where about of Ruchi Kumari and that thereafter the said boy was examined and then sent back home. The allegation that the police is pressurizing and using coercion on the appellant is denied in the said status report.

13. It transpires that due to the detailed investigation and raids made by the police at different places they were able to recover two girls namely Meera Kumari and Reena Kumari who had allegedly ran away with Ruchi Kumari. On questioning it was found out from them that they were helped in coming out from the protection home by the relatives of the appellant, namely, maternal uncle and other relatives of the appellant who came to protection home and took away all the four girls. Two of them except Ruchi Kumari and Meera Kumari were allowed to go to their respective homes. It also transpires that a letter has been written by the victim, Ruchi Kumari to the CJM on 13.12.2008 which was sent through registered post from Gulzar Bagh Post Office, Patna alleging inter alia that the relatives of the husband of the victim helped her in running away from the protection home.

14. In the said status report it is stated that the police team specially constituted for the said purpose is making investigation and taking all steps to recover Ruchi Kumari. Reference also could be made to the statement of the Meera Kumari which was recorded by the police u/s 164 of the CrPC. It was stated in the said statement that at about 8.00 p.m. at night maternal grand-mother, grand-father and uncle of Ruchi Kumari arrived at Remand Home, Patna and took away all the four girls viz., Nibha Devi, Reena Kumari, Ruchi Kumari and Meera Kumari from the Remand Home, Patna.

15. Having scrutinized all the records and having heard the learned Counsel appearing for the parties, we are distressed to find that a minor victim girl, who was sent to the protection home by a judicial officer for providing home and

safety would be missing from the said home without the knowledge of the authority managing the said protection home. It is shocking that a home which is being run by the State Authority and named Suraksha Home has practically no security and that the inmates of the house either could be forcibly taken away or could run away from the said home easily and that also without the knowledge of the Authority. What is more astonishing is the fact that such incident is said to be a regular affair. It is unfortunate that although the police was informed immediately thereafter, the police did not even think it appropriate to swing into action immediately.

16. On perusing the records, we find that there is total lack of supervision and control in the management of the home and there is also lethargy and negligence on the part of the police authority, which is entrusted with the duty of providing security and safety and also maintaining law and order and also empowered to investigate into an offence brought to their notice. The State authority is duty bound to see that all its welfare measures are being carried out effectively and meaningfully but from the facts of the present case it appears that it has failed to discharge its responsibility.

17. If the inmates of the protection home could flee away, as alleged, from the control of authority managing the home or if persons could enter the said home at the dead of night without detection or permission and could take away girls under the nose of the people protecting the home, lot of explanation would have to be given by the appropriate Government and the competent authority regarding their capabilities of offering proper care and protection to such girls and women. Probably it is for such reasons that today these care and protection homes are becoming homes for trafficking of girls and women. It appears that the State Government is totally oblivious of its responsibilities regarding implementation of social welfare programmes of providing secured homes to destitute women and also children in conflict with law.

18. Considering the gravity of the situation and the problem, we direct for conducting a proper and detailed inquiry into the whole episode and affair for we will like to be enlightened not only about the functioning, management and the security of Nari Suraksha Griha but also regarding where about of the concerned girl and how she could go missing from the state home and as to who is responsible in helping the girl to flee away, if it is so and consequential actions taken by the police. We request the Hon'ble Chairman, Bihar Human Rights Commission to cause such an inquiry and then submit a report to us preferably within six weeks from the date of communication of the order. In addition the Chief Secretary, Government of Bihar is also directed to submit a report within the said period with respect to the maintenance and governance of the said protection home specifically indicating the security measures and the steps being taken up in that regard. The report should also indicate the reasons behind the inability of the police to trace out the missing girl and also the status of the investigation. He shall also inform through the report if any action is taken or

contemplated against any of the erring officer or employee.

19. We hope and expect that the report, as aforesaid, to be submitted by the Hon'ble Chairman and the Chief Secretary would be a comprehensive report. List after six weeks.