

(2010) 12 GUJ CK 0098
In the Gujarat High Court

Case No : Special Criminal Application No. 2429 of 2010

Chhayaben Vijaykumar Thaker

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 16-12-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 12 GUJ CK 0098

Hon'ble Judges : Vijay Manohar Sahai, J;A.M. Kapadia, J

Bench : Division Bench

Advocate : J.V. Mehta, for the Appellant; Dabhi, Assistant Public Prosecutor for Respondent Nos. 1 and 2 and Mukesh B. Dave, for the Respondent

Judgement

A.M. Kapadia, J.—Mr. Mukesh B. Dave, learned advocate appears and states that he has received instructions to appear on behalf of Respondent Nos. 3 and 4 and he shall enter his appearance during the course of the day. Registry is directed to accept his appearance representing Respondent Nos. 3 and 4.

2. Rule. Mr. Dabhi, learned APP appears and waives service of notice of Rule on behalf of RespondentNos.1 and 2, whereas Mr. Mukesh B. Dave, learned advocate appears and waives service of notice of Rule on behalf of Respondent Nos. 3 to 4.

3. By filing instant petition under Article 226 of the Constitution of India, the Petitioner has prayed to issue writ of Habeas Corpus or any other appropriate writ, direction and/or order directing Respondents to produce the corpus Rita - daughter of the Petitioner, who is allegedly in illegal detention of Respondent Nos. 3 and 4, before this Court.

4. As per the averments made in the petition, daughter of the Petitioner namely Rita was missing for more than 6 days. The Petitioner has therefore, tried her level best to trace out her whereabouts, but failed to know about her whereabouts. The Petitioner had also inquired from Respondent Nos. 3 and 4.

However, the Respondent No. 4 is not available and Respondent No. 3 has given evasive reply.

4.1 It is further averred in the petition that the Petitioner had received threats and dire consequences from Respondent No. 3 and his family members.

4.2 It is further averred in the petition that the Petitioner's husband had filed complaint before the Zinzuvada Police Station about missing of the daughter Rita, but the Police had not taken any speedy action to find out her missing daughter Rita. The Petitioner therefore apprehended that the life of her daughter Rita is in danger and she might be victimized by the Respondent Nos. 3 and 4 to fulfill their personal revenge. Therefore, the Petitioner has filed this petition and prayed for the relief to which the reference is made in the earlier paragraph of the judgment.

5. This Court vide order dated 3.12.2010 issued Notice to Respondents, which was made returnable on 16.12.2010 on condition that the Petitioner shall deposit Rs. 5000/- as a cost, to show her bona fide, on or before 6.12.2010.

6. Today, when the matter is called out, Mr. LB Dabhi, learned APP, upon instructions received from Mr. PB Desai, PSI, City Police Station, Joravarnagar, Dist: Surendranagar, who is personally present before the Court, states that he has traced out the corpus Rita from the custody of Respondent No. 4 and he wants to produce her before the Court with the assistance of Woman Police Constable, so that this Court can ascertain will and willingness of corpus Rita and also inquired as to whether she was in illegal detention of either Respondent No. 3 or Respondent No. 4 or not. We therefore, have permitted him to produce corpus Rita before this Court.

7. On production of corpus Rita before the Court, we have ascertained her will and willingness and also inquired as to whether she is in illegal detention of either Respondent No. 3 or Respondent No. 4 or not. She has in unequivocal terms stated before the Court that she has solemnized the marriage with Respondent No. 4 Hitendrabhai Hasmukhbhai Trivedi on 8.10.2010 in Arya Samaj, Surendranagar, which has been registered with the Marriage Registrar, Wadhawan Nagarpalika on the same day and she therefore, is lawfully wedded wife of Respondent No. 4 Hitendrabhai Hasmukhbhai Trivedi. She has further stated that she is not in illegal detention of Respondent No. 4 Hitendrabhai Hasmukhbhai Trivedi with whom she has solemnized the marriage and she wants to permanently reside with him. She has categorically stated before the Court that she does not want to stay with the Petitioner -her mother and her father, who are present before the Court.

8. So far as age of corpus Rita is concerned, she has stated that her birth date is 28.9.1992, therefore, on the day of marriage i.e. on 8.10.2010 she was above 18 and therefore, she was major. The fact of corpus Rita being major is not disputed by Mr. JV Mehta, learned advocate for the Petitioner.

9. In the case of Gian Devi v. The Superintendent, Nari Niketan, Delhi and Ors., (1976) 3 SCC 234 , the Supreme Court has observed that a woman who has attained majority is free to stay in any place she likes without constraints by her parents or husband. What is held by the Supreme Court in the above referred to case is that against her wishes a minor girl cannot be sent to Nari Niketan or to her parents house.

10. In the facts and circumstances emerging from the record of the case and more particularly, in view of the statement made by corpus Rita before the Court to the effect that she is lawfully wedded wife of Respondent No. 4 Hitendrabhai Hasmukhbhai Trivedi with whom she wants to permanently reside and she is not in his illegal detention and in view of the judgment of the Supreme Court referred to herein above, since corpus Rita is above 18 years of age, she is sui juris and hence, no fetters can be placed upon her choice of the person with whom she has to stay. We have therefore, permitted her to go wherever she wants to go.

11. Seen in the above context, the Habeas Corpus petition lacks merit and deserves to be rejected.

12. At this stage, Mr. JV Mehta, learned advocate for the Petitioner does not press this petition and seeks leave to withdraw the same.

13. Mr. Dabhi, learned APP for Respondent Nos. 1 and 2 as well as Mr. Mukesh B. Dave, learned advocate for Respondent Nos. 3 to 4 have no objection if leave as prayed for is granted.

14. In view of this, this Habeas Corpus petition is disposed of as it is withdrawn. Rule is discharged.

15. The Petitioner has deposited Rs. 5000/-, as a condition precedent for issuance of Notice, before the Registry Court. According to us, every father and mother have a right to inquire about the welfare of their children and in the instant case, the Petitioner being mother has a right to inquire about the welfare of her daughter. In view of this if the amount of Rs. 5000/- deposited by the Petitioner before the Registry Court shall be paid back to the Petitioner who is personally present before the Court, it will meet the ends of justice.

16. Registry is directed to pay back the amount of Rs. 5000/- to the Petitioner, upon due verification.