
(2015) 05 AHC CK 0177

In the Allahabad High Court

Case No : Habeas Corpus Writ Petition No. 28153 of 2015

Deepa Rani and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 15-05-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 363, 366

Citation : (2015) 2 ACR 2016 : (2015) 5 ADJ 702

Hon'ble Judges : Amreshwar Pratap Sahi, J;Vijay Lakshmi, J

Bench : Division Bench

Advocate : Ravi Prakash Singh, for the Appellant

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioners. The petitioner No. 2 has come up for the release of the petitioner No. 1 contending that she is his married wife and who is major. Reliance has been placed on the medical examination report dated 8.11.2013 where the approximate age of the victim - petitioner No. 1 is stated to be about 17 and a half years.

2. On this calculation, learned counsel for the petitioners submits that the custody of the said petitioner is unlawful and she should be released forthwith in favour of the petitioner No. 2 who is her lawfully wedded husband.

3. Learned counsel has invited the attention of the Court to the statement made by the victim under Section 164 Cr.P.C. previously in Case Crime No. 536 of 2013 and then subsequently in Case Crime No. 57 of 2015.

4. The necessity of these two statements arose on account of the fact that earlier the petitioner No. 1 is alleged to have eloped with the petitioner No. 2 whereupon an FIR was lodged being Case Crime No. 536 of 2013. In the said case, the statement of the petitioner No. 1 was recorded where she alleges to have gone voluntarily with the petitioner No. 2 and even in that statement she

had alleged that she was 17 and a half years. The statement was recorded on 11.11.2013. After recording of the said statement, the learned Magistrate vide order dated 11.11.2013 handed over the custody of the petitioner No. 1 to her mother. The said order has been filed as Annexure 4 to the writ petition. It would be relevant to mention that in the said custody order, the date of birth of the petitioner No. 1 was recorded as 15.1.1999 as per her educational certificate.

5. Again the petitioner No. 1 left her parental home and went with petitioner No. 2 as a result whereof Case Crime No. 57 of 2015 has been lodged under Section 363/366 IPC.

6. After the second FIR, the petitioner No. 1 was again taken into custody and produced before the Magistrate where she gave her statement under Section 164 on 15.4.2015. The statement again has been made against the prosecution where she has disclosed her age as 19 years. The concerned Magistrate has thereafter passed an order of custody again relying on the same educational certificate as in the previous case where the date of birth of the petitioner No. 1 is recorded as 15.1.1999, and this time she has been sent to Nariniketan Mathura.

7. The petitioner No. 1 therefore is in the custody of the Superintendent, Nariniketan, Mathura, hence this Habeas Corpus Petition.

8. The petitioners' contention is about the age of the petitioner No. 1 on the strength of the medical examination report.

9. Learned AGA on the other hand contends that once two custody orders have already been passed by a competent Court where the date of birth of the petitioner No. 1 has taken to be 15.1.1999, then she still continues to be a minor and would attain the age of majority only in the year 2017. The second detention order at Nariniketan Mathura also spells out the same.

10. Sri Ashish Pandey, learned AGA has invited the attention of the Court to the division bench judgment in the case of Anupriya Shahu and another v. State of U.P. and others, Habeas Corpus Petition No. 24725 of 2015, decided on 13.5.2015 to contend that the custody being lawful and the petitioner No. 1 being a minor as per her educational qualification, she cannot be given into the custody of the petitioner No. 2 and the writ petition is otherwise not maintainable unless the factum of her date of birth as recorded in the order of the Magistrate is dislodged.

11. He further submits that the order of custody passed by a competent authority has not been challenged before the appropriate forum and therefore a writ petition for habeas corpus would not be maintainable.

12. The question of determination of date of birth has been considered in detail by the Apex Court in the case of Jarnail Singh Vs. State of Haryana, (2013) 7 AD 313 : AIR 2013 SC 3467 : (2013) CriLJ 3976 : (2013) 9 JT 374 : (2013) 3 RCR(Criminal) 644 : (2013) 7 SCALE 764 : (2013) 7 SCC 263 , where it has been

categorically held that such determination should be made in accordance with the provisions of the Juvenile Justice Act 2000 and the rules framed thereunder in 2007 which require the consideration of the educational qualifications as the first option under Rule 12 of the 2007 Rules.

13. The learned Magistrate while passing an order of custody therefore appears to have taken an appropriate decision in accordance with law and the custody cannot be said to be unlawful. This decision has been taken after the medical report was given on which reliance is placed by the petitioner and the same appears to be in conformity with the ratio of Jarnail Singh's case (supra).

14. In the aforesaid background, if the petitioner wants to dislodge the age of the petitioner No. 1 to be more than what has been described by the learned Magistrate, then the remedy of the petitioner is to file a revision against the order of the Magistrate and not a habeas corpus petition, inasmuch as, the custody does not appear to be unlawful. The writ petition is therefore dismissed as not maintainable without prejudice to the rights of the petitioners to file a revision.