

(2021) 06 J&K CK 0006

In the Jammu And Kashmir High Court

Case No : Writ Petition (Crl) No. 15 Of 2021, CRM (M) No. 17 Of 2021, Criminal Miscellaneous No. 71, 154 Of 2021

Gulzar Ahmad Wani And Others

APPELLANT

Vs

UT Of J&K & Ors

RESPONDENT

Date of Decision : 04-06-2021

Acts Referred:

Indian Penal Code, 1860 — Section 109, 366A
Code Of Criminal Procedure, 1973 — Section 164

Citation : (2021) 06 J&K CK 0006

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : Suhail, Sheikh Hilal, Sheikh Hilal, Suhail

Final Decision : Disposed Of

Judgement

Ali Mohammad Magrey, J

WP(Crl) No.15/2021

1. Pursuant to order dated 01.06.2021, Secretary Legal Services Authority has submitted the medical examination report of Sonia Gulzar D/o Gulzar

Ahmad Wani R/o Aarath, District Budgam, which is taken on record.

2. Heard learned counsel for the parties and considered the matter.

3. Pursuant to order dated 31.05.2021, the Medical Board, on examination of the girl, Soniyah Gulzar, has furnished its opinion / report about her age.

The opinion so furnished by the Board is taken on record. The Medical Board has opined the age of the girl to be about 19 years. In that view of the

matter, the claim of the petitioner, i.e., the father of the girl, that she is a minor girl is rendered doubtful and cannot be relied upon, especially so when

the girl herself not only refuted the claim of her father that she is a minor girl, but in her statement before this Court categorically deposed that she is presently more than 22 years of age.

4. It would be apt to mention here that pursuant to this Court's order dated 01.03.2021, the Investigating Officer of FIR no.470/2020 under

Sections 366-A, 109 IPC of Police Station Budgam, registered at the instance of the girl's father, got the statement of the girl under Section 164

Cr. P. C. recorded before the concerned Magistrate. An English translation thereof was placed on record. The translated version of the statement so

made by the girl, placed before the Court is reproduced below:

“In the year 2020, it has been on three occasions that I left my home and went with the accused namely Mohammad Amir Bhat. My father

off and on used to physically assault (beat) me. He even chopped / cut my hair. He hit my back and due to the same, even today I feel /

suffer from back pain. I used to reside with the accused at his residence located at Kulgam. On 20th December 2020 my father came to the

residence of the accused at Kulgam and for the purpose of Nikah, he signed the acceptance deed / memo and left me at the residence of the

Sarpanch of Arigatnu. Subsequently, on 25th December 2020, my father telephonically conveyed to the Sarpanch that instead of him, he

may read out my Nikah sermons. On 30th December my father alongwith his maternal brother and police came to the house of my in-laws

and physically assaulted me due to which I started bleeding and was taken to the hospital (Shafakhana). I then filed a case against my

father in the court at Kulgam. However, my father did not appear before the said court due to which I filed an application before the

Hon'ble High Court. Dy. SP of Police Station Kulgam handed me over to Police Budgam. Four months ago, my Nikah has been

solemnized. I am quiet well in my matrimonial home. I want to go back to my matrimonial home (in-laws house). The accused did not

kidnap me.”

5. Three facts thus stand established: first, that the girl, the alleged prosecutrix, is not a minor, as claimed by her father; second, that she has entered

into a wedlock with the accused, Mohammad Amir Bhat, out of her own volition; and third, that she had been residing with her husband, Mohammad

Amir Bhat, in her in-laws house at Arigatnu, Kulgam, wherefrom she, in fact, was taken into custody by the Police. In view of establishment of the

above three vital facts, the claim of the petitioner that the girl, being a minor, had been kidnapped by the accused or that she was being kept under

illegal detention by the accused against her wish is wholly belied. That being the factual position, this petition has no merit. It, therefore, deserves to be dismissed.

6. It may be mentioned here that the learned counsel for the parties sought to stretch the scope of the matter, such as, at what age a Muslim girl

attains majority and can contract her marriage etc., and sought to cite judgments in support of their respective submissions, but I think such

submissions are beyond the contours of factual scenario attendant to the case, as narrated above, and, therefore, those submissions need not be

reflected herein.

7. In view of the above, the petition, WP(Crl) No.15/2021, alongwith its connected Crl M.No.154/2021, is dismissed as being unfounded and without any merit.

8. It may be mentioned here that with a view to protecting the girl, Soniyah Gulzar, pursuant to directions of the Court, she was directed to be lodged

in Shelter Home Sheikhpora, Budgam, run by the Social Welfare Department, Government of the UT of J&K. On 19.05.2021, on enquiry from the

Court, she expressed that she may be handed over to her husband, namely, Mohammad Amir Bhat, as, according to her, she had contracted marriage

with him out of her own free will and without any coercion. Her statement is recorded in para 03 of the order that date. Now that the petition has

been dismissed and the girl is established not to be minor, coupled with the fact that she states to have married to Mohammad Amir Bhat and had

been residing with him, and was, in fact, taken into custody from his residential home, the girl deserves to be let free and handed over to her husband,

Mohammad Amir Bhat.

9. The SHO, Police Station, Budgam, and the Incharge of Shelter Home, Sheikhpora, Budgam, are, accordingly, directed to release the girl and ensure

that her custody is handed over to her husband against proper receipt. It shall be the responsibility of the SHO, Police Station, Budgam, to ensure that

the couple is safely escorted upto their residence at Arigatnu, Tehsil Pahloo,

Kulgam.

10. All interim order shall abide by the orders passed hereinabove.

CRM(M) No.17/2021:

11. In light of clear findings recorded by the Court hereinabove, the Court feels it unnecessary to record a finding as to the legality or otherwise of the

FIR in the instant petition. The above findings will naturally set the course of the investigation in the FIR and lead the IO to a just conclusion therein.

12. Leaving the appropriate course to be adopted to the decision of the IO in light of the above, this petition is disposed of alongwith the accompanying

CrIM No.71/2021. Interim direction, if any passed and subsisting shall merge in this final order passed by the Court.

Registry to place copy of the order on each file.