
(2007) 10 AHC CK 0127
In the Allahabad High Court

Khaderu Ram Yadav

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 04-10-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 482
Penal Code, 1860 (IPC) — Section 363, 366

Citation : (2007) 10 AHC CK 0127

Hon'ble Judges : R.K. Rastogi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.K. Rastogi, J.—This is an application u/s 482 Cr.P.C. for quashing the order dated 29.5.2004 passed by the Addl. Sessions Judge, F.T.C. Ist, Jaunpur in S.T. No. 180 of 2003, State v. Rai Sahab and Ors. under Sections 363/366 I.P.C. , P.S. Line Bazar, District Jaunpur.

2. The facts relevant for disposal of this application are that on 29.10.02 the applicant Khaderu Ram Yadav lodged a F.I.R. at police Station Line Bazar District Jaunpur with these allegations that his daughter Sangeeta Yadav aged about 16 years had gone to T.D. College on 26.9.02 at about 10 A.M. where she was studying. The accused Rai Sahab, Shiv Shankar , Bharat Nath Yadav , Arat Yadav and Nakharoo Yadav kidnapped her in the way. This incident was witnessed by Kanhai and Janardan Yadav. They prohibited the accused from doing so but the accused threatened them and absconded taking Sangeeta Yadav with them. Then Khaderu Yadav lodged this F.I.R. at the police station. On the basis of this report case Crime No. 755 of 2002 was registered against the above named accused persons.

3. It appears that Sangeeta Yadav , accused Rai Sahab , Bharat Ram Yadav, Shiv Shankar Yadav and Arat Nath Yadav filed Criminal Misc. Writ Petition No. 6886 of 2002 before This Court and in that writ petition a copy of High School Certificate of Km. Sangeeta Yadav was also filed in which her date of birth was described to

be 2.12.1983. She had further claimed that she had married accused Rai Sahab out of her own free will and taking into consideration her High School Certificate , this Court had stayed arrest of the petitioners No. 2 to 5 of above petition till submission of report u/s 173 Cr.P.C.

4. The police after investigation submitted a charge sheet under Sections 363/366 I.P.C. against the accused persons on 17.12.02.

5. It further appears that Habeas Corpus petition No. 16183 of 2003, Km. Sangeeta Yadav through Khaderu Ram Yadav v. R.S.Yadav was filed in this Court and in that petition the statement of Sangeeta Yadav was recorded on 8.8.03 in which she stated that she was a student of B.A. Ist year. Her age was 20 years and she had married accused Rai Sahab out of her own free will and she was residing with Rai Sahab at Bandra, Bombay. This Habeas Corpus petition was dismissed on 8.8.03 with this observation that Smt. Sangeeta Yadav was major and she was residing with her husband and she was not under illegal detention of Opp. Party Rai Sahab Yadav.

6. The case on the basis of the charge sheet was committed to the court of Sessions and thereafter it was transferred to the Fast Track Court for trial. The statement of Sangeeta Yadav was recorded in the court as P.W. 1 and in that statement she stated that her date of birth is 2.12.83 and she had willingly gone with Rai Sahab and had married him out of her own free will. She was declared hostile by the prosecution and was cross examined. She denied the prosecution case in cross examination. She further submitted that she had married Rai Sahab accused and that she had given birth to a child also and was leading a happy life with her husband accused Rai Sahab. The statement of P.Ws. 2 and 3 (father & brother of Sangeeta) were also recorded who have stated that the age of Sangeeta Yadav was 16 years only at the time of the incident. Thereafter the prosecution moved an application for medical examination of Sangeeta Yadav for ascertainment of her age. That application was rejected by the Addl. Sessions Judge on the ground that there was sufficient evidence to this effect that the date of birth of Sangeeta Yadav was 2.12.83 and so she was major on the date of the incident. He further observed that she could not be compelled for medical examination against her wishes and therefore he rejected the above application moved by the prosecution vide his impugned order dated 29.5.2004. The prosecution has not challenged the above order. But Khaderu Yadav, father of Sangeeta Yadav has filed this application u/s 482 Cr.P.C. to quash the above order and for issuing a direction for medical examination of Sangeeta Yadav.

7. I have heard the Learned Counsel for the applicant as well as the Learned Counsel for Smt. Sangeeta Yadav who has moved an application for impleadment in this case, as well as the A.G.A.

8. It may be mentioned that Sangeeta Yadav in para 3 of the affidavit filed in support of the application for impleadment has specifically stated that she does not want to be medically examined.

9. It is to be seen that there is sufficient evidence in the present case to this effect that Sangeeta Yadav was major on the date of the incident. As per her High School Certificate , her date of birth is 2.12.83 and as such on the date of incident which is 26.9.02 she had completed the age of 18 years. It is further to be seen that this date of birth of Sangeeta must have been disclosed by her father at the time of her admission in the School and there is no reason to doubt this date of birth as mentioned in the High School Certificate. She passed her High School Examination in year 1998 and she was student of B.A. at the time of the incident in 2002. Apparently a student of B.A. Could not be minor. As such in view of clear evidence of the High School Certificate regarding date of birth of Sangeeta Yadav , there was no necessity for her medical examination for ascertainment of her age; specially when she had expressed her unwillingness for medical examination. The law is that no body can be forced to be medically examined against his or her wishes, and if refusal to undergo medical examination is unjustified , the Court may draw an adverse inference against the defaulting person but it can not force any one to undergo medical examination against his/her wishes. In the present case, in view of the date of birth mentioned in the High School Certificate of Sangeeta Yadav , her refusal to undergo medical examination for ascertainment of her age was justified. Thus the order passed by the learned Addl. Sessions Judge does not suffer from any illegality. There is no force in the application u/s 482 Cr.P.C. It is accordingly dismissed. The interim order stands vacated.