
(2010) 07 JH CK 0088
In the Jharkhand High Court

Krishna Nepali

APPELLANT

Vs

The State of Jharkhand and Raghunandan Malakar

RESPONDENT

Date of Decision : 22-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Hindu Minority and Guardianship Act, 1956 — Section 6
Penal Code, 1860 (IPC) — Section 366, 366(A)

Citation : (2010) 4 JLJR 597

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—In spite of repeated calls, counsel for the Opposite Party No. 2 has not appeared.

2. Heard counsel for the petitioner and counsel for the State.

3. The petitioner, being aggrieved by the order passed by the Additional Sessions Judge, F.T.C.-1, Dhanbad in Criminal Revision No. 193 of 2009 whereby one Soni Kumari, claimed by the petitioner to be his wife, was directed to be remanded to the Remand Home (Nari Niketan, Deoghar), has filed the present criminal miscellaneous petition.

4. The impugned order has been assailed on the ground that the same has been passed without due application of judicial mind and without considering the relevant facts pertaining to the age of the girl.

5. Sri M.K.Dey, learned Counsel for the petitioner would argue that though the case was instituted on the basis of the F.I.R. lodged by the girl's father namely the Opposite Party No. 2 and registered for the offence u/s 366A of the Indian Penal Code, but there is a serious dispute in respect of the actual age of the girl. Referring to the statement of the victim girl recorded u/s 164 Cr.P.C., learned Counsel informs that the girl, in her statement, has categorically declared that she had voluntarily accompanied the petitioner and had married him of her own

free will and further, that on the date when she had left her father's house and subsequently married, she was more than 20 years of age. Furthermore, in order to assess her age, a Medical Board was also constituted and in the opinion of the Medical Board, the age of the girl was assessed as 19 years and above. Learned Counsel adds that under such circumstances, the purported school certificates produced by the informant/father declaring some misleading date of birth, ought not to have been relied upon by the court below. Rather, the desire of the victim girl should have been considered and she ought to have been left free to join the company of any person of her choice.

6. In support of his argument, learned Counsel would refer to an unreported judgment of the Madras High Court in the case of K.V. Prabakaran v. Maheswaran, a copy of which has been filed for reference and submits that a similar issue came for consideration before the Madras High Court in the aforesaid case. The case was registered u/s 366 of the Indian Penal Code against the accused on the allegation that he had abducted the minor daughter of the informant. After perusing the copies of the documents filed by the petitioner in the aforesaid writ application, the Court had considered that the girl was undisputedly of the age of 17 years and was married to the accused and hence, it is the husband who is entitled to her custody under the provisions of Section 6 of the Hindu (Minority and Guardianship) Act.

7. Learned Counsel for the State, on the other hand, while submitting arguments in support of the impugned order, would argue that the statement of the girl and the opinion of the Medical Board cannot be accepted as having greater reliability over the school certificate in which the age of the girl was recorded more than 10 years ago at the time when she was admitted at the school as 10.12.1993. On the date of occurrence, the girl was a student of Class X and according to her date of birth mentioned in the school Admission Register, she was hardly 15 years and 3 months old.

8. I have heard counsel for the parties and have also perused the materials available on record as also the impugned order of the court below.

9. From the perusal of the impugned order of the court below, it appears that while rejecting the petitioner's prayer for release of the victim girl, the learned court has relied upon the school certificates produced by the informant/father of the victim girl, which indicated that the victim girl was born on 10.12.1993 and accordingly, on the date of her alleged kidnapping, she was 15 years and 3 months old. The court below has therefore refused to accept the opinion of the Medical Board or even the statement of the victim girl and in doing so, the court appears to have relied upon the judgment of the Supreme Court in the case of Ram Suresh Singh v. Prabhat Singh 2009 (2) JCR (SC).

10. The application of the ratio decided in the case of Ram Suresh Singh (Supra) can be made only in accordance with the procedure laid down therein. Reliance upon the school certificates could have been placed only if it has been duly

proved be to correct. In the present case, there are materials to dispute the genuineness of the school certificates in view of the fact that not only the girl's own statement and the Medical Board's opinion, but also the informant's own statement in the F.I.R. goes to suggest the contrary in as much as that in the F.I.R., the approximate age of the girl has been mentioned as 17 years whereas according to the school certificates, she could not be more than 15 years 3 months on the alleged date of occurrence. It also appears that the genuineness of the school certificates produced by the informant, has not been verified by the Investigating Agency. Under such circumstances, there has to be a valid and genuine reason for curtailing the liberty of the victim girl by confining her to the protection of the Remand Home and for refusing her the liberty to join the company of any person of her choice.

11. The judgment referred to and relied upon by the petitioner in the case of K.V. Prabakaran (Supra) would not apply to the facts of the present case in view of the fact that whereas in the case of K.V. Prabakaran, it was a fact even admitted by the father of the victim girl that she was legally married to the accused of the case. In the present case, there is no such admission made on behalf of her father, nor is there any confirmation available from the Investigating Officer.

12. Considering the aforesaid facts and circumstances, the matter is remanded back to the learned court below with a direction to make a reassessment on the issue relating to the age of the victim girl after obtaining proper verification of the school certificate and pass appropriate orders on the desirability of continuing her stay in the Nari Niketan against her will.

With the above observations, this application is disposed of.