
(2011) 04 AHC CK 0376
In the Allahabad High Court
Case No : Habeas Corpus No. 800 of 2010

Kumari Renu Thru Laxminarayan

APPELLANT

Vs

Guru Prasad, Vidya Prasad and Ramdas

RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

Citation : (2011) 04 AHC CK 0376

Hon'ble Judges : Uma Nath Singh, J; Satish Chandra, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. We passed the following order on 04.4.2011:

Affidavit of Shri Brij Lal, Special Director General of Police, Law & Order and also Crime and STF, Uttar Pradesh, filed in Court is taken on record.

Pursuant to our last order dated 14.03.2011, Km. Renu, alleged detainee, has been produced in Court. Her date of birth as recorded in the school records is 05.02.1997, whereas in the medical report submitted by Emergency Medical Officer, District Hospital, Lakhimpur Kheri, her age has been found to be about 18 years. The medical report does not contain requisite information. Though it mentions that no definite opinion can be given about commission of rape but it seems to be contrary to the fact that the detainee claimed to have stayed with accused Guru Prasad for about 6 months. Moreover, she claims to have married the accused in a temple in Delhi.

Thus, we direct a detailed medical examination of the detainee by the Civil Hospital, Lucknow. The Superintendent, Civil Hospital, Lucknow, shall do the needful and submit a complete medical report before the next date of listing.

In the meantime, the Petitioner detainee shall be lodged in Women Protection Home, Lucknow.

Accused Guru Prasad and Petitioner detainee shall be produced in Court on the

next date of hearing. Their parents shall also remain present in Court. List on 07.04.2011.

2. Pursuant thereto, the alleged detainee was medically examined by a Board of Doctors and the Board has given the opinion as under:

1. Acc. to C.M.O's report dt. 06.4.2011 her age is about (16) sixteen years.
2. USG report shows no gestational sac, but the preg. test is positive. So pregnancy is not confirmed. USG to be repeated after one month.
3. No opinion regarding rape can be given. She is habitual of intercourse.

Dr. R. Chawla Dr. K.L. Bajpai Dr. Tina Gupta

4. During the course of arguments, father of Petitioner Sri Laxmi Narain Mishra placed on record two original documents namely, Marks-sheet of Class v. and transfer certificate issued by the same Head Master of the same Primary School, Singhakala, District Lakhimpur Kheri. In the marks-sheet, the date of birth is recorded as 11.8.1996 and mother's name as Smt. Kamla, whereas in the Transfer Certificate (T.C.), the date of birth is mentioned as 05.2.1997 and mother's name as Smt. Maya Devi.

5. Father of alleged detainee girl is represented by Sri P.K. Jaiswal, Advocate. Sri Jaiswal submitted that in the earlier medical examination report issued by medical officer, Lakhimpur Kheri, the age of prosecutor has been noted to be approximately 18 years, whereas in the supplementary medical examination report submitted by a Board of three doctors today in Court it is mentioned as about 16 years. Learned Counsel also referred to a judgment of Hon'ble the Apex Court reported in AIR 2006 Supreme Court 508 (Vishnu v. State of Maharashtra) to argue that parents' statement based on birth-certificate issued by Municipal Corporation or other competent authority like Registrar, birth & death or issued by hospital on the basis of register maintained there, should be taken as an unimpeachable and credible document to determine the age of prosecutor. On the contrary, the approximate age noted in the medical report can be taken only as the tentative age of the person.

6. There is no quarrel about the ratio laid down in the judgment by the Apex Court and it is only a reiteration of the earlier view taken in various judgments. However, it is not the case here that two certificates submitted by the father of Petitioner, placed on the record of Court are based on any official Birth Register containing the date of birth of the Petitioner. Moreover, had there been any such record within the knowledge of Petitioner's father, he would have certainly produced it in the Court.

7. As from two medical reports, with margin of error of 2 years on either side, the age of the girl can be taken to be about 18 years. Besides, she also makes a categorical statement that her age is about 18 years. Thus, she is found to be a major. She also states that she wants to stay with accused Guru Prasad.

Moreover, the latest medical report also suggests that pregnancy test has been found to be positive and a further USG has been advised after one month.

8. In view of all the aforesaid, we dispose of the writ petition and direct that Petitioner Km. Renu being a major would be at liberty to join Guru Prasad and stay at any place of her choice. The Station House Officer, P.S. Singahi, District Kheri, shall ensure that there is no interference, whatsoever, with the marital life of the Petitioner.

9. Both the original documents containing two different dates of birth placed before us in Court be taken on record.

10. The Superintendent, Nari Niketan, shall release the alleged detainee forthwith on receipt of a copy of this order.

11. This writ petition, thus, stands disposed of.