
(2006) 11 AHC CK 0051
In the Allahabad High Court

Kumari Shabnoor

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-11-2006

Acts Referred:

Contract Act, 1872 — Section 11

Criminal Procedure Code, 1973 (CrPC) — Section 156

Penal Code, 1860 (IPC) — Section 120B, 363, 366, 504, 506

Citation : (2007) 2 AWC 1719

Hon'ble Judges : Vinod Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vinod Prasad, J.—This Habeas Corpus Petition has been filed by Mohammad Tahseem, father and Guardian of Km. Shabnoor (Minor) praying for issuance of a writ, order or direction in the nature of Habeas corpus directing respondent No. 2 and 3 to produce the victim Km. Shabnoor (Minor) before this Court on a particular date and release her from the illegal custody of respondents No. 4 to 8. It has further been prayed that a writ order or direction may be issued to the respondents to hand over the custody of petitioner Km. Shabnoor (Minor) forthwith to her natural guardian Mohammad Tahseem, the petitioner who is her father.

2. The brief facts as are averred in this petition are that Km. Shabnoor is the daughter of Mohammad Tahseem and is a minor. Km. Shabnoor (minor) was a regular student of Primary Pathshala, Agwanpur, Block Parikshitgarh, District Meerut and had studied there upto class IIIrd. After her admission in class 4th she left going to school, Her date of birth as is mentioned in school leaving certificate is 10.4.1994 which has been filed as annexure No. 1 to this petition. According to Mohammad Tahseem also she is a minor. On 12.5.2006 Smt. Kausar and Km. Lubana took away Km Shabnoor along with them and thereafter she was kidnapped by Rizwan, Zaheed, Mehmood, Shaheed, and Wakeel, who all are

arrayed as respondents No. 4 to 8 in this petition. The petitioner made an endeavour to lodge a report for the said abduction of his daughter by the aforesaid persons with the police but it yielded no results. At last he approached the Magistrate through an application, u/s 156(3) Cr.P.C, on 5.6.2006, seeking his direction to the police to register his FIR and investigate the offences. His said application was registered as Misc. Case No. 119 of 2006. On 15.6.2006 Judicial Magistrate IInd Meerut, ordered for registration and investigation of the case on his said application vide annexure No. 2 to this petition. Pursuant to the said order a FIR was registered against the accused on 17.6.2006 as crime number C- 8 of 2006 for offences under sections 363. 366. 120B, 504, 506 IPC at PS Parikshitgarh district Meerut Vide annexure No. 3 to this petition. Even after registration of the FIR the police did not recover the victim Km. Shabnoor who was allegedly kept in illegal confinement by respondents No. 4 to 8. Respondents No. 4 to 8, on the contrary started threatening Mohammad Tahseem, the father , therefore he filed an application to the higher police officials on 28.6.2006(Annexure No. 4) but that too was a futile effort, Being disillusioned by the police and their inaction in recovering his daughter the petitioner filed this habeas corpus petition in this Court with the prayers mentioned above. On 18th July 2006 , this Court issued notices to respondents No. 4 to 8 to file counter affidavit and also directed them to produce Km. Shabnoor, the victim in this Court. Respondents 4 to 8 appeared in this Court through Sri Amit Daga, advocate on 23.8.2006 and prayed time for filing counter affidavit. How ever they did not produce Km. Shabnoor on that date before this Court. On their request 11.9.2006 was fixed for the said purposes .and the respondents were also directed to produce the victim in this Court on the date so fixed in pursuance of the earlier order passed by this Court. On 11.9. 2006 the respondents filed a counter affidavit and also produced the corpus of Km. Shabnoor in the court.... Her statement was recorded by this Court in open court which forms the part of record of this petition. The said statement is signed by Shabnoor, the victim. This petition , thereafter was listed on 20.9.2006 when a rejoinder affidavit was filed and this Court ordered for verification of the school leaving certificate(Annexure No. 1) which was filed along with the petition. The verification of the said certificate was received to this Court from the court of CJM, Meerut vide his letter dated 5.10.2006 . The said report is appended with five other papers which include report of police station Parikshitgarh dated 31.10.2006, Certificate by Principal of Primary School Agwanpur, Meerut dated 3.10.2006, Letter dated 4.10.2006 of the BSA , Meerut addressed to CJM, Meerut, Letter dated 3.10,2006 of ABSA, Meerut and photo copy of the school leaving certificate issued by the said school which is annexure No. 1 to this petition. These reports in six leafs are on record and they directed to form the part of the record of this petition.

3. In the counter affidavit filed by Shabnoor, the victim and the alleged abductee, on behalf of respondents No. 4 to 8 it has been averred by her that she is major aged about 18 years and her date of birth is 2.1.1988. Respondent No. 4, Rizwan

is also major aged about 21 years and his date of birth is -5.2.1985. In para 4 of the said counter affidavit it is averred by her that both of them are illiterate persons and so can not bring any document relating to their date of birth. It is also averred that both of them are the resident of the same locality- Mohalla Sher Khan, village Agwanpur District Meerut and hence they knew each other since long and were in love with each other. Both of them because of said love decided to live with each other as married couple as per Muslim customs and rituals. For the said purpose both of them left the house in the first week of May 2006 and went to Delhi where they were advised to perform a court marriage to which they agreed, Then they came to know that for the solemnization of court marriage they require a age certificate. For the said purpose they contacted Dr, Raman Khurana who after conducting x-ray and other necessary tests gave them a age certificate by opining that her age is above 18 years. The said certificate by Dr. Raman Khurana, dated 3.6.2006, is annexed as CA 1 to the counter affidavit. Thereafter the relatives of and all the near and dear ones of both of them advised them to perform Nikah as per Muslim customs and rituals. On 3.6.2006 they both contracted Nikah in New Delhi which was performed by a Kazi namely Maulana Kazi Abdul Salam Kazmi. The photo copy of Nikah Nama is filed as annexure CA 2 to the counter affidavit. Since after the marriage the couple is residing happily as husband and wife in Seelampur Colony, New Delhi. It is further averred that father of Shabnoor Mohammad Tahseem knew about the love affair between the two and only when he came to know about the marriage between them that he lodged the FIR mentioned above only to harass the two of them. The registration of the FIR under the direction of the Magistrate against respondent No. 4 and others as has been mentioned above is admitted in the counter affidavit though it is said that the same was lodged for harassment. It is further the case of respondents that as soon as the deponent Shabnoor came to know about the said FIR she filed an application along with an affidavit before the concerned Magistrate on 16.6.2006 (Annexure No. CA 5) that she is a major and that she had married with respondent No. 4 on her own accord and sweet will and the allegations of the complaint is absolutely baseless. However her application was rejected by the Magistrate as not maintainable on 16.6.2006 itself, Because of the FIR the police started harassing them and other relatives therefore Shabnoor , Rizwan, Km. Lubna, Smt. Kausar, Zaheed, Mehmood, Shahid, and Wakeel filed criminal Revision No. 3315 of 2006 Rizwan v. State of UP and Ors. and challenged the order dated 15.6.2006 passed by Magistrate for registration and investigation of the case on which notices were issued to respondent No. 2 (Mohammad Tahseem) on 29.6.2006, fixing 11.9.2006 and it was further directed to the police not to harass the revisionists in that revision. The copy of" this order is annexure No. CA 6 to the counter affidavit. It is further averred in the counter affidavit that to avoid any complications the couple applied for a marriage certificate at Meerut which is still pending and they were advised to get a age certificate from CMO, Meerut which they obtained on 21.7.2006 vide annexure No. CA 7 to the counter affidavit. With these facts the averments made in the Habeas Corpus petition are denied with reiteration of the

above defence in reply.

4. In the rejoinder affidavit filed by the petitioner the averments made in the counter affidavit are denied and the facts mentioned in the writ petition are reiterated.

5. I have heard Sri 1,K. Chaturvedi, learned Counsel for the petitioner in support of this Habeas Corpus petition and Sri Satish Trivedi, learned Senior Counsel assisted by Sri Amit Daga advocate on behalf of respondents in opposition.

6. The controversy in this Habeas corpus petition lies in a narrow compass as the only two questions which requires determination are that as to whether Shabnoor is major or not? And secondly whether her Nikah with respondent No. 4 Rizwan is legal or not ? If she is major then according to her statement she had married with respondent No. 4 Rizwan on her own free will and so her Nikah with him will be legal and justified according to Muslim law and she is entitle to live with respondent No. 4 Rizwan. If she is not major and at the time of Nikah the fact of her age was not in the knowledge of KAZI then her Nikah, in absence of any proof of her age before Kazi, was not in accordance with Muslim law as she was incapable of contracting marriage being minor and hence she can not be allowed to live with respondent No. 4 against the wishes of her guardian(Father) Mohammad Tahseem, who is her natural and legal guardian. But before cogitating over the merits of the petition a brief sketch of the relevant laws.

7. Al- Qur'an the proper name of "The Holy Quran", the most sacred book of Muslims, which is the fountain head of Muslim law, is divided into 114 chapters, each one of it is called "Surah", which means "eminence" or "high degree". These "Surah" vary in length according to number of it's Ayats (verses). The longest chapter consist of 286 verses which is 1/12th of entire book and smallest is only of three versus. Each Chapter is complete in itself and is called a "Book" and thus "The Holy Quran" contains many "Books", The longer chapters are divided into ruku's (Sections) and each section contains Ayats (versus). Not to go into detail , the Ayats means "communication or a message from GOD. Chapter 4 of "The Holy Quran" titled as "Al-Nisa" (The Woman) deals with marriage and responsibilities of guardians towards minors. It is divided into 24 sections with 177 verses and was revealed at Madinah. In the 6th verse of the said chapter it is mentioned as follows:

6 And test the orphans until they reach the age of marriage. Then if you find in them maturity of intellect, make over to them their property, and consume it not extravagantly and hastily against their growing up. And whoever is rich, let him abstain, and whoever is poor let him consume reasonably. And when make over to them their property, call witnesses in their presence. And Allah is enough as a reckoner.

(Extracted From: THE HOLY QURAN: Arabic Text, English Translation And Commentary By MAULANA MUHAMMAD ALI)

8. Explaining the said "Ayat" it has been mentioned in the said book that "According to Abu Hanifah, majority is attained at eighteen years, but if maturity of intellect is not attained at eighteen, the limit may be extended."

9. Since Muslim marriages are contracts a glimpse of The Indian Contract Act 1872 (Act IX Of 1872) will also be helpful for the purposes of the present petition. Section 11 of the said Act provides thus:

11. Who are competent to contract?- livery person is competent to contract who is of the age of majority according to the law to which he is subject , and who is of sound mind , and is not disqualified from contracting by any law to which he is subject

10. Thus from the two texts quoted above it is clear that unless a person has attained the age of majority according to the law to which he is subject, Muslim Law in the present case, he can not enter into any contract on his own even though it is a contract of marriage. Muslim marriages being a contract , also requires, for a valid marriage, that both the parties, if they are contracting marriage on their own, has attained the age of majority, which according to the passage quoted above from the Book by Maulana Muhammad Ali- THE HOLY QURN, is eighteen years. Under the Contract Act as well as under the Muslim Law any marriage by a person who has not attained the age of eighteen years, is not a valid marriage and is null and void which literally means that no marriage at all has taken place between the spouses. On such an exposition of law, now, the present petition has to be decided.

11. It was argued by Sri I.K.Chaturvedi , learned Counsel for the petitioner, father Mohammad Tahseem, that Km. Shabnoor is his minor daughter aged about 13 years. He submitted that in support of this fact he has tiled the school leaving certificate from the Primary school, Agwanpur, Meerut where Km. Shabnoor had studied till class third and which after due verification by the authorities has been found to be correct and the age of Shabnoor in the said certificate is mentioned as 11.4.1994. He submitted that Km. Shabnoor joined the school on 20.7.2000 and left it on 29.4.2004. This fact which finds place in the school leaving ;, certificate is well corroborated by the averments made in the petition by the father. He further submitted that the father is the best person to tell the date of birth of his child. He further submitted that the alleged marriage of Shabnoor with respondent no, 2 is wholly illegal and void being contrary to Muslim Law, as according to her statement before this Court , recorded on 11.9.2006, Shabnoor has clearly stated that she had not produced the proof of age or any medical certificate before the Kazi at the time of the marriage and therefore she was not in possession of any document regarding her age at the time of contracting her marriage and hence the marriage in the absence of proof of age at that time of contracting it is null and void. He further submitted that the proof of age which has been submitted by the respondents as annexure No. CA 1 and CA 7 are sham documents as and so far as annexure CA 1 is concerned was not in the possession of Shabnoor or Rizwan respondent No.

4 at the time of contracting marriage. Had the said medical certificate, which is of the date of marriage itself, been in their possession, Shabnoor would not have given the statement in this Court that at the time of contracting marriage she had not produced any document regarding her date of birth nor any medical certificate before the Kazi he submitted. He further argued that the said annexure CA 1 is wholly bogus as does contain any scientific date on which the opinion was based and hence the same can not be believed. He further submitted that Km.Shabnoor has stated before this Court that her uncle and father used to tell her regarding her date of birth and she does not have any knowledge on her own. He further submitted that the same father has stated that she is a minor and her date of birth is 11.4.94 as is mentioned in the school leaving certificate. Me further submitted that a false counter affidavit has been filed in this case mentioning therein that Shabnoor and respondent No. 4 Rizwan are illiterate as both of them have signed on the relevant papers. Shabnoor has signed on the counter affidavit filed by her and Rizwan has signed on the power of attorney filed by him. Thus he submitted that there is an ample proof of the fact that both of them are literate and Shabnoor has filed an intentional false counter affidavit in this Court. Me further submitted that Shabnoor has also signed on her statement recorded by this Court on 11.9.2006 which also indicate that she is literate. He submitted that from the statement of Km. Shabnoor it is clear that neither Shabnoor nor Rizwan were in possession of the proof of their age at the time of contracting marriage and hence both the proofs - annexure No. CA 1 as well as annexure No. CA 7 , filed along with the counter affidavit are subsequently procured, manufactured and cooked up documents and no reliance can be placed on them. He also submitted that annexure CA 1 is a doubtful document also for the reason that it is not perceptible from it as to with whom it is related There is no thumb impression or any other mark of identification and the document itself is based on no data. So far as annexure CA 7 is concerned according to the case of respondents themselves it was procured after the contraction of marriage and hence is no help to the respondents. He submitted that how and under whose direction annexure CA 7 has been issued by the office of CMO, Meerut is also not clear and therefore it is a manufactured and procured document on which no opinion can be formed. He submitted that school leaving certificate which has been filed along with the petition is a genuine document and coupled with the statement of the father, Shabnoor is minor and therefore she should be given in his custody and the habeas corpus petition deserves to be allowed and respondents No. 4 to 8 be restrained from interfering with the life of Km. Shabnoor.

12. Sri Satish Trivedi, learned Senior counsel on the contrary submitted the Km. Shabnoor is major and the two medical reports are genuine and therefore they should be believed. He submitted that both the medical reports are based on scientific method and therefore they are more reliable. He further contended that Shabnoor has given statement in court that she had married with respondent No. 4 out of her own free will and therefore her . marriage is a valid marriage and

she is free to live with her husband respondent No. 4 Rizwan. He also contended that the school leaving certificate is a sham document and no reliance can be placed on it. He contended that Shabnoor has given a statement in court that she is illiterate and therefore the school leaving certificate is a false and manufactured document. He also contended that Shabnoor is happy in the company of her husband and therefore she should be allowed to go with him only. He also contended that the verification report of school leaving certificate can not be relied upon as it is only a report based on hear say. He further contended that the father never wanted to marry Shabnoor with respondent No. 4 and therefore he has indulged into all the legal battle with malafide intentions. He contended that Shabnoor being major is entitle to live with her married husband and from him she has become pregnant also having a pregnancy of two months therefore this Habeas corpus petition deserves to be dismissed.

13. I have considered the submissions raised by both the sides. In this case some facts are not in dispute. They are that Shabnoor is the daughter of Mohammad Tahseem. It is also not in dispute that both the parties are Muslims governed by Shariat law. The only bone of contention is regarding age of Shabnoor and validity of her marriage with respondent No. 4. So far age is concerned in this respect the school leaving certificate filed by father was got verified by the court through CJM, Meerut and his report . which is on record indicates that the said school leaving certificate is genuine and is not a sham document. In that certificate the date of birth of Shabnoor is recorded as 10.4.1994. The father Mohammad Tahseem has also averred the same date of birth. Thus I don't find any reason to disbelieve the said certificate. On the contrary, according to the respondent's case Shabnoor did not know her date of birth and she was informed of her date of birth by her father and uncle. So far as the two medical reports which are the sheet anchor of respondents case are concerned it is difficult to place any reliance on them for the simple reason that annexure CA 1 is bereft of scientific data on which the opinion of Dr. Raman Khurana is based and secondly it can not be said that the said report is related with Shabnoor as the name mentioned therein is Shabnoor Khanam which does not find place any where in the pleadings of both the parties and even in her counter affidavit Shabnoor has not mentioned her name as such. More over the medical report does not contain any identification marks or any other feature to relate the said report with Shabnoor daughter of Mohammad Tahseem. Further it is extremely doubtful that Shabnoor had in her possession the said medical report before she contracted her marriage as she, in unequivocal terms has stated before this Court that she did not produce before KAZI any certificate of her date of birth or any medical certificate at the time of contracting marriage. Mad Shabnoor or Rizwan, respondent no 4 been in possession of the same they would have produced it before the Kazi at the time of marriage as the same was obtained for the said purpose only. So far as the second medical report Annexure No. CA -7 is concerned the same was obviously obtained after the marriage is alleged to have been contracted by Shabnoor with Rizwan. This is the pleading in

para 12 of the counter affidavit . This medical report (annexure CA 7), according to the pleadings made in para 12 of the counter affidavit, was obtained to avoid complications. Thus this medical report also can not be believed and it seems that the same was obtained to avoid the arrest and cover up the void marriage and give it a shape of a valid marriage according to Muslim customs and rites. Admittedly these two medical reports were not furnished to the Kazi who got the marriage contracted . This all creates a doubt regarding genuineness of the said medical reports filed along with the counter affidavit. Thus on the basis of the two medical reports produced by respondents it can not be said that Shabnoor is a major and at the time of her marriage she had attained the age of majority. Contrary to it the case of the father is consistent and more probable. Hence I am of the view that Km.Shabnoor is not major and she had no right to enter into wed lock with Rizwan , respondent No. 4. Her marriage is against the mandate of Muslim law as is spelt out herein before. It is the moral duty of every Muslim to follow the teachings of Islam. She being minor would have been given in marriage only by her father or guardian and she had no right to contract the same on her own free will. She is declared to be a minor.

14. Coming to the next question as to whether her marriage with respondent No. 4 is a valid marriage according to Muslim customs and rites I am of the view that once Shabnoor is a minor, below 18 years of age, she had no right to contract the marriage. Her contract of marriage is void as according to "THE HOLY QURAN", as has been slated above, the age of majority is taken to be the age of 18 years. Till attaining of that age of majority it was only her father Mohammad Tahseem or her guardian who could have contracted her marriage. She on her own free will before that age of 18 years was not competent to contract marriage. Before the Kazi, who got her marriage contracted, there was no proof that Shabnoor was a major and hence he could not have performed the marriage of Km. Shabnoor with Rizwan. The said marriage being against the tenets of Islam can not be considered to be a valid marriage and is therefore null and void. Consequently Rizwan respondent No. 4, has no right to keep Km. Shabnoor as his wife and Km. Shabnoor has no right to live with him as his wife and treat him as her husband. Both of them failed to prove even prima facie that at the time of contracting marriage they were major and the Kazi who performed their marriage was in the knowledge of the said fact. Thus Shabnoor can not be treated to be legally wedded wife of respondent No. 4 Rizwan. Since their marriage is no marriage according to Shariat law Shabnoor can not be allowed to live with Rizwan against the mandate of The Holy Quran.

15. Resultantly this habeas corpus petition deserves to be allowed. The petitioner Mohammad Tahseem , the father, is entitle to have the custody of her daughter Km. Shabnoor and respondents Nos. 4 to 8 Rizawan, Zahid, Mahmood, Shahid, and Wakeel deserves to be restrained from interfering with the life of Km. Shabnoor.

16. Consequently this Habeas corpus petition is allowed. Km, Shabnoor, the

petitioner, daughter of Mohammad Tahseem resident of Mohalla Sher Khan, Village Agwanpur PS , Parikshitgarh District Meerut is directed to be taken out of the illegal custody of respondent No. 4 Rizwan respondent No. 4 forth with and be handed over to her father petitioner Mohammad Tahseem forth with and further respondents No. 4 to 8 namely Rizawan son of Liaquat Ali, Zahid son of Shabbir Khan Wakeel son of Sanif all resident of Mohalla Sher Khan, Village Agwanpur PS Parikshitgarh District Meerut , Mahmood son of Anwar Khan, and Shahid son of Mahmood both residents of village Palwada, PS, Sayana District Meerut, are restrained from interfering in the life of Km. Shabnoor aforesaid in any manner what so ever, How ever the parties shall bear their own costs.

17. With the aforesaid direction, this Habeas Corpus Petition is allowed.