

(2009) 08 AHC CK 0333
In the Allahabad High Court
Case No : H.C.W.P. No. 33084 of 2009

Kusum Devi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164

Citation : (2010) 1 ACR 624

Hon'ble Judges : D.R. Azad, J; Amar Saran, J

Bench : Division Bench

Advocate : Ravindra Prakash Srivastava, for the Appellant; A.G.A., for the Respondent

Judgement

Amar Saran and D.R. Azad, JJ.—Heard learned Counsel for the Petitioner and learned Additional Government Advocate.

2. Learned A.G.A. states that no useful purpose would be served in requiring a counter-affidavit to be filed in this case and summoning the detenu Smt. Kusum Devi in Court, who has been detained in Women Protective Home/Nari Niketan, Ayodhya on order of the Sub-Divisional Magistrate, Basti Sadar dated 26.5.2009.

3. Perusal of the said order shows that Deep Narain, son of Radhey Shyam, moved an application on 2.4.2009 before the S.D.M. that his mother Smt. Kusum had gone to Lucknow for medical treatment and had not returned for two days and she is presently staying in Lalitpur, she should be searched and given in his custody. The S.D.M. asked the Superintendent of Police, Lalitpur to produce Smt. Kusum Devi before the Court. Thereafter, constables Pratipal and Asha Devi produced Smt. Kusum Devi before the Court on 26.5.2009. Statement of Smt. Kusum Devi was recorded u/s 164, Code of Criminal Procedure, who stated that she had gone to Lucknow for the purpose of medical treatment, after taking medicine, she got into a bad mood and she left for Lalitpur herself. In Lalitpur she stayed in village Bargaon in the house of Akram with whom she was earlier in contact. She was not held hostage there. She has two children, one boy and

one girl, the girl is married and the son could stay with his father and she has got married with Akram in Court and wants to stay with him.

4. Radhey Shyam, husband of Smt. Kusum, moved an application that he wants Smt. Kusum to return home, because he was a teacher and suffering from diabetes. He has some septic problem with his leg and in the meantime he has been suspended from his job and there is no one to look after him. His wife had gone to Lucknow, from where she had left with Akram. He learnt about her disappearance on Akram's mobile phone. He wanted to get back the custody of his wife as relations had been restored with his wife. Having perused the aforesaid statements, the learned Magistrate observed that Smt. Kusum could not give any certificate of marriage with Akram and without first getting divorce from Radhey Shyam, she could not have married Akram. She had expressed her desire to stay in Lalitpur whereas her son and husband wanted her to stay at their place, as there was none to look after them. The Magistrate was apprehensive that there could be some untoward incident if Smt. Kusum Devi was handed over to Radhey Shyam, hence he had sent Smt. Kusum Devi to the Women's Protective Home.

5. It is the admitted position that the age of Smt. Kusum Devi is 37 years, her date of birth being 14.5.1972. There is an application dated 5.6.2009 moved by Smt. Kusum Devi that she would like to go with her husband. There is also a forwarding letter of the Superintendent, Government Protective Home, Ayodhya dated 5.6.2009 that Smt. Kusum Devi has given a handwritten application that she would like to stay with her husband Radhey Shyam.

6. In view of the decisions of this Court in *Mrs. Kalyani Chaudhari Vs. The State of U.P. and Others*, that even a minor female cannot be kept in women's protective home unless authorised by law and that a person can only be kept in protective home either in pursuance of the Immoral Traffic in a Women and Girls Protection Act or under some other law permitting her detention in such a home.

7. It appears that Smt. Kusum Devi has not been kept in the protective home under any law and she is not wanted in any offence under Immoral Traffic in Women and Girls Protection Act.

8. A similar view was taken in another Division Bench decision in *Smt. Rajkumari v. Superintendent, Women Protection House, Meerut and Ors.* (XXXV)1997 ACC 1 : 1997 ACR 350, where again relying on *Kalyani Chaudhari* case (supra) and other decisions, this Court had held that no adult woman can be compelled to stay in a Government Protection House against her wishes.

9. A similar view has also been taken by this Bench in Civil Misc. Habeas Corpus Writ Petition No. 24382 of 2009, *Kumari Ajra Khan v. State of U.P.*, decided on 23.7.2009, where after relying on the aforesaid two decisions in *Kalyani Chaudhari* (supra) and *Smt. Raj Kumari* (supra) and two Apex Court's decisions in *Gian Devi v. The Superintendent, Nari Niketan, Delhi and Ors.*, (1976) 3 SCC 234 and *Idrish Mohd. Vs. Memam and Another*, and after recording the

preference of the detenu, who was a major woman of 26 years, this Court released her from the Nari Niketan and allowed her to go where she pleased.

10. In view of the aforesaid decisions, we direct the Magistrate to consider the application dated 5.6.2009 made by Smt. Kusum Devi and other submissions regarding her preferences as to where she would like to go and pass appropriate orders in accordance with law.

With the aforesaid observations, this habeas corpus petition is disposed of.