
(2016) 09 PAT CK 0064

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 683 of 2016 Arising Out of P.S.
Case No. Year - Thana - District-Saharsa

Md. Aftab Alam

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 19-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 BLJud 125 : (2016) 4 PLJR 325

Hon'ble Judges : Mr. Hemant Gupta, J.

Bench : Single Bench

Advocate : Mr. D.K. Sinha, Senior Advocate, Mr. Amir Alam, Advocate, for the Petitioners; Mr. U.S.S. Singh, G.P. 19, Mr. Uday Bhan Singh, A.C. to G.P. 1, for the Respondents

Final Decision : Disposed Off

Judgement

Mr. Hemant Gupta, J. (Oral)—Heard learned counsel for the parties.

2. The challenge in the present writ application is to an order passed by the learned Judicial Magistrate, 1st Class, Saharsa on 28th of June, 2016 in connection with Sonbarsa Raj P.S. Case No. 82 of 2016 dated 9th of June, 2016 whereby, the custody of Roobana Praveen was ordered to be handed over to Sachin Sharma, brother-in-law of the accused Chandan Kumar. The said order arises out of an allegation that the victim was allegedly kidnapped by Chandan Kumar.

3. On 25th of June, 2016, the learned Judicial Magistrate, 1st Class passed an order that though the victim has disclosed her age as 19 years in a statement under Section 164 of the Criminal Procedure Code but her date of birth is 16th of August, 2001 on the basis of Matriculation Certificate. Therefore, she is of 14 years, 10 months and 9 days. She was ordered to be sent to Remand Home.

4. Later on, medical examination was conducted and on the basis of medical

examination and the statement of the victim, she was found to be major and the petition filed by the brother-in-law of the accused was allowed and custody of the victim was ordered to be given to him.

5. The Matriculation Certificate is earlier in point of time when there was no dispute regarding age of the victim. As per the Matriculation Certificate her date of birth is 16th of August, 2001. Thus, oral statement of the victim that she is 19 years old cannot be relied upon as it is a statement of interested person who wants to support her marriage with the accused. Even the medical examination report that she is major, cannot be relied upon as the medical examination is based upon opinion and, therefore, it is not conclusive.

6. Since on the basis of the Matriculation Certificate, the age of the victim is 14 years, 10 months and 9 days, therefore, she is minor and that the order of release of the victim in favour of brother-in-law of the accused is wholly unjustified, when the victim is minor.

7. Consequently, the order dated 28th of June, 2016 is set aside. The victim be sent to the Remand Home, if she is not willing to join her parental home till she attains the age of majority.

8. With the aforesaid direction and liberty, the writ application is disposed of.