

(2009) 07 AHC CK 0345
In the Allahabad High Court
Case No : Criminal M.A. No. 6025 of 2002

Meharban Ali alias Toni and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 06-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 363, 366

Citation : (2009) 3 ACR 3055

Hon'ble Judges : R.K. Rastogi, J

Bench : Single Bench

Advocate : Mohd. Yusuf, for the Appellant; Gurfan Ali and Irfan Ali and A.G.A., for the Respondent

Judgement

R.K. Rastogi, J.—Heard learned Counsel for the applicants, learned A.G.A. and Sri Irfan Ali, learned Counsel for the opposite party No. 2.

2. This is an application u/s 482, Cr. P.C. for quashing the proceedings of Criminal Case No. 417/9 of 2001, pending in the Court of I Ind Judicial Magistrate, Muzaffar Nagar.

3. The facts relevant for disposal of this application are that on 22.5.2000 at about 10.30 a.m., the informant Mohd. Habib (opposite party No. 2) lodged the report against applicant No. 1, Meharban Ali alias Toni with these allegations that Toni and his two-three associates had kidnapped his minor daughter Shaukeena aged about 17 years on 21.5.2000 at about 9.30 p.m. and since they could not be traced out, he went to the police station on 22.5.2000 and lodged this report.

4. On the basis of the above report, the police registered a case under Sections 363 and 366, I.P.C. against Toni alias Meharban Ali and his unknown associates and investigated the same. After investigation, a charge-sheet was submitted against Toni and his brothers Subhan, Fana and Suleman under Sections 363 and 366, I.P.C. The accused-applicants then moved this application u/s 482, Cr. P.C.

for quashing the charge-sheet in which it was alleged that Shaukeena was major at the time of the incident and she had herself gone with Toni alias Meharban Ali out of her own free will, and had married him. A copy of the Nikahanama was filed alongwith the application and a photo copy of the age certificate issued by the C.M.O., Muzaffar Nagar on 5.12.2000 was also filed showing that the age of Smt. Shaukeena was nineteen years.

5. Notices on the application were issued to the State and to the opposite party No. 2 Mohd. Habib (father of Shaukeena). No counter-affidavit has been filed by the State but a counter-affidavit has been filed by Mohd. Habib on 7.4.2008 in which he admitted that the age of Shaukeena was nineteen years at the time of the incident. It was further stated that Meharban Ali alias Toni and Shaukeena loved each other and they married each other. Shaukeena had given birth to four children out of this wedlock and she lived happily with her husband. The F.I.R. was lodged by him due to social customs. He has further submitted in the counter-affidavit that he does not want that the proceedings in Criminal Case No. 417 of 2001 should continue in the court of I Ind Judicial Magistrate, Muzaffar Nagar. It was also submitted that the charge-sheet is erroneous because Shaukeena was aged nineteen years at the time of the incident and so no case under Sections 363 and 366, I.P.C. was made out.

6. This Court had also ordered for fresh medical examination of Shaukeena and for recording her statement by the C.J.M., Muzaffar Nagar. In compliance thereof the C.J.M. got Smt. Shaukeena again medically examined and according to the medical report dated 16.5.2009, Shaukeena was aged about twenty nine years on that date and this medical certificate corroborates the earlier medical certificate. The original medical certificate has been sent by the C.J.M., Muzaffar Nagar and it is clear from both the medical certificates that Smt. Shaukeena was major at the time of the incident, and since she stated in her affidavit as well as in her statement before the C.J.M. that she had gone with the applicant No. 1. Meharban Ali alias Toni out of her own free will and had married him, no case under Sections 363 and 366, I.P.C. is made out against the accused-applicants.

7. Under these circumstances, there is no justification for continuing the criminal proceedings pending against the applicants in the court below and continuance of these proceedings would amount to abuse of the process of the Court. So in the interest of justice, this application u/s 482, Cr. P.C. to quash the proceedings of Criminal Case No. 417/9 of 2001, State v. Meharban Ali alias Toni and others, pending in the court of I Ind Judicial Magistrate, Muzaffar Nagar deserves to be allowed. The application u/s 482, Cr. P.C. is, therefore, allowed and the proceedings of Criminal Case No. 417/9 of 2001 pending in the court of I Ind Judicial Magistrate are hereby quashed.