

(1986) 06 J&K CK 0003
In the Jammu And Kashmir High Court

Mohammad Ashaq

APPELLANT

Vs

Muneer Hussain and Others

RESPONDENT

Date of Decision : 17-06-1986

Acts Referred:

Citation : (1987) CriLJ 867

Hon'ble Judges : R.P. Sethi, J

Bench : Single Bench

Judgement

R.P. Sethi, J.—Under the cloak of this petition the petitioner seeks the production of Shameema Akhtar, his alleged wife in the Court

allegedly on the ground that she has been illegally confined by respondents 2 and 3. It has been further prayed that after her production in the

Court she be set at liberty.

2. The petitioner has alleged that his marriage with Shameema Akhtar was solemnised on 28th Dec, 1985 for a consideration of Rs. 4,000/- as

dower according to Muslim Personal Law and the Custom prevalent in the area. The rest of the formal ceremonies of the marriage, that is, bringing

of bride to the house of the petitioner was fixed to be done on 10th May, 1986. Towards the end of January, 1986 the respondents connived with

the parents of Shameema Akhtar and for huge consideration illegally and without her consent removed and confined her. The petitioner initiated

proceedings in the Court of Chief Judicial Magistrate, Rajouri where Shameema was produced on 10th Feb., 1986. Shameema Akhtar made a

statement in the Court of C.J.M., Rajouri that she had contracted marriage with respondent No. 1 and that she was not kept in the illegal

confinement. It is further alleged that her statement was procured under threat

of physical torture and death. She has been detained by the respondents against her will and if she is not produced before this Court and set at liberty there was every likelihood that the respondents 2 and 3 shall do away with her because they are not only pressurizing but also physically torturing her to agree to contract marriage with respondent 1. No documents regarding the factum of marriage with the petitioner has been produced along with this petition.

3. Heard the learned Counsel for the petitioner.

4. The writ of habeas corpus is remedial in nature and cannot be used as an instrument of punishment. This remedy can also not be resorted to for

the oblique motives of harassing, pressurizing and thereby blackmailing the citizens. The remedy of the issuance of writ of habeas corpus is also not

a substitute of ordinary criminal proceedings. Though the writ of habeas corpus is a writ or right yet it cannot be used to take vengeance and

redress matrimonial civil disputes. The issuance of the writ of habeas corpus depends upon and differs from case to case, keeping in view the

suitability of the occasion. The scope of this writ is however circumscribed. On the one hand it is designed to afford immediate relief of illegal

confinement or restraint and on the other hand to prevent the abuse of the process of the Court for the vengeance of the civil rights which require

determination of disputed questions of facts. It cannot be used as a means of securing judicial determination of any other question except the

alleged illegal confinement or restrain or captivity whether partial or absolute. It cannot serve for punishing the respondents or for affording

preparation or redress to the person wronged, for an action for which the remedy under the ordinary law is available. In case where disputed

questions of facts and the other remedies are available it should be insisted that resort in such cases must be had to the ordinary remedies. What

has to be seen in such petition is as to whether the particular alleged detention, illegal confinement or captivity is lawful or not and whether any

other efficacious alternative remedy is available to the person complaining of such wrongful detention or not.

5. After perusing the contents of the petition I am of the view that Shameema Akhtar is not under illegal custody and has not (been) wrongfully

confined. She has stated of her own free will and agreed while making a

deposition in the Court of Chief Judicial Magistrate, Rajouri that she is married to one of the respondents and is not confined. I have no reason to disbelieve her statement nor any facts or circumstances have been brought to my notice to have any different view. The petitioner claiming to be husband of Shameema Akhtar has resorted to this remedy of her production in the Court with the object or pressurizing and harassing her to redress the grievances of the alleged matrimonial disputes. I fear the High Court cannot interfere in such a matter.

6. For the reasons stated above there is no merit in this petition which is dismissed.