
(1977) 12 AHC CK 0041
In the Allahabad High Court

Mrs. Kalyani Chaudhari

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 27-12-1977

Acts Referred:

Womens and Childrens Institutions (Licensing) Act, 1956 — Section 10, 2, 7, 8

Citation : (1978) CriLJ 1003

Hon'ble Judges : U.C. Srivastava, J; Hari Swarup, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Hari Swarup, J.—This petition has been filed by a girl alleging herself to be Mrs. Kalyani Chowdhary. According to the petitioner she claims that she has been wrongfully detained in Manila Ashram, Moti Nagar, Lucknow. She accordingly has prayed for a writ in the nature of Habeas Corpus. Return was called from the Superintendent, Mahila Ashram, Moti Nagar and the Station Officer, Police Station, Saadatganj, Lucknow. They have appeared and produced the girl. According to the statement given by the Superintendent, Mahila Ashram, the petitioner had been admitted in the Ashram in the night between the 21st and the 22nd Dec., 1977 on the basis of an order issued by the Magistrate. The Station Officer has explained that because of a dispute between the two factions concerning this girl she was produced before the Magistrate and on the basis of the orders of the Magistrate she was put in the Mahila Ashram, The girl has also appeared and made a statement. She has stated that she is not being permitted by the authorities of the Mahila Ashram to have free movement and that she is being detained against her will. According to her statement, she is married to Vinod Kumar Chowdhary and wants to live with him.

2. The question for determination is whether her detention in Mahila Ashram which is a Protective Home, is in accordance with law. The documents produced and the statements made before us show that the Station Officer apprehended that there was likelihood of tension growing between the parents of the girl and

some others. On the basis of this apprehension he made a report to the Magistrate and the learned Additional City Magistrate directed that the girl be kept in the Protective Home, Moti Nagar, It is on the basis of this order that she has been kept in the protective home.

3. Protective Homes find a mention In the Suppression of Immoral Traffic in Women and Girls Act, 1956. "Protective home" has been defined u/s 2(g) as meaning:

an institution, by whatever name called, in which women and girls may be kept in pursuance of this Act and includes-

- (i) a shelter where female under-trials may be kept in pursuance of this Act; and
- (ii) a corrective institution in which women and girls rescued and detained under this Act may be imparted such training and instruction and subjected to such disciplinary and moral influences as are likely to conduce to their reformation and the prevention of offences under this Act.

Sub-section (2) of Section 10 of the Act provides that where a woman or girl is convicted of any offence u/s 7 or Section 8, she may be kept in the protective homes.

4. A reading of the provision of the Suppression of Immoral Traffic in Women and Girls Act clearly shows that a person can be kept in a Protective Home only when she is being dealt with under the Act. No person can be kept in the protective home unless she is required to be kept there either in pursuance of the Suppression of Immoral Traffic in Women and Girls Act, or under some other law permitting her detention in such a Home. It is admitted that the case does not fall under this Act, no other law has been referred to.

5. The order of the learned Magistrate gives no reason why the girl be kept in the Protective Home. His order mentions no provision of law under which he has passed such a direction. The order of the Magistrate directing the girl to be kept in the "Protective Home" thus suffers from inherent lack of jurisdiction. Her custody in the protective home cannot, therefore, be held to be a legal custody.

6. Learned Counsel for the father of the girl has urged that because, according to him, the girl was a minor she could be kept in the protective home, and if not, she should be given in custody of the father as she was not a legally married woman. The evidence of the girl shows that she is a major. Moreover, in the present case the question of minority is Irrelevant as even a minor cannot be detained against her will or at the will of her father in a Protective Home. The question of giving the girl in the custody of the father also does not arise in the present case as the father was himself instrumental in getting the girl, sent into the Protective Home through the aid of the Police. We are, in these proceedings, also not required to determine the question about the minority or marriage of the girl or about the right of any person to keep In his custody the petitioner, as that is a matter which can arise in proceedings such as under the Guardians and

Wards Act and not in a petition for Habeas Corpus where the petitioner seeks freedom from illegal detention. The objection raised on behalf of the father cannot therefore be sufficient for our holding that the petitioner is not entitled at liberty from her illegal detention.

7. Learned Counsel for the petitioner Mrs. Kalyani Chowdhary (Kumari Kalyani Devi) and the girl herself have stated that she will appear in the criminal court whenever she is summoned in connection with the case which the police may be investigating and in connection with which the order was secured from the City Magistrate.

8. There is no allegation that the petitioner has committed any offence; there can therefore be no legal validity for the curtailment of the petitioner's liberty. The order of the learned Magistrate cannot accordingly validate the detention.

9. In the result, the petition is allowed and Mrs. Kalyani Chowdhary (Kumari Kalyani Devi) is set at liberty forthwith.