
(2009) 02 GAU CK 0051
In the Gauhati High Court

Mrs. Shania Rahman Choudhury

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 27-02-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 366

Citation : (2009) CriLJ 1930 : (2010) 6 GLR 305 : (2009) 3 GLT 603

Hon'ble Judges : Jasti Chelameswar, C.J;Arun Chandra Upadhyay, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A.C. Upadhyay, J.—A writ petition was registered upon receiving a letter from Miss Shania Rahman Choudhury (hereinafter referred to as petitioner), addressed to the Hon'ble Chief Justice, with a fervent prayer to save her and her husband's life from the grip of her enraged guardian and to enable her to live peacefully.

2. Facts leading to registration of this writ petition may be stated as follows:

The petitioner Ms. Shania Rahman Choudhury, aged about 23 years (birth date 3-10-1986) legitimately and willingly got married with Md. Nazimuddin on 15-10-2008, in the office of the Marriage Registrar, Kamrup District. Once again on 17-10-08, the petitioner and Md. Nazim Uddin got married according to Islamic social tradition at the office of the Muslim Marriage Registrar and Kazi at Patharkandi. After getting married, when the petitioner came with her husband to the residence of her in-laws, her father, paternal and maternal uncles along with a gang of people appeared and tried to forcibly take her away by assaulting and molesting the men and women, who were present in the house of her in-laws. On hearing the petitioners cries and screams, local villagers came and rescued the petitioner and her husband. In the meantime, petitioner's father filed an F. I. R. on 16-10-08 at Hatigaon P.S. against her husband alleging commission of offence of kidnapping, which was registered as Hatigaon P.S. Case

No. 105/08 u/s 366/34, I.P.C.

3. The police, after having registered a case of kidnapping against petitioner's husband, started harassing him and her in-laws. Finding no alternative petitioner's husband and in-laws approached the High Court and obtained bail orders and directions. Consequently, by an order the High Court directed the petitioner to give her statement before the Court of learned C.J.M., Kamrup and before the Police of Hatigaon P.S. by appearing personally.

4. The Petitioner alleged that her father is a top ranking Government Officer who enjoys a considerable political clout and also maintains cordial relationship with political leaders and Ministers of the State Government. The petitioner suspected that by taking advantage of his political influence together with petitioner's father, one Ebadur Rahman Choudhury, other Fazlur Choudhury, Abdul Basir alias Manik of Badarpur and along with few others threatened to kill her and her husband.

In such circumstances the petitioner could not dare to reach premises of the C.J.M.'s Court or Hatigaon P.S. to get her statement recorded officially in Hatigaon P.S. case No. 105/08, and thus, she unwillingly and under duress violated the order of the Hon'ble High Court.

5. Considering the seriousness of the distress letter of the petitioner, the matter was ordered to be taken up on the judicial side by registering it as a writ petition.

6. We have heard Ms. B. Goyal, learned State Government Counsel. On her prayer connected Bail Application No. B. A. 5254/08 was ordered to be listed with this writ petition. Mr. G. N. Shahewalla, Sr. Advocate assisted by Mr. A. K. Talukdar, Advocate, who also appeared in other bail applications filed on behalf of the petitioner's husband and father in-laws, appeared in this case to assist the Court to produce the petitioner before this Court. Mr. Shahewalla, Sr. Advocate informed us that the petitioner was willing to appear before this Court if police escort was provided to them. Accordingly, learned Government counsel took necessary steps to provide police escort for the petitioner to appear in this Court on 26-2-2009.

7. The petitioner, Shania Rahman Choudhury, appeared before us on 26-2-09. She was examined by us in-camera, when she asserted that she is a major in age and also admitted that she was in love with Nazim Uddin and got married with him voluntarily on 15-10-08 before the Marriage Registrar, Kamrup. She further made categorical statement confirming her marriage as per Muslim Customs on 17-10-08. Petitioner affirmed and stated that she was born on 3-10-86. She also stated before us that she is living with her husband Nazimuddin very peacefully, and her in-laws are also with them. The only apprehension of the petitioner is threat caused by her father and other family members. After interacting with the petitioner and on perusal of the copy of the birth certificate we are of the view that the petitioner is a major and has voluntarily decided to get married and live with Nazim Uddin.

8. Heard Mr. B. Mahajan, learned Counsel appearing on behalf of the father of the petitioner in Cri. Misc. Case No. 726 of 2008 arising out of B. A. No. 5254/08, fairly submitted that the petitioner being undisputedly a major in age, has the right to take a decision to live wherever she likes and that cannot be interfered with by anybody.

9. On perusal of the order dated 28-11-08 passed by learned Single Judge in B. A. 5254/08 it appears to us that a direction was issued to the petitioner and her husband Nazim Ahmed to appear before the Investigating Officer on 5-12-08 at 10 a.m. in connection with Hatigaon P.S. case No. 105/2008 u/s 366/34, I.P.C.

10. As it appears from the record of B.A. 5254/08 that a Cri. Misc. Case 726 of 08 was filed by the father of the petitioner alleging violation of the direction of the High Court, for not producing the petitioner before authority concerned. The stance revealed in the misc. petition aforesaid, by the father of the petitioner, clearly spell out that even in spite of knowing fully well that the petitioner has chosen to live according to her choice and get married with a boy whom she loves, is relentlessly following the trail. Therefore, apprehension of threat from the petitioner's father and other relation is not without substance.

11. In view of the statement made by the petitioner before us today that she voluntarily got married to Nazim Ahmed leaves us with one option that her right to live wherever she likes can not be interfered with and there is absolutely no reason to allow Hatigaon P.S. 105 of 2008 u/s 366/34, I.P.C. pending against Md. Nazimuddin and others, to continue any more to multiply litigations.

12. In the facts and circumstances of the case, we deem it appropriate that the FIR filed in connection with kidnapping of the petitioner, which was registered as Hatigaon P.S. Case No. 105/08 is required to be quashed and accordingly it is quashed.

Writ petition is accordingly allowed, as indicated above.