
(2019) 12 BOM CK 0005

In the Bombay High Court

Case No : Criminal Writ Petition No. 5935 Of 2019

Mukesh Lalji Kanojia

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 04-12-2019

Acts Referred:

Indian Penal Code, 1860 — Section 363

Citation : (2019) 12 BOM CK 0005

Hon'ble Judges : S.S. Shinde, J; Prithviraj K. Chavan, J

Bench : Division Bench

Advocate : Ram Mani Upadhyay, Pravartak Pathak, Saba Kureshi, Pravin Soni, M.M. Deshmukh, Ganesh Mali, Shantaram Walvi

Judgement

1. At the outset, it is required to be noted that, since the petitioner by this petition seeks directions to the respondents to produce girl whose name is mentioned in the petition, before this Court, and considering the allegations made by petitioner against the respondents, the identity of the said girl needs to be concealed and hence she is referred to as "X". The registry is directed to maintain the record accordingly.

2. The petitioner by this writ petition seeks directions against the respondents to produce the girl 'X' before this Court, and also seeks directions against Respondent No. 1 and 2 to take immediate and necessary action against the police officer who have acted contrary to law and handed over said 'X' to Respondent No. 3.

3. On 29.11.2019 the Division Bench (Coram:- S.S. Shinde & N.B. Suryawanshi, JJ.) issued notice to the respondents which was made returnable on 04.12.2019 i.e. today. Respondents are represented through respective counsels. Learned APP has tendered across the bar, a report prepared by Assistant Police Inspector serving in Mira Road Police Station, Mumbai, same is taken on record and marked as "X" for identification.

4. Learned APP relying upon the contents of the said report made following submissions:-

That, the Petitioner is already married and has two daughters, and said marriage is still subsisting. The age of 'X' was 17 years 2 months on the date of alleged incident of kidnapping. She was minor on the date of alleged incident. 'X' is brought in the Court by API- Mr. Ganesh Bhalchandra Mali, Mira Road Police Station, Mumbai. Learned APP submits that, on 20.11.2019 said girl was brought by Petitioner himself in the police station. However, concerned Assistant Police Inspector has not taken entry in respect of the same in the station diary. Learned APP on instructions submits that, said officer informed the parents of 'X' that, Petitioner has produced her in the Police Station, and upon receiving such information parents came to the police station and custody of said girl was given to her parents. Learned APP on instructions submit that, on 03.12.2019 'X' was brought by her parents to the Mira Road Police Station, Mumbai. Thereafter, concerned police officer sent her to Ankur Children Home, Mira Road, Mumbai.

5. The concerned police officer has produced the said girl before this Court. Parents of said girl are also present in the Court. We have interacted with the said girl in presence of learned Public Prosecutor Mrs. M.M. Deshmukh, in chamber. She stated that, her aunt i.e. father's sister is residing in house situate on Mira Road at Thane. She stated that her aunt is working in Dance Bar. She stated that, her age is 17 ½ years. She came along with her parents by car at Mumbai on 03.12.2019. She stated that, she resided with her aunt prior to registration of Crime No. 184/2019.

We called Respondent No. 3 in the chamber. We asked him, what is his relation with said girl. He stated that she is his daughter. He told that he used to drive Taxi earlier, but presently he is engaged in DJ business and occasionally he is driving taxi. When we asked him, who is residing on Mira Road, Mumbai, he stated that his mother and sister are residing at said place.

When we asked, what her sister is doing, he started giving evasive answers. He said that she is going to office for duty. Keeping in view the statement made by said girl that her aunt is working in dance bar, again we asked 3rd Respondent, whether his sister is working in Dance Bar or in any other office, he replied in the affirmative. We could observe from his demeanor and facial reactions that he is not telling the truth and hiding some thing. We are of the opinion that, conduct, behaviour and role of Respondent No. 3 in sending girl to his sister, who is working in dance bar, who might have induced said girl to work in dance bar, needs to be inquired into.

6. In the present case, we have noticed some disturbing features and unusual behaviour of the concerned police officer. It is mentioned in the police report that said girl was produced by the Petitioner in the Police Station on 20.11.2019. In our prima facie opinion, it was incumbent upon the said police officer to take entry of the said fact i.e. girl was produced by the Petitioner in the station diary.

However, as informed by learned APP no such entry has been taken in the station diary by the said police officer. When the custody of said girl was given to Respondent No. 3 and his wife, it was bounden duty of the said police officer to find out, whether Respondent No. 3 is biological father of the said girl and as a matter of fact has he played role to send the said girl to his sister, who is working in the Dance Bar with a view to send said girl in the Dance bar, as alleged in the writ petition.

As submitted by learned APP again the girl was brought back to the police station by Respondent No. 3 and his wife on 03.12.2019, then she was sent on very same day to Ankur Children Home, Mira Road, Mumbai. It is not known whether said girl was produced before Juvenile Justice Board on 03.12.2019.

7. It appears that, the concerned police officer has not adhered to the relevant procedure, so also has not shown sensitivity in such a complex matter. The report submitted by the concerned police officer dated 03.12.2019 which is already taken on record wherein it is mentioned that, Crime No. 184/2019 under Section 363 of Indian Penal Code is registered at the instance of one Priya Ratan Singh on 14.08.2019 alleging therein that, some unknown person has kidnapped 'X' girl, aged 17 years 9 months. Learned APP submitted that, though said crime is registered in the moth of August 2019, till date nobody is arraigned as accused in the said crime. Keeping in view allegations made in the petition so also report submitted by the concerned police station, our interaction with said girl and her father and conduct of the Petitioner, we are of the opinion that, this is a fit case wherein it is necessary to give certain directions to the Superintendent of Police, Thane (Rural). Accordingly, we issue following directions:-

I) The Superintendent of Police shall forthwith initiate inquiry by following principles of natural justice against Assistant Police Inspector Mr. Ganesh Bhalchandra Mali for dereliction in performing his duties, and thereafter subject to outcome of the inquiry take appropriate decision/action.

II) The Superintendent of Police shall forthwith appoint new investigating officer, not below the rank of Additional Superintendent of Police to investigate in Crime No. 184/2019 registered under Section 363 of Indian Penal Code at Mira Road Police Station, Mumbai. Said investigating officer shall forthwith cause the investigation and find out, on the date of registration of said crime, 'X' girl was in whose illegal custody and accordingly take further steps.

III) In addition to above, the Superintendent of Police shall issue direction to the said officer to inquire into, whether the third respondent is biological father of 'X' girl, secondly, why the third respondent sent said girl to Priya Ratan Singh i.e. informant in Crime No. 184/2019, who is working in dance bar. Perusal of the annexures to the petition shows that, election card issued in the name of said girl is issued at Bangalore and stamp paper wherein it is written that, mutual consent marriage scripture is purchased and notarized at Ujjain (State of Madhya Pradesh).

IV) The Superintendent of Police, shall ensure that, the said girl is produced before the Juvenile Justice Board constituted under the Juvenile Justice (Care and Protection of Children) Act, 2000, so as to cause inquiry about age of the said girl on the date of registration of Crime No. 184/2019 and, how the said girl was brought to the house of her alleged aunt i.e. Priya Ratan Singh who is residing at Mira Road, Mumbai as disclosed in the petition and after inquiry, if necessary, to seek orders from Juvenile Justice Board and Child Welfare Committee for sending her in observation home.

V) The Superintendent of Police shall endeavor to see that, future life and carrier of said minor girl may not get spoiled and she should be saved from physical and mental agony/assault.

VI) The aforesaid directions shall be complied with within three months from today, and accordingly detailed report of compliance of aforesaid directions should be sent in the name of Registrar (Judicial-II), High Court of Bombay, on or before 15.03.2020.

8. List on 23.03.2020.

9. Parties to act upon an authenticated copy of this order.