

(2013) 05 UK CK 0036

In the Uttarakhand High Court

Case No : MCC Modification Application No. 58 of 2013 in Writ Petition (Criminal)
No. 543 of 2012

Mulkiraj and Another

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 03-05-2013

Acts Referred:

Citation : (2013) 2 NCC 71

Hon'ble Judges : Barin Ghosh, C.J.;Serves Kumar Gupta, J

Bench : Division Bench

Advocate : Safdar, for the Appellant; V.P. Bahuguna, Brief Holder for Respondent
Nos. 1 to 3 and Mr. Siddharth Sah, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Barin Ghosh, C.J.—This writ petition is by Mulkiraj and Smt. Sony. They contended that they got married after becoming major. They contended that respondent No. 4 Smt. Rajkumari, mother of Smt. Soni, is averse to the marriage and, accordingly, petitioners are apprehensive that some harm may be caused to them. They, accordingly, sought protection from this Court. In order to show that petitioner No. 2 Smt. Sony is major, reliance was placed upon Scholar's Register & Transfer Certificate issued by S.S.P. Junior High School, Sultanpur, Haridwar. The same suggested that petitioner No. 2 studied in the said school from 1st April, 2003 to 31st March, 2006. Initially, Court placed reliance thereon and permitted the petitioners to obtain protection from SHO, P.S. Ranipur, District Haridwar. After service was effected upon Smt. Rajkumari, respondent No. 4, she filed a counter affidavit and, therein, she contended that Smt. Sony studied in a School known as "Shishu Shiksha Sadan Primary School, Worker Hostel, BHEL, District Haridwar". The said certificate suggested that petitioner No. 2 joined the said school on 10th July, 2002 and left the same on 28th April, 2006. According to the said school leaving certificate relied by respondent No. 4, petitioner No. 2 was to become major on 14th October, 2014.

Initially, no rejoinder thereto was filed, but subsequently, a rejoinder was filed. In that, the ration card of respondent No. 4 was relied, which suggested that petitioner No. 2 was 10 years" old as on 15th July, 2004 and, accordingly, attained majority in 2012. The Court, by an order dated 5th September, 2012, directed the District Magistrate, Haridwar to enquire, which school-leaving certificate is correct, i.e. whether the school-leaving certificate relied by petitioner No. 2 is correct or the school-leaving certificate produced by respondent No. 4 is correct. The District Magistrate, Haridwar submitted a report and, thereby, reported that the school-leaving certificate relied by petitioner No. 2 is not a genuine document. On the basis thereof, the Court presumed that the school-leaving certificate produced by respondent No. 4 is genuine, although no report to that effect was given by the District Magistrate concerned. On the basis of such presumption and in view of petitioner No. 2 informing the Court that she is not agreeable to reside with her mother/respondent No. 4, this Court, by an order dated 27th September, 2012, directed petitioner No. 2 to remain at Nari Niketan, Haldwani until 14th October, 2014, with a further direction that she shall be set free to decide where she wants to live on 15th October, 2014. An Application has been filed by respondent No. 4, wherein she has indicated that petitioner No. 2 is desirous to live with her mother, respondent No. 4. The Court, accordingly, directed production of petitioner No. 2 from Nari Niketan. Accordingly, she was produced on 29th April, 2013. Petitioner No. 2, on 29th April, 2013, once again represented to the Court that she is a major and that, while she is no longer interested to reside at Nari Niketan, she is also not interested to reside with respondent No. 4 and, instead, she wants to reside with her husband, namely, petitioner No. 1. The Court, accordingly, directed on 29th April, 2013 production of petitioner No. 2 before the Chief Medical Officer for her examination through a medical board for the purpose of determining her age. Petitioner No. 2 was, accordingly, produced and the Chief Medical Officer has reported that the board, constituted by him, has determined the age of petitioner No. 2 in between 18 and 22 years.

2. Although, in matters connected with Juvenile Justice (Care and Protection of Children) Act, 2000, date of birth certificate of the school first attended has more significance than determination of age by the medical board, but, as aforesaid, the genuineness of the school leaving certificate produced by respondent No. 4 has not yet been verified and ascertained; whereas the medical board has ascertained in no uncertain terms that petitioner No. 2 is now 18 years plus. At the same time, in the matter of determination of age of marriage under the Hindu Marriage Act, which requires that the girl should be more than 18 years, there is no method prescribed for ascertaining the age and, in that relation, the Court can always rely upon medical report.

3. In the circumstances, the Court directs Nari Niketan, Haldwani to forthwith release petitioner No. 2, with a further direction that petitioner No. 2 shall be entitled to live with petitioner No. 1 and petitioners shall be entitled to all necessary police protection from respondent Nos. 2 and 3. The said respondents

are specifically requested to provide adequate protection to the petitioners. The Modification Application is, thus, dismissed and the writ petition is disposed of with the directions as above.