
(2011) 08 AHC CK 0054
In the Allahabad High Court
Case No : Criminal Revision No. 3006 of 2011

Naushad @ Tanveer and others

APPELLANT

Vs

State of U.P. and another

RESPONDENT

Date of Decision : 02-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 190(1)
Penal Code, 1860 (IPC) — Section 363, 366

Citation : (2011) 3 ACR 3347

Hon'ble Judges : S.C. Agarwal, J

Bench : Single Bench

Advocate : P.S. Pundir, for the Appellant; Mohd. Aslam Ansari, Vikrant Pandey and A.G.A., for the Respondent

Final Decision : Disposed Of

Judgement

S.C. Agarwal, J.—Parcha filed by Mohd. Aslam Ansari and vakalatnama filed by Sri Vikrant Pandey on behalf of the complainant is taken on record.

Heard learned counsel for the parties, learned A.G.A. for the State and perused the material available on record.

This revision is directed against the order dated 4.7.2011, passed by Chief Judicial Magistrate, Saharanpur in Criminal Misc. Case No. 3827 of 2011 under Sections 363 and 366, I.P.C., P.S. Mandi, district Saharanpur whereby the revisionists were summoned to face trial.

Learned counsel for the revisionists contended that police submitted final report twice, but after considering the material available in the case diary and in the affidavits, the Magistrate passed the summoning order u/s 190(1)(b), Cr.P.C. It was submitted that in the statements recorded under Sections 161 and 164, Cr.P.C., the prosecutrix claimed herself to be major and also stated that she married with the revisionist No. 1 out of her own sweet will and on this ground, the final report was submitted by the police. The further submission is that after

the girl was given in the supuragi of her mother, she has changed her version and filed an affidavit stating therein that she was kidnapped and raped against her Will.

2. As per the medical report, her age was found to be about 18 years, whereas according to the complainant, the age of the victim is about 14 years. Whether the victim was a minor on the date of offence or major, is to be established during trial. Whether she was a consenting party or not, is also to be seen after evidence.

In these circumstance, the impugned summoning order does not call for any interference by this Court and the same has been passed by the Magistrate on the basis of material available in the case diary.

3. However, keeping in view the statements of the victim recorded under Sections 161 and 164, Cr.P.C., the revision is disposed of with a direction that if the revisionists surrender before the Magistrate concerned within a period of three weeks from today and apply for bail, their prayer for bail be considered by the courts below keeping in view a Full Bench decision of this Court in the case of Amrawati and another v. State of U.P., 2004 (57) ALR 290 : 2004 (3) ACR 2888, as affirmed by Hon"ble Apex Court in Lal Kamendra Pratap Singh v. State of U.P., 2009 (3) ADJ 322 : 2009 (2) ACR 2063 (SC).

4. If for any reason, disposal of the bail application on the same day is not possible, then the revisionists shall be released by the courts below on interim bail till the final disposal of their bail application.

For a period of three weeks, no" coercive steps shall be executed against the revisionists.