
(2013) 09 JH CK 0056
In the Jharkhand High Court
Case No : Criminal M.P. No. 1915 of 2013

Parvati Kumari

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 16-09-2013

Acts Referred:

Citation : (2014) 1 JLJR 28

Hon'ble Judges : R.R. Prasad, J

Bench : Single Bench

Advocate : Shailesh, for the Appellant; Mohan Kumar Dubey for the O.P. No. 4, for the Respondent

Final Decision : Allowed

Judgement

R.R. Prasad, J.—Heard learned counsel appearing for the petitioner and learned counsel appearing for the opposite party as well as learned counsel appearing for the State. This petition has been filed for quashing of the First Information Report of Dhanbad [Dhansar] P.S. Case No. 683 of 2013 [G.R. No. 2842 of 2013] instituted under Sections 366-A, 363/34 of the Indian Penal Code.

2. Before proceeding further in the matter, the prosecution case needs to be taken notice of.

3. It is the case of prosecution that one Baso Devi, mother of Parvati Devi [petitioner] lodged a case alleging therein that on 5.7.2013 when she woke up early in the morning, she did not find her daughter, namely, Parvati Kumari in home. She was searched, but she could not be traced. In course of search being made, she came to know that one Raj Kumar Bhuia was seen taking Parvati Kumari with him. On coming to know, they came to the house of Raj Kumar Bhuia, but none of the family members of Raj Kumar Bhuia disclosed anything. Thus, it was alleged that said Raj Kumar Bhuia, who was married from before, had enticed away her daughter, aged about seventeen years and half years old.

4. On such allegation, Dhanbad [Dhansar] P.S. Case No. 683 of 2013 [G.R. No.

2842 of 2013] was lodged under Sections 366-A, 363/34 of the Indian Penal Code. Upon the case being lodged, said Parvati Kumari approached to this Court and has filed an application u/s 482 Cr.P.C. for quashing of the First Information Report as according to her, no case is made out when she being a major had gone in company with Raj Kumar Bhuia with her own accord.

5. Mr. Shailesh learned counsel appearing for the petitioner submits that though in the First Information Report, age of the girl has been disclosed as 17 years 6 months, but in fact, on the day of occurrence i.e. 5.7.2013, she was of more than 18 years of age as her date of birth in the Certificate issued by the Central Board of Secondary Education, New Delhi has been recorded as 5.1.1995 and thereby, she could very well maintain this petition though she is not an accused, in view of the decision rendered in a case of Lata Singh Vs. State of U.P. and Another, which has been followed by this Court in a case of Shanu Paul vs. The State of Jharkhand & Ors., in W.P. (Cr.) No. 228 of 2006 Reported in Shanu Paul Vs. The State of Jharkhand and Others, decided on 28.6.2013, in a case of Lata Singh similar was the situation where a major girl Lata Singh who had been alleged to have been enticed away, had filed an application for quashing of the First Information Report which was found to be maintainable. Similar is the case herein as it would be evident from the Certificate annexed as Annexure-1 [to the Memo of petition] that on the day of occurrence, the girl was major and according to her, she had gone with her own accord and volition and thereby, no offence whatsoever is made out and thereby, the F.I.R. is fit to be quashed.

6. As against this, learned counsel appearing for the opposite party No. 2 submits that though a plea on the basis of the certificate has been taken that the girl on the date of occurrence was major, but in the First Information Report a categorical statement has been made that on the day of occurrence, the girl was aged about 17 years and 6 months and in that view of the matter, the girl being minor, any consent given by her would be immaterial for the purpose of prosecution u/s 366 of the Indian Penal Code.

7. Further, it was submitted that the case of Lata Singh as has been referred to above, on behalf of the petitioner is not applicable in the instant case as in the case before the Hon'ble Supreme Court, the husband has never been alleged to have married from before whereas in the instant case, it has been stated that the husband who enticed away the girl, was a married person. In support of his submission, that the boy was married from before, learned counsel has referred to an affidavit sworn by Raj Kumar Bhuia [husband of the petitioner] annexed as Annexure-A to the counter-affidavit.

8. Having heard learned counsel appearing for the parties, it does appear that the accused has never approached to this court for quashing of the First Information Report rather it is girl who has been alleged to have been enticed away by the accused, has approached to this court whereby an application u/s 482 Cr.P.C. has been filed for quashing of the First Information Report for the reason that she on the date of occurrence, was major and had gone in company

with the accused with her own volition. In support of submission that the petitioner was a major on the date of occurrence, a document which is a certificate issued by the Central Board of Secondary Examination, New Delhi has been filed, wherein date of birth of the petitioner has been shown as 5.1.1995, meaning thereby that on 5.7.2013 she would be more than 18 years of age.

9. In that view of the matter, any oral statement made in the First Information Report that the girl was less than 18 years of age on the date of occurrence would not be acceptable.

10 Furthermore, the statement made on behalf of the petitioner with respect to her age of more than 18 years on the basis of date of birth recorded under a certificate has also not been denied in the counter-affidavit. In that eventuality when the girl is major and has gone in company with the accused with her own volition, the accused cannot be said to have committed any offence whatsoever either u/s 363 or 366-A I.P.C and in that event, the F.I.R. warrants to be quashed. More or less similar was the situation, in case of Lata Singh (supra), wherein Their Lordships before coming to the conclusion have observed as follows:--

14. This case reveals a shocking state of affairs. There is no dispute that the petitioner is a major and was at all relevant times a major. Hence, she is free to marry anyone she likes or live with anyone she likes. There is no bar to an inter-caste marriage under the Hindu Marriage Act or any other law. Hence, we cannot see what offence was committed by the petitioner, her husband or her husband's relatives.

15. We are of the opinion that no offence was committed by any of the accused and the whole criminal case in question is an abuse of the process of the Court as well as of the administrative machinery at the instance of the petitioner's brothers who were only furious because the petitioner married outside her caste. We are distressed to note that instead of taking action against the petitioner's brothers for their unlawful and high-handed acts [details of which have been set out above] the police has instead proceeded against the petitioner's husband and his relatives.

16. Since several such instances are coming to our knowledge of harassment, threats and violence against young men and women who marry outside their caste, we feel it necessary to make some general comments on the matter. The nation is passing through a crucial transitional period in our history, and this Court cannot remain silent in matters of great public concern, such as the present one.

17. The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when we have to be united to face the challenges before the nation unitedly. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. However, disturbing news are coming from several parts of the country that

young men and women who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. In our opinion, such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut-off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple are not harassed by anyone nor subjected to threats or acts of violence, and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law.

11. Under the circumstances, as aforesaid, the criminal case was quashed at the instance of the girl who had never been an accused in that case. Similar is the situation here. The petitioner who has been alleged to have been enticed away has never been made an accused still she can very well maintain this petition for quashing of the First Information Report, in view of the ratio laid down in the aforesaid case.

12. Under the circumstances, the First Information Report of Dhanbad [Dhansar] P.S. Case No. 683 of 2013 [G.R. No. 2842 of 2013] is hereby, quashed. In the result, this petition stands allowed.