
(2010) 09 AHC CK 0375
In the Allahabad High Court

Pooja @ Bitta, & Others

APPELLANT

Vs

State of U.P., Thru. Secretary, Home & Others

RESPONDENT

Date of Decision : 20-09-2010

Acts Referred:

Citation : (2010) 09 AHC CK 0375

Hon'ble Judges : Rajiv Sharma, J and Syed Nazim Husain Zaidi, J

Final Decision : Dismissed

Judgement

S.N.H. Zaidi, J.

Supplementary affidavit filed by the petitioners is taken on record.

1. In compliance of the Court's Order dated 6.9.2010, the Director (Social Welfare) and Superintendent of Police, Sitapur are present in person.

2. By means of instant writ petition, petitioners have sought quashing of the impugned First Information Report lodged by the respondent No.3 against the petitioners registered as Case Crime No. 1098/2009 under Sections 363/366 IPC, P.S. Maholi, District Sitapur, contained in Annexure No.1 to the writ petition and also for a direction to the opposite parties not to arrest the petitioners in pursuance of the said F.I.R.

3. Learned Counsel for the petitioners has submitted that the petitioner no.1 Smt. Pooja @ Bitta and Amar Deep are Hindu by religion but belong to different castes. Both had fallen in love about three years ago and decided to marry out of their own freewill. On 28.5.2010, they married each other and also got their marriage registered before the Registrar, Hindu Marriage, Shahjahanpur. Thereafter they started living as husband and wife. The parents of petitioner no.1 were against the marriage and therefore, the impugned FIR has been lodged against the petitioner nos. 2 and 3.

4. Learned Counsel for the petitioners has submitted that the petitioner No.1, Smt. Pooja is an illiterate girl, therefore, there is no documentary evidence

available in respect of determination of age of the girl and this Court may direct the authorities concerned to conduct the medical examination.

5. E Contra, it has been asserted on behalf of opposite party No.3 that the petitioner No.1 is a minor and the petitioners nos.2 and 3 have illegally taken her away from the legal guardianship of the opposite party No.3. In support of his submission, he has annexed a copy of Marksheet issued by the institution where the petitioner no.1 had studied. A perusal of the Marksheet would show that at the relevant time, she is aged about 15 years 6 months.

6. In order to verify the aforesaid fact, the Principal of Shri Phool Singh Shiksha Niketan Uttar Madhyamik Vidyalaya, Shahjahanpur as well as Principal of Purwa Madhyamik Vidyalaya, Hasanpur, District Sitapur were directed to appear in person before this Court alongwith Transfer Certificates/Scholar Register as well as attendance register of students. In pursuance of this Court's Order dated 6.9.2010, both were present and produced the relevant records. From perusal of the record, it reflects that her roll number is 213 and her date of birth has been mentioned as 11.6.1994, whereas according to medical report, the doctor opined that she is more than 19 years.

7. Having heard learned Counsel for the parties, we are of the opinion that the medical report need not be considered for determining the age of petitioner No.1, when she had pursued the studies in the aforesaid school upto 8th class, which is the best proof for determining her age. In the cases of Harpal Singh and another v. State of Himachal Pradesh [(1981) 1 SCC 560] and Bhoop Ram v. State of U.P. [(1989) 3 SCC 1], the Apex Court held that where, there is an inconsistency in the date of birth given in the school register and the medical opinion, the evidentiary value of the school register shall be taken into consideration as against the medical report because the medical report is nothing but an opinion based on the guesses. The case law relied upon by the petitioner i.e. Jabar Singh vs. Dinesh and another [(2010) 2 SCC (Cri.) 484] is not applicable in the instant case as in the instant case, this Court is exercising jurisdiction under Article 226 of the Constitution whereas in the case of Jabar Singh (Supra) the Apex Court was scrutinizing the order passed by the High Court in Revisional jurisdiction and came to the conclusion that the High Court was not at all right in reversing the findings of the trial Court.

8. It is pertinent to mention that the date of birth recorded in the original School Register, which has been produced before us, is much before the date of incident and as there is no question of doubting the entry recorded in the School Register more so, when there is no cutting or interpolation on the said entry. Furthermore, the doctor has opined the age of petitioner no.1 as about 19 years, which always as per medical jurisprudence has two years variation on either side.

9. In view of the above, as First Information Report discloses commission of cognizable offence, we are not inclined to interfere in the F.I.R. and the writ petition is hereby dismissed. The stay order stands vacated. It is made clear that

the aforesaid observations have been made for the purposes of declining to exercise jurisdiction under Article 226 of the Constitution of India and the lower Court/police will not be guided by any of the observations made hereinabove at any point of time.

10. Before parting, we would like to point out that vide order dated 22.6.2010, this Court directed the Investigating Officer to send Smt. Pooja alias Bitta to Women Protection Home after medical examination, till further orders of this Court. As the writ petition has been dismissed, we direct that the custody of Smt. Pooja alias Bitta shall be delivered to her father and natural guardian, who is also present in the Court.