

(2010) 12 GUJ CK 0116
In the Gujarat High Court

Case No : Special Criminal Application No. 2520 of 2010

Ramesh Rasikbhai Makwana

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 29-12-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 12 GUJ CK 0116

Hon'ble Judges : Bankim N. Mehta, J;A.M. Kapadia, J

Bench : Division Bench

Advocate : Abha B. Makwana, for the Appellant; L.B. Dabhi, for Respondent Nos. 1-3 and Party-in-Person for Respondent Nos. 4-7, for the Respondent

Judgement

A.M. Kapadia, J.—Rule.

2. Mr. L.B. Dabhi, learned APP appears and waives service of notice of Rule on behalf of Respondent Nos. 1, 2 and 3 whereas Respondent Nos. 4 - 7 appear in person and waive service of notice of Rule.

3. By means of filing this petition under Article 226 of the Constitution, the Petitioner has prayed to issue a writ of Habeas Corpus or any other appropriate writ, order or direction in the nature of habeas corpus, directing the Respondent No. 2 to trace out the corpus `Soram" who is allegedly in illegal detention of Respondent Nos. 4 to 7 and produce the corpus before this Court and to hand over her custody to him.

4. As per the averments made in the petition, the Petitioner is the husband of Soram Girdharisinh Rajpurohit, who is aged about about 20 years. She was living at village Kharvath, Taluka - Panch Padhra, District - Balmer, State - Rajasthan. She used to visit the house of her sister - Respondent No. 6, Petitioner and Soram came into contact with each other and they fell in love and they decided to get marry and accordingly he got married with the corpus as per the Hindu rites at Ahmedabad on 2.12.2010.

4.1 It is further averred in the petition that the Respondent Nos. 4 and 5, who are the elder brOrs. of Soram, Respondent No. 6 is her eldest sister and Respondent No. 7 is her brother-in-law, who has married to Respondent No. 6, did not like the marriage of Soram with the Petitioner and, hence, they were waiting for an opportunity to get them separated.

4.2 It is further averred in the petition that on 2.12.2010 the Petitioner and Soram both came to the house of Petitioner's uncle - Umeshbhai Mistry, residing at B-6, Shrinath Apartments, Near Vastrapur Railway Crossing, Ahmedabad. On that day, at about 11.30 hours, the Respondent Nos. 4 to 7 visited the house of the uncle of the Petitioner and told the corpus to come along with them, failing which, they threatened to beat her and Petitioner and his family members. Since Soram refused to go along with them, they started beating up Soram including the Petitioner and his family members and forcibly took away Soram. Since the Petitioner was severely beaten, he became unconscious and, therefore, he could not immediately go to the police station to lodge the complaint and out of fear he remained at the place of his uncle for the whole day i.e. On 3.12.2010. Thereafter, on 4.12.2010 the Petitioner went to Vejalpur Police Station, Ahmedabad, and lodged a complaint narrating the entire incident of beating him, his family members and corpus and had forcibly taken away his wife Soram by Respondent Nos. 4 to 7.

4.3 It is further averred in the petition that the police had recorded the said incident as 'Janva Jogh Entry' with an assurance given to the Petitioner that they would search and find out the whereabouts of his wife Soram.

4.4 It is also alleged in the petition that though the Petitioner had informed about the whole incident but no action was taken to find out wife - Soram, who is in illegal detention of Respondent Nos. 4 to 7. Therefore, the Petitioner has filed the instant petition and prayed for the reliefs to which the reference is made in earlier paragraph of the judgment.

5. This Court, vide Order dated 15.12.2010, issued Notice to the Respondents, on condition that the Petitioner shall deposit Rs. 10,000/- as a cost to show his bona fide with the Registry of this Court.

6. Today when the matter is called out, Mr. L.B. Dabhi, learned APP, for Respondent - State of Gujarat, upon instructions received from Mr. M.N. Vaghela, PSI of Vejalpur Police Station, Ahmedabad, who is personally present in the Court, states that corpus- 'Soram' is produced by Respondent No. 7 - Anupsinh Rajpurohit before him and he wants to produce the corpus before the Court. Therefore, we have permitted him to produce the corpus before us.

7. On production of corpus Soram before us, we have ascertained the wish and willingness of the corpus - Soram and also inquired from her that as to whether she is in illegal detention of Respondent Nos. 4 to 7, who are bOrs., sister and brother-in-law of the corpus respectively. She has stated before us that she does not know as to whether her marriage has been solemnized with the Petitioner or

not. She has further stated she knows the Petitioner - Ramesh Rasikbhai Makwana, who is the neighbour of his brother Mangilal and Babulal, who are residing at Baroda. She has emphatically stated that she is not in illegal detention of Respondent Nos. 4 to 7, who are her brOrs., sister and brother-in-law. She has also stated that she wants to permanently reside with Respondent Nos. 4 to 7.

8. So far as her age is concerned, there is no dispute about her age by either sides that she is about 21 years of age.

9. On the facts and circumstances emerging from the record of the case and more particularly in view of the statement made by her before us to the effect that she has not solemnized her marriage with the Petitioner and she was not in illegal detention of Respondent Nos. 4 to 7 with whom she is at present staying and wants to stay permanently with them, so also she is about 21 years of age, she is sui juris and, hence, no fetters can be placed upon her choice of person with whom she wants to reside, we have permitted her to go with Respondent Nos. 4 to 7, who are her brOrs., sister and brother-in-law respectively.

10. Seen in the above context, instant Habeas Corpus petition lacks merit and deserves to be rejected.

11. At this stage, Mr. Abha B. Makwana, learned Advocate for the Petitioner, does not press this petition and seeks leave to withdraw the same with a request that the amount of Rs. 10,000/- deposited by the Petitioner with the Registry of this Court to show his bona fide may be paid back to him.

11.1 Mr. L.B. Dabhi, learned APP for the Respondent Nos. 1, 2 and 3 has no objection if leave as prayed for is granted and also if the amount of Rs. 10,000/- deposited by the Petitioner shall be paid back to him.

12. Hence, leave to withdraw the petition is granted. The petition stands disposed as it is withdrawn. Rule is discharged.

13. The Registry is directed to pay back the amount of Rs. 10,000/- deposited by the Petitioner to him upon due verification.