

(2014) 12 AHC CK 0135

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 52588 of 2014

Razeena Bano and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Penal Code, 1860 (IPC) — Section 166, 166(A)

Citation : (2015) 2 ADJ 232

Hon'ble Judges : Surya Prakash Kesarwani, J

Bench : Single Bench

Advocate : T.I. Khan, S.A. Ansari and S.K. Mishra, Advocates for the Appellant;
S.S. Srivastava and Mayank Srivastava, Advocates for the Respondent

Judgement

Surya Prakash Kesarwani, J.—Heard Sri S.A. Ansari, learned counsel for the petitioners, Sri Kamal Singh Yadav, learned Additional Advocate General assisted by Sri S.K. Yadav, learned Additional Chief Standing Counsel for the State-respondents. No one appeared on behalf of the respondent No. 4. Briefly stated facts of the present case are that this writ petition has been filed praying for an order/direction in the nature of mandamus commanding the respondents not to interfere in the married life of the petitioners. In paragraph 4 it is stated that the petitioner No. 1 is aged about 20 years and the petitioner No. 2 is aged about 30 years. The writ petition is supported by an affidavit of the petitioner No. 2.

2. In paragraph 5 it has been stated:

"That it is a pertinent to mention here that Petitioner No. 1 studied in Madarsa and only she read and write Hindi and Urdu only and the name of Madarsa is Daru-Uloom-Dumarsiyaganj, District-Sidharthnagar."

3. It is stated in paragraph 6 that the petitioners have performed marriage on 15th September, 2014 at Allahabad. Since it is stated in the writ petition that the petitioner No. 1 has studied in Madarsa and she can only read and write in Hindi

and Urdu and as such this Court directed for medical tests of the petitioners No. 1 vide order dated 25th September, 2014. It is also stated in paragraph 9 that no F.I.R. has been registered against the petitioners. In paragraph 13 it is stated that the petitioners have performed marriage on 15th February, 2014. A medical report dated 11th October, 2014 issued by C.M.O., Basti has been produced by the learned Standing Counsel, in which a medical opinion has been expressed on the general medical examination of the petitioner No. 1 that she is aged about 22 years and her teeth are 13/16. This report appears to be doubtful in the absence of requisite details in the report, the law laid down by Hon"ble Supreme Court in the case of Bishnu Dayal v. State of Bihar, 1980 (Supp.) SCC 358 (Para 8 and Para 9), Kailash @ Tanti Banjara Vs. State of Madhya Pradesh, and the High School mark-sheet of the petitioner No. 1 in which her undisputed date of birth is mentioned as 6.2.1998. Petitioner No. 2 has filed an affidavit dated 5.11.2014 in which also he has not disputed the date of birth of the petitioner No. 1 as mentioned in the High School mark-sheet. Thus, date of birth of petitioner No. 1 is undisputedly 6.2.1998. The High School mark sheet of the petitioner No. 1 has been brought on record by the respondent No. 4 by means of his affidavit dated 30.10.2014 filed on 31.10.2014. On 31st October, 2014 this Court passed the following order:

"1. Respondent Nos. 2 and 3 shall ensure that the petitioner No. 1 and petitioner No. 2 both are produced before this Court on the next date fixed at 10.00 a.m. Respondent No. 3 shall also remain present on the next date. Full security/protection shall be extended to the respondent No. 4, so that the petitioner No. 2 or any other persons may not cause threat or harm to the respondent No. 4.

2. The Qauzi Mohd. Islam Ali S/o. Imamuddin, Sewaimandi, Allahabad, shall also appear in person before the Court on the next date fixed and shall file his personal affidavit explaining as to why he conducted Nikah of a minor girl and issued a Nikahnama. S.S.P. Allahabad, shall communicate this order to the aforesaid Qauzi Sri Mohd. Islam Ali, S/o. Imamuddin, and shall request him to remain present in the Court on the next date fixed.

3. Petitioner No. 2 shall file his personal affidavit explaining the averments made by him in paragraph 4, 5, 6, 10 and 13 of the writ petition in the light of the facts stated in the affidavit of respondent No. 4 filed today."

4. On 5th November, 2014 the respondent No. 4 filed a short counter-affidavit, in which he stated in paragraph Nos. 4, 6, 7, 8, 9, 10 and 11 that when his daughter was enticed then he went to the police station Parasrampur, District-Basti on 30.9.2014 but F.I.R. was not registered and as such he went to the Superintendent of Police, Basti on 1st October, 2014 and filed an application but nothing was done. Then, he went to the office of the DIG, Basti and gave an application dated 9th October, 2014 but no action was taken. In support of the averments he has filed copy of the application dated 30th September, 2014, copy of the application submitted to the Superintendent of Police, Basti dated 1.10.2014 and "Jan Sikayat Panjiyan Parchi" of the office of the DIG, Basti dated

9th October, 2014. It is stated in paragraph Nos. 9 and 10 that having become disappointed and worried respondent No. 4 filed application under Section 156(3) Cr.P.C. in the Court of C.J.M. Court No. 11, Basti on 13.10.2014. The Court of C.J.M. Passed an order dated 20.10.2014 directing the SHO concerned to register an F.I.R. and file compliance report. Despite all these facts the F.I.R. was not registered.

5. Ultimately F.I.R. was registered by the respondent No. 3 on 4.11.2014. On 5.11.2014 this Court passed the following order:

"1. Heard Sri S.A. Ansari and Sri S.K. Mishra, learned counsel for the petitioners, Sri Kamal Yadav, learned Additional Advocate General, assisted by Sri Siddharth Singh Shreenet, learned counsel for the State Respondent and Sri Mayank Srivastava holding brief of Sri S.S. Srivastava learned counsel for the respondent No. 4.

2. Pursuant to the order dated 31st October, 2014 an affidavit has been filed today by the petitioner No. 2. Pursuant to the aforesaid order dated 31st October, 2014, Kazi Mohammad Islam Ali son of Sri Immauddin, Resident of Sevai Mandi, Allahabad is present in person. He states that he has committed mistake and shall never conduct Nikah of minor girls. He states that in view of this undertaking, he may be excused.

3. On 30th October, 2014, an affidavit was filed by respondent No. 4 stating therein that the date of birth of her daughter i.e. the petitioner No. 1 is 6th February, 1998 and thus she is minor. In support photostat copy of high school examination certificate year 2013 has been filed as Annexure 1 and original has also been produced before the Court. Another affidavit dated 5.11.2014 has been filed by the respondent No. 4 today. It is stated by Sri Abdul Kamal, respondent No. 4 who is present in person in the Court today that her daughter i.e. petitioner No. 1 was enticed by the petitioner No. 2. It is stated that the petitioner No. 1 her daughter is minor which is evident from the date of birth recorded in the high school examination certificate. It is stated that although he continuously approached the respondent No. 3, no F.I.R. was registered. It is stated that he then approached the Superintendent of police and D.I.G. of Police, but no action was taken. He thereafter filed a written complaint before the D.I.G., Basti Region, Basti on 9th October, 2014. It is stated in paragraph No. 9 that since no action was taken by the police authorities, and therefore, the respondent No. 4 filed an application under Section 156(3) Cr.P.C. in the Court of Chief Judicial Magistrate, Court No. 11, Basti on 13th October, 2014. The Court of Chief Judicial Magistrate passed an order dated 20th October, 2014 on the aforesaid application for registering the F.I.R. After great persuasion and after this Court passed the order dated 31st October, 2014 which was communicated to the police authorities, the F.I.R. was registered only on 4th November, 2014.

4. The statement made before this Court as noted above and also the averments made in the affidavits of respondent No. 4 as briefly noted above clearly

indicates serious circumstances which needs to be taken care by the Secretary Home as well as the Director General of Police of the State Government so that sense of insecurity may not prevail amongst people and the people may not loose confidence in the police.

5. Learned Additional Advocate General assures that the matter shall be taken up at the highest level and appropriate steps shall be taken at the highest level of the State Government to ensure that in matters where girls are enticed or taken away and F.I.R. is attempted to be lodged by the father/mother or other relative of the girl, F.I.R. shall be immediately registered and every legally possible steps in accordance with law shall be taken by the police authorities. He further ensure that the appropriate direction in this regard shall be issued by the State Government immediately within 24 hours and a copy of the directions so issued shall be filed before this Court alongwith an affidavit of an officer not below the rank of A.D.G.P.

6. As evident from record, the petitioner No. 1 is minor girl and her date of birth is 6.2.1998. Under the circumstances, the respondent No. 3 who is also present in person in the Court is directed to ensure that the petitioner No. 1 is produced within 48 hours before the concerned Magistrate who shall take appropriate steps and shall decide the issue of custody of the girl after hearing the parties concerned.

7. As prayed by Sri Kazi Mohammad Islam Ali, Sri S.A. Ansari appearing alongwith Sri S.K. Mishra, learned counsel for the petitioners and Sri Kamal Singh yadav, learned Additional Advocate General, put up on 10th November, 2014 for further hearing".

6. In compliance of order dated 5.11.2014 an affidavit of Sri Hitesh Chandra Awasthi, Additional Director General of Police (Crime), Uttar Pradesh was filed on 10th November, 2014, annexing therewith the circular of the Secretary Home, Government of U.P. dated 6th November, 2014 and circular of the Director General of Police, U.P. dated 6th November, 2014. By the aforesaid Circular the Director General of Police, U.P. has directed all the Senior Superintendent of Police/Superintendent of Police in the State of U.P. to ensure compliance of the guidelines issued by the Constitution Bench of Hon"ble Sureme Court in the case of Lalita Kumari Vs. Govt. of U.P. and Others, , with regard to registering of F.I.R. He further directed that in the matter of cognizable offences against women and children not registering F.I.R. is a punishable offence under Section 166(A) I.P.C. and if any police employee/officer is found guilty, proceedings in accordance with law shall be initiated. The circular of the DGP dated 6th November, 2014 is reproduced below:

7. On these facts this Court passed the order dated 10th November, 2014 as under:

"Affidavit of Sri Hitesh Chandra Awasthy, Additional Director General of Police (Crime), Uttar Pradesh and affidavit of Respondent No. 3 Sri Shailesh Kumar

Singh filed today in compliance of order dated 5.11.2014 are taken on record.

In view of the facts and circumstances of the case and the stand taken by the state respondents in the above referred two affidavits, it is directed that personal affidavits be filed on or before the next date fixed by the Home Secretary U.P. and the Director General of Police, U.P. with respect to the following

(i) In how many matters action has been taken in the State of U.P. against the Police Officer after the circular of D.G.P. for not registering FIR and more particularly in the matter of respondent No. 4.

(ii) Proposed steps to check increasing instances of enticing minor girls

(iii) Proposed steps for speedy and qualitative investigation, submission of charge-sheet and pairvi of such cases against accused.

Put up on 19.11.2014."

8. In compliance to the aforesaid order an affidavit of Sri Mukul Goel, Additional Director General of Police (Law and Order), Uttar Pradesh was filed on 1st December, 2014 stating that a chart has been filed giving details of cases in which action against police officer have been taken for not registering the F.I.R. As per this chart merely in five matters in the whole of State of Uttar Pradesh action has been taken against the erring police officer for not registering the F.I.R. However, this chart does not reflect any action against the police officers, who have not registered F.I.R. of the respondent No. 4. This shows that the chart is nothing but merely an eye wash. Today an affidavit of Sri Virendra Pratap Srivastava, Superintendent of Police, Basti has been filed in which it is stated that F.I.R. has been registered on 1.12.2012 against the S.H.O. of the police station concerned under Section 166 A.I.P.C. being case crime No. 803/2014 P.S.-Parsurampur, District-Basti and the investigation is going on.

9. There are two parts of this case, the first part is for grant of relief sought in the present writ petition and the second part is the inaction of the State respondents in not registering the first information report of respondent No. 4 whose minor daughter (as per high school certificate) was enticed and which was registered much belatedly even after the order was passed by C.J.M., Basti dated 20th October, 2014.

10. So far as the first part is concerned, it is undisputed that false and misleading averments have been made in various paragraphs of the writ petition including paragraphs 4 and 5. The petitioner No. 1 is an educated girl but this fact was not only consciously concealed by the petitioner No. 2 but false and misleading averment was made that she can only read and write in Hindi and Urdu and she has studied in Madarasa. The fact was brought on record by the respondent No. 4 by filing a counter-affidavit annexing therewith copy of the high-school mark-sheet of the petitioner No. 1 in which her date of birth is mentioned as 6th February, 1998. Thus, the petitioners have approached this Court with unclean hands, unclean mind and unclean heart which dis-entitles

them to invoke the extraordinary and equitable jurisdiction under Article 226 of the Constitution of India. No relief can be granted to the petitioners, as they have suppressed material facts and made false and misleading averments in the writ petition.

11. In view of above discussion this writ petition deserves to be dismissed on the grounds that false and misleading averments have been made in the writ petition, the petitioner No. 1 appears to be minor as per her date of birth mentioned in the high school mark-sheet/certificate and F.I.R. has been registered against the petitioner No. 2.

12. So far as the second part is concerned, this Court is of the view that the guidelines for registering F.I.R. as issued by Hon''ble Supreme Court in Lalita Kumari's Case (Supra) and instructions dated 6.11.2014 issued by the D.G.P. must be strictly complied with by all the police personnels in the State.

13. Under the circumstances a direction in nature of mandamus is issued to all the Senior Superintendent of Police and Superintendent of Police to ensure strict compliance of circular of the Director General of Police, U.P. dated 6th November, 2014 and the directions given by Hon''ble Supreme Court in the case of Lilita Kumari (Supra). The writ petition is dismissed with the directions as aforementioned.