

(1999) 01 RAJ CK 0007

In the Rajasthan High Court

Case No : Habeas Corpus Petition No. 2408 of 1998

Sajish Khan

APPELLANT

Vs

Supdt. of Police and Others

RESPONDENT

Date of Decision : 05-01-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164

Citation : (1999) CriLJ 2744 : (2000) 1 RLW 146

Hon'ble Judges : M.A.A. Khan, J; Arun Madan, J

Bench : Division Bench

Advocate : M. Rafiq, for the Appellant; S.R. Yadav, Government Advocate and Jai Singh, SHO, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties at length. The case of the petitioner in short is that he had lawfully married Smt. Sheetal resident of Rampura Colony, Kota. They were neighbours and developed friendly relations sometime in the year 1992. In the year 1997, they decided to marry and expressed their desire to their parents. However, the parents were not agreeable to the same and therefore, they decided to marry on their own. It has further been contended by the petitioner that Smt. Sheetal accompanied the petitioner of her free consent and they contracted marital ties in a temple Ram Mandir situated near Railway Station, Kota. It was further been contended that the petitioner had adopted Hinduism after renouncing Islam. The marriage had taken place with the help of the priest of the said temple on 8-11-1997. Thereafter, the parties started residing together at Kota. In this period, the respondent No. 3-Harish Goyal, father of Sheetal, exercised his undue influence to secure her custody in alleged connivance with the police. Hence, the petitioner had to take his wife to indore from where they came to Jhalawar. An application was also moved by Smt. Sheetal before the learned Chief Judicial Magistrate, Jhalawar for recording her statement under Section. 164, Cr. P.C. and accordingly, her statements were

recorded on 12-2-1998 in which she alleged that she was legally wedded wife of the petitioner and that she was staying with the petitioner of her own choice and freewill. She also stated that her parents were planning to remarry her elsewhere to which she was not agreeable. Thereafter, the petitioner and his wife went to Indore and therefrom they came to Sawai Madhopur on 23-3-1998 during which period they performed their marital relations. Thereafter, Smt. Sheetal had appeared before the Dy. Supdt. of Police, at Sawai Madhopur and made a statement that she was residing with the petitioner as his wife of her free will. Subsequently, an FIR came to be lodged by respondent No. 3 against the petitioner for offence u/s 363, I.P.C. The police after investigating into the matter, however, gave a final report in FIR No. 392/97 of PS Madanganj, Ajmer on 31-12-1997. Since Smt. Sheetal was not prepared to make any statement before the Magistrate, further investigation was closed by the police. Thereafter, the petitioner filed DB Habeas Corpus Petition No. 1868/98 earlier before this Court giving details with regard to the above incident which was disposed of by this Court being not maintainable after hearing learned counsel for the parties, on 6-4-1998, by observing that since the petitioner had an alternative remedy for approaching the trial Court which was competent to deal with the matter u/s 97, Cr. P.C. and alternatively, the petitioner had the remedy for restitution of conjugal rights before the Civil Court. Consequently, the writ petition was dismissed summarily. Thereafter, the petitioner being yet not satisfied has again moved the present petition inter alia making same allegations against the respondents which he had made earlier in the previous habeas corpus petition.

2. Pursuant to the show cause notice, the respondents No. 1 and 2 have filed their reply wherein it has been contended inter alia that in compliance with the directions of this Court dated 9-12-1998, the investigating police had made all possible efforts and succeeded in recovering Smt. Sheetal from Sawaimadhoipur on 24-3-1998. As soon as she was recovered, she was produced before the doctor at General Hospital, Kishangarh, Ajmer where she was medically examined vide Annexure R-1, on 25-3-1998. We have perused Annexure R-1, from which it is apparent that the doctor had opined the bony age of Smt. Sheetal to be between 18-22 years. Shri SR Yadav, learned counsel appearing for the State has contended that Smt. Sheetal was produced before the Additional Chief Judicial Magistrate, Kishangarh, Ajmer on 25-3-1998 and she made a statement that she does not wish to live with the petitioner in view of her ill-treatment by the petitioner and since she was apprehending grave risk to her life, she had voluntarily decided of her own to stay with her parents. Since Smt. Sheetal is a major, she was accordingly allowed by the learned trial Magistrate to go with her father vide Annexure R-2 on his furnishing Supurdginama. Custody of Smt. Sheetal was handed over to her father. Her statement was consequently recorded as per Section 164, Cr. P.C. at Udaipur by the Judicial Magistrate, Udaipur City (South) on 17-4-1998 vide Annexure R-3 wherein she was made a statement in clear and unambiguous terms that she does not wish to live with the petitioner in view of the circumstances as referred to above.

3. During the course of hearing, learned counsel for the petitioner has contended that since she was not produced before the concerned Magistrate at Kishangarh, Ajmer despite orders made earlier, hence, the petitioner was left with no alternative but to move this Court earlier by way of habeas corpus and subsequently by way of the present petition and her statements were recorded in the manner as referred to above.

4. We are prima facie of the considered view that the present habeas corpus petition is not maintainable not only because St. Sheetal is a major woman, aged 18-22 years as opined by the doctor vide Annexure R-3, who had medically examined her vide and she has made statement in clear and unambiguous terms that she does not intend to live with the petitioner in any circumstance as she had apprehended danger to her life. It is not a case of wrongful confinement of Smt. Sheetal and rather her statement has been recorded under the provisions of Section 164, Cr. P.C. wherein she has made the statement as referred to above and having regard to all the circumstances as well as the reply as well as the contentions advanced by the learned counsel for the State of Rajasthan and also the relevant documents which have been annexed to the reply filed by the respondent Nos. 1 and 2 we are of the view that the present habeas corpus petition does not survive for any further consideration by this Court being not maintainable. This Court cannot compel restoration of a female, who is not desirous to live with her husband, in a habeas corpus petition, since it is only the civil Court which is competent to grant the relief of restitution of conjugal rights and it is not open to this Court to compel either party to the marriage, to perform its marital obligations contrary to his or her wishes. Hence, we have no reason to discard or disbelieve the statement made by Sheetal u/s 164, Cr. P.C. before the learned Magistrate on 17-4-1998. Moreover, custody of Smt. Sheetal has already been handed over to her father vide Annexure R-2 dated 25-3-1998, which cannot be said to be illegal particularly when she has expressed her unwillingness to live with the petitioner.

5. With the above observations, this petition is disposed of being not maintainable.