

(2018) 11 MP CK 0027

In the Madhya Pradesh High Court

Case No : Misc. Criminal Case No. 38918 Of 2018

Samiksha Jain

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 30-11-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 161, 164, 482
Constitution of India, 1950 — Article 14, 19(1)(A), 21

Citation : (2018) 11 MP CK 0027

Hon'ble Judges : G.S.Ahluwalia, J

Bench : Single Bench

Advocate : Anil Mishra, F.A. Shah, Devendra Choubey, Sanjay Bahirani

Final Decision : Disposed Off

Judgement

This petition under Section 482 of Cr.P.C. has been filed by the applicant seeking her release from the Nari Niketan Gwalior.

The necessary facts for the disposal of the present application in short are that the father of the applicant lodged a missing person report alleging that one Mohd. Adil who was pressurizing his daughter to marry him might have abducted her. Accordingly, the police registered the offence in Crime No.269/2018 at Police Station Mungawali, District Ashok Nagar. Later on, the applicant was recovered and her statement under Sections 161 and 164 of Cr.P.C. was recorded. In her statement under Section 161 of Cr.P.C. she has stated that Mohd. Adil by pressurizing and threatening her had forcibly compelled her to deboard the train at Khandwa from where he took her to Nasik and Hyderabad and all the time he was promising that he would marry her. Under the threat, she was kept in a hotel and on 15-16.5.2018 the police brought them to Ashoknagar. Thereafter, the statement of the applicant was recorded under Section 164 of Cr.P.C. The statement of the applicant under Section 164 reads as under:-

****1- eSa okMZ uacj 9 vkS"k/kky; jksM eqaxkoyh esa jgrh gwaA ejs ifjokj esa**

esjs ikik] HkkbZ] nknk nknh rFkk pkpk pkph ,oa nks pkpk vkSj muds rhu cPps gSa gekjh pkph vyx jgrh gS vkSj ge lkFk esa lHkh jgrs gSaA eSa eqaxkoyh thokyh fo'ofok; esa ch-,l-lh- f}rh; o"kZ esa v;;ujr gwaA eSa eksgeen vkfn dks 6 o"kksZ ls tkurh gwa tks eqaxkoyh dk gh jgus okyk gSA eSa eksgeen vkfn ls yxHkx 5 o"kksZ ls I;kj djrh gwa nksuks ds e/; cgqr vPNs laca/k gSaA esjk ,oa eksgeen vkfn dks 'kknh djus dk dkQh le; ls Iyku py jgk Fkk fdUrj nksuks ds e/; ekSdk ugha feyk Fkk blfy, igys fookg ugh dj ik;s FksA

2- eSa esjs ukuk ukuh ceukoj rglhy bZlkx<+ esa jgrs gS ftUgksus lkr vkB fnu iwoZ eq>s dgk fd vius dks iwuk ekek ekeh ds ikl tkuk gSA fnukad 07-05-18 dks ge tks/kiqj Hkksiky V^asu ls ge Hkksiky igqap x, Fks fQj Hkksiky ge iwjs fnu :ds vkSj jkf= 11 cts gekjh V^asu iwuk ds fy, Fkh ge ml V^asu esa cSB x, vkSj esjs Iyku ds eqrkfd eksgeen vkfn chuk ls mlh V^asu esa cSB x;k Fkk mlds ckn gchxat ls ge fti dksp esa lokj Fks mlh dksp esa eksgeen vkfn Hkh vk x;k mlds ckn [k.Mok LVs'ku ij eSa vkSj eksgeen vkfn V^asu ls mrj x, ml esjs ukuk ukuh V^asu es gh lks jgs FksA

3- ge ykxksa dks ukfld tkuk Fkk blfy, geus cl dk irk yxk;k tgk gesa cl ugha feyh rc geus ,d dkj fdjk, ls yh vkSj ge Hkqlkoy lqcg yxHkx lk<+s N% cts igqPk x, FksA tgka ls gesa ukfld ds fy, cl fey xbZA ge ml cl esa cSBdj yxHkx nksigj esa rhu cts igqap x, FksA fQj ge ,d gksVy esa Bgjs tgka ij ge nks ?kaVs :ds vkSj ,d dkj fdjk, ls dh vkSj mlesa cSBdj x, vkSj fnukad 09-05-2018 dks fnu ds yxHkx Ms<+ cts gSnjkcn igqap x, tgka ij geus dejk fdjk, ls fy;k fQj geus gSnjkcn esa ,d ,MoksdsV~l ls ckr dj yh Fkh rc odhy lkgc us gedks jkr esa ukS cts muds vkWfQl esa cqyk;k Fkk fdUrj jkf= gksus dsk dkj.k ge ykx ogka ugha x,A

4- fnukad 10-05-2018 dks lqcg vkB cts odhylkgc ds ;gka igqap x, Fks fQj mlls ckrphr dh rc eq>s odhylkgc us dgk fd rqEgsa bLyke dcwy djuk iM+sxk mlds ckn eksgeen vkfn ls rqEgkj fudkg gks ldrk gS mlh fnukad dks nksigj 2 cts eksYgoh lkgc ds ;gka cqyk;k tgka ij eq>ls ,d 'kiFk i= fy[kok;k vkSj dgk fd vki bLyke /keZ dcwy djuk pkgrh gks ;k ugh fQj eSaus dgk fd eq>s bLyke /keZ viuh ethZ ls dcwy gSA fQj eq>ls ,d fefuV rd dqjku 'kjhQ i<+k;k A mlds ckn eq>s bLyke /keZ dk izek.k i= fn;k tks mnwZ esa fy[kk gqv Fkk mlds ckn ge nwljs fnu ,d vkSj eksYgoh ds ikl x, rks mlus Hkh ,d 'kiFk i= fy;k fd viuh ethZ ls fudkg dj jgh gks ;k ncko esa dj jgh gksA

5- eSaus viuh ethZ ls fudkg djus ckor~ 'kiFk i= fy[kk fti ij eSaus gLRkk{kj fd, Fks rFkk eksgeen vkfn ls Hkh eksyoh lkgc us 'kiFk i= fy[kok;k Fkk fd viuh ethZ ls fudkg dj jgs gks ;k ncko esa dj jgs gks rc mlus viuh ethZ ls fudkg djuk fy[kok;k Fkk fti ij mlds gLrk{kj gSa mlds ckn nksuks ls eksyoh lkgc us iz'u iwNs vkSj ohfM;ks cuk;k FksA nwljs fnu eksyoh lkgc ds ;gka fudkg ds fy, ge nksuks dks cqyk;k Fkk fQj eqfLye jhfr&fjokt vuqlkj gekjk fudkg gqv eq>ls ,oa eksgeen vkfn ls iwNk Fkk fd rqEgsa fudkg dcwy gS rc eSaus fudkg dcwy gksuk crk;k vkSj eksgeen vkfn us Hkh fudkg dcwy gksuk crk;k mlds ckn 'kfuokj] jfookj dh NqV~Vh gksus ds dkj.k geus gt gkWml gSnjkcn esa lkseokj dks fudkg dcwy ,oa bLyke /keZ dcwy dk izek.k i= fnukad 15-05-2018 dks fn;kA

6- fQj odhy lkgc us gedks dgk fd dfe'uj vkWfQl gSnjkckn esa tkdj iwjh tkudkj nsaA fQj ge jkf= yxHkx 9 cts dfe'uj vkWfQl x, tgka ij dfe'uj lkgc ugha feys vkSj muds ih-,- us dgk fd ftl {ks= esa jg jgs gks ogka ds Fkkus esa fjiksVZ ntZ dj nsaA fQj geus ukeiYyh Fkkus esa tkdj fjiksVZ ntZ djkus x, fdUrq ml {ks= dk Fkkuk gchcuxj gksus ds dkj.k ukeiYyh ds Fkkuk izHkkjh us gchcuxj Fkkus esa Qksu }kjk lwpuk nh Fkh fQj ge yksx gchcuxj Fkkus esa x, tgka ij iqfyl lqj{kk ekaxh rc mUgksus iqfyl okgu ls gesa gekjh gksVy essa NksM+ fn;k vkSj gksVy okys dks dgk fd ;fn buls dksbZ feyus vkos rks fcuk iqfyl dks lwpuk fn, feyus u nsaA

7- mlds nwljs fnu gchcuxj Fkkus ij gesa cqyk;k vkSj dgk fd ftl {ks= ds vki jgus okys gSa ogha vkidks vius c;ku nsus gksxs ftlds fy, iqfyl lqj{kk vko';d gS rc v'kksduxj Fkkus ls iqfyl dh iwjh Vhe gSnjkckn jokuk gks xbZ Fkh rc ogka ds Vh-vkbZ- us Qksu }kjk Vhe dks lwpuk nh rc bUgksus dgk fd ge vk/ks ?kaVs esa igqap jgs gSa fQj eSa iqfyl cy ds lkFk fnukad 17-05-2018 dks fnu esa 3 cts v'kksduxj vk x, Fks vkSj eSa ,l-Mh-vks-ih- dk;kZy; esa uhrw flag eSMe ,oa nks vkSj baLisDVj Fks muds lkFk xbZA

8- eSus vius ethZ ls eksgEen vkfnys ls fudkg fd;k gS eq> ij fdLh us ncko ugha cuk;k gSA eSa eksgEen vkfnys ds lkFk jguk pkgrh gwaA eSa esjs ifjokj esa ugh jg ldrh gwa rFkk eksgEen vkfnys ds ifjokj okys eq>s Lohdkj ugha dj jgs gSa blfy, eSa vkfnys ds ifjokj esa Hkh ugha jg ldrh rFkk eksgEen vkfnys vHkh dgka ij gS eq>s ekywe ugha gSA eq>s iqfyl vfHkj{kk dh l[r vko';drk gS ;fn eq>s iqfyl vfHkj{kk ugh nh tkrh gS rks esjh tku dks [krjk gS rFkk eksgEen vkfnys dh tku dks Hkh [krjk gSA**

It appears that there was some unrest in the locality because of inter caste marriage, accordingly, the Court by order dated 18.5.2018 directed that the applicant be kept in Nari Niketan at Gwalior because in the assessment of the Court the security of the applicant was in danger.

Being aggrieved by order dated 18.05.2018 passed by the JMFC Ashok Nagar in Criminal Case No.269/2018, the applicant filed an application under Section 482 of Cr.P.C. which was registered as M.Cr.C.No.22659/2018. The said application was allowed by order dated 20.06.18 and the applicant was permitted to file a fresh application before the Court below seeking permission to go to the place of her choice and in case if such an application is filed, then the trial court/ committal court was directed to reconsider the law and order situation and it was also directed that if it is found that the security of the applicant is not in jeopardy, then she may be allowed to go as per the law by taking into consideration the welfare of the applicant. It appears that thereafter a fresh application was filed which has been dismissed by the Court below by order dated 6.9.2018. The Trial Court before considering the application, recorded the statement of the applicant through video conferencing. It was submitted by the applicant that she is a major and she specifically stated that she does not want to stay with her parents. It was contended by the father of the applicant that the mental condition of his daughter/applicant is not fit, therefore, she should be

given in his custody.

Considering the statement of the applicant in which she had specifically refused to stay with her father, the Court below rejected the application filed by the father of the applicant for giving her in his custody.

An application was also filed by Mohd. Adil seeking the custody of the applicant on the ground that he is the husband of the applicant. The father of the applicant opposed the said application by filing a written reply and submitted that before conversion of religion, the permission of the Collector was not taken and even the fraud was played by disclosing the name of the mother of the applicant as Bharti Hussain in place of Bharti Jain. It was further submitted that therefore it cannot be said that the applicant is legally wedded wife of Mohd. Adil. The application filed by Mohd. Adil was rejected by the Court below on the ground that whether the applicant is the legally wedded wife of Mohd. Adil or not is a disputed question of fact and prima facie it has not been proved that she is the legally wedded wife. Accordingly, the application filed by Mohd. Adil to give the interim custody of Samiksha to him was rejected.

Thereafter, the application filed by the applicant for releasing her from the Nari Niketan, Gwalior was taken up. A report from the Police Station Mungawali, District Ashoknagar was called. It was also held by the Court below that since the applicant is a major lady therefore she is free to go anywhere as per her wishes. It was mentioned in the order that according to the report given by the Police Station Mungawali, District Ashoknagar the security of the applicant is in danger and because of the possibility of religious unrest in the society, the police was also feeling uneasy in producing the applicant before the Court and accordingly her statement was recorded through video conferencing. The application filed by the applicant was rejected by the Court below on the ground that since there is a possibility of religious clash between the members of two different communities and although the applicant is free to go to anywhere as she is major but considering her security it would not be proper to release her from Nari Niketan.

Challenging the order passed by the Court below it is submitted by the counsel for the applicant that in the present case the applicant has married to Mohd. Adil. The Supreme Court in the case of Shakti Vahini vs. Union of India & Ors. reported in (2018) 7 SCC 192 has held that freedom to marry is an integral part of Article 21, 19 1-A, 14 of Constitution of India.

By relying on the judgment passed by the Supreme Court in the case of Gian Devi vs. The Superintendent, Nari Niketan, Delhi & Ors. reported in (1976) 3 SCC 234, it is submitted by the counsel for the applicant that a woman who has attained majority is free to stay in any place she likes without constraint by her parents or alleged husband. The Supreme Court in the case of Gian Devi has held as under:-

7. It is the case of the petitioner that she was born on June 5, 1954. As against that, the plea of Sheesh Pal Singh, father of the petitioner, is that she was born

on April 20, 1956. Whatever may be the date of birth of the petitioner, the fact remains that she is at present more than 18 years of age. As the petitioner is sui juris no fetters can be placed upon her choice of the person with whom she is to stay, nor can any restriction be imposed regarding the place where she should stay. The court or the relatives of the petitioner can also not substitute their opinion or preference for that of the petitioner in such a matter. The fact that the petitioner has been cited as a witness in a case is no valid ground for her detention in Nari Niketan against her wishes.

Since the petitioner has stated unequivocally that she does not want to stay in Nari Niketan, her detention therein cannot be held to be in accordance with law. We accordingly direct that the petitioner be set at liberty.

By relying upon the judgment passed in the case of Lata Singh vs. State of U.P. & Anr. reported in AIR 2006 SC 2522, it is submitted by the counsel for the applicant that under the Hindu Marriage Act inter-caste marriage is not bar even it is not barred under any act or any other law. Major Boy or girl are free to marry any one she likes or lives with anyone she likes. The Supreme Court in case of Lata Singh has held as under:-

"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.

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 any one nor subjected to threats or acts of violence, and any one 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.

18. We sometimes hear of 'honour' killings of such persons who undergo inter-caste or inter-religious marriage of their own free will. There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal minded persons who deserve harsh punishment. Only in this way can we stamp out such acts of barbarism."

Thus, it is not dispute that the applicant is a major girl and accordingly she is free to move to any place as per her wishes.

The next question is that whether this Court under the apprehension of danger to the security of the applicant can compel her to live in Nari Niketan against her wishes or not? It is fairly conceded by the counsel for the parties that by keeping the applicant in Nari Niketan, her independence and freedom has been curtailed. She cannot move freely to any place as per her wishes. Providing security to citizen of India is one of the sovereign duty of the State. The State cannot keep a major person in an undeclared detention by keeping her in Nari Niketan on the ground that as she has married a boy belonging to another community, therefore, her security is in danger. The independence of an innocent person against whom no offence has been registered cannot be curtailed by keeping her under undeclared detention. If the State is so serious about the security of its citizen, then it is paramount duty of the State to provide full security to the applicant and the State cannot close its side by saying that since her security is in danger therefore she should be kept in Nari Niketan.

At this stage, it is submitted by the counsel for Mohd. Adil that Mohd. Adil with whom the applicant has married is ready to give a written undertaking before this Court that he would keep the applicant with him with full dignity and would provide full security and under the instruction of his parents he is also ready to give an undertaking in writing that the applicant shall be given full respect by her in-laws.

Accordingly, vide document No.11440/2018 an affidavit has been filed by Mohd Adil stating that he would keep the applicant with him with full dignity and respect and even his family has accepted the applicant as their daughter-in-law. A copy of the aforesaid affidavit was supplied to Shri Sanjay Bahirani, the counsel for the father of the applicant. In reply the counsel for the father of the applicant submitted that the father of the applicant is not ready and willing to give in writing ensuring the security of his daughter.

Undisputedly, the applicant is major and she cannot be kept in Nari Niketan against her wishes and she is free to go to any place of her choice.

In this petition also the applicant has made the following relief:-

"It is therefore humbly prayed that this Hon'ble Court may kindly be pleased to

allow this petition and the impugned order may be set aside so far it relates to petitioner and petitioner may be directed to be released from Nari Niketan."

Accordingly, it is directed that the applicant be immediately released from Nari Niketan with a direction to the Superintendent of Police, Ashoknagar to provide full security to the applicant. She may be allowed to go to any place of her choice and it shall be the duty of the Superintendent of Police, Ashoknagar to provide police force for escorting her to go to her place of choice.

From the order of the Court below, it is clear that the father of the applicant had given a reply that there is unrest in entire country because of the fact that Mohd Adil has married the applicant and had prayed for rejection of the application filed by Mohd. Adil for grant of custody of the applicant to him and thus the father of the applicant himself had expressed that the security of his daughter would be in jeopardy because of communal feelings.

Considering the facts and circumstances of the case, the present application is disposed of with the following observations:

1. That, the applicant Samiksha be released from Nari Niketan Gwalior with immediate effect.
2. The applicant shall give in writing to the Superintendent, Nari Niketan and Superintendent of Police, Ashoknagar, disclosing the place where she wants to go.
3. The Superintendent of Police Ashoknagar is directed to ensure the security of the applicant and she be allowed to go to the place of her choice and the Superintendent of Police, Ashoknagar shall provide police escort for taking her to the place of her choice, from the Nari Niketan, Gwalior.
4. The father of the applicant is directed not to cause any harm to the applicant either by himself or through any other person and in case any harm is caused to the applicant by a person not belonging to the side of the in-laws of the applicant, then it shall be presumed that the father of the applicant is directly or indirectly responsible for causing harm to the applicant.
5. The Superintendent of Police is also directed to keep the periodical watch on the welfare and security of the applicant after every 15 days and in case if it is found that the security of the applicant is in jeopardy, then he shall provide full security to her and would ensure proper action against the persons taking law in their hands.

With the aforesaid observations, the petition is finally disposed of.