

(1995) 09 AHC CK 0023

In the Allahabad High Court

Case No : Civil Miscellaneous Habeas Corpus Writ Petition No. 23850 of 1995

Shamima Rizvi and Another

APPELLANT

Vs

Syed Badshah Hussain Rizvi and Others

RESPONDENT

Date of Decision : 28-09-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 09 AHC CK 0023

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Advocate : Gulab Chandra, for the Appellant; A.G.A., for the Respondent

Judgement

B.S. Chauhan, J.—This petition has been filed by Sri Abbas Haidar alias Annoo for the custody of Smt. Shamima Rizvi, his legally wedded wife, with an allegation that she was in illegal and unlawful detention of her parents and other family members, the Respondent Nos. 1 and 3. From the record of this case, it appears that petitioner No. 2 got married with the alleged detenu in July, 1989 as per the Mohammedan law and social customs. The petitioner and the alleged detenu had two children out of this wedlock, a daughter of five years and a son of three years. The petitioner had taken the ground that the alleged detenu has been detained illegally by opposite party Nos. 1 and 3 and the said Respondents were not permitting her to come and stay along with the petitioner and perform her conjugal duties being a legally wedded wife.

2. This Court, vide its order dated 30.8.1995, directed the Senior Superintendent of Police, Allahabad to ensure the presence of the alleged detenu Smt. Shamima Rizvi before this Court on 25th September, 1995. In compliance of the said order, the alleged detenu was produced before this Court and her statement was recorded on oath in the open court. In her statement, she stated that during her stay along with her husband, the Petitioner, she was beaten and given ill-treatment not only by the Petitioner, her husband, but also by her two sister-in-laws, namely, Haidari and Sardari and also by her brother-in-law. She further

stated that she was forced by the petitioner to leave his house along with her two children and he always insisted to bring a sum of Rs. 15,000 from her father. It is further revealed by her in her statement that her father had already paid twice a sum of Rs. 5,000 just to satisfy the greed of the Petitioner. The alleged detenu refused to go along with the Petitioner.

3. So far as the habeas corpus petition is concerned, nothing survives in the said petition as the alleged detenu is major and living with her parents on her own free will. There is no restraint or any kind of surveillance on her by any person in the family of her parents.

4. In view of the above, nothing survives in this habeas corpus petition. However, it is desirable to mention here that in the case of Mohd. Ikram Hussain Vs. State of U.P. and Others, , the Supreme Court has laid down the law regarding the maintainability of the habeas corpus petition particularly when the husband seeks the custody of wife. In the said case, it was held that if some element of offence is Involved the party may resort to the provisions of the Code of Criminal Procedure by moving the Court of the Magistrate, but if no element of offence is involved, the remedy available to the husband is to file a case for restitution of conjugal rights. A writ petition under Article 226 of the Constitution of India cannot be entertained merely because it is convenient to a party or other remedies provided under the statutes are more burdensome. The instant petition is frivolous and has been filed by the petitioner to compel the alleged detenu to surrender to his whimsical attitude. There is no substance in the averment made in the petition that the alleged detenu had been kept under surveillance by the family members of her parents or she had been in illegal and unlawful detention of the members of the said family. It is settled law that the writ prerogative cannot be misused by a party as "legal-thumb-scrue" against the other party for serving some collateral purpose. Abdul Razzaq Shahid v. Mst. Azizunnisa Begam AIR 1970 Mad 14.

5. In the case of Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and another, , the Supreme Court has observed as under:

A court of equity, when exercising its equitable Jurisdiction under Article 226 of the Constitution of India, must so act as to prevent perpetration of a legal fraud and the courts are obliged to do Justice by promotion of good faith, as far as it lies within their power. Equity is always known to defend the law from crafty evasions and subtleties Invented to evade law.

6. Similarly, the Supreme Court in the case of State of Maharashtra and Others Vs. Prabhu, , has observed as under:

It is the responsibility of the High Court as custodian of the Constitution to maintain the social balance by interfering where necessary for the sake of Justice and refusing to interfere where it is against the social Interest and public good.

7. It is settled law that when a person approaches the court of equity in exercise

of its extraordinary jurisdiction under Article 226 of the Constitution of India, he should approach the court not only with clean hands but with clean mind, clean heart and with clean objectives. There is no need to cite any authority for this but reference may be made to the cases of The Ramjas Foundation and Others Vs. Union of India and Others, ; Guvala China Venkatesu and another Vs. State of Andhra Pradesh, and K.R. Srinivas Vs. R.M. Premchand and Others, . The contention of the Respondent No. 1 is that the petitioner is guilty of suppressing the material fact and hence not entitled for any equitable relief before this Court.

8. In view of the above, I am of the considered opinion that the writ petition is nothing but amounts to wood winking the court. No person can be allowed to approach this Court for making false allegations against other party. The alleged detenu, who has been thrown out of her legitimate abode by the petitioner himself and has been humiliated and insulted by filing this writ petition and compelled her to appear before this Court by giving false affidavit, deserves to be deprecated in strongest terms. In fact, it amounts to contempt of this Court within the meaning of the provisions of the Contempt of Courts Act, 1971. This may also be termed a case of wanton abuse of process of the court without responsibility. Vide Afzal and Another Vs. State of Haryana and Others, and State of Kerala Vs. Thressia and another, .

9. The writ petition fails and is dismissed with exemplary costs, which is quantified to a sum of Rs. 5,000. The petitioner is directed to deposit the said amount with the learned Registrar of this Court within a period of six weeks from today, who may send this money to the alleged detenu, Smt. Shamima Rizvi.