

(2002) 04 AHC CK 0186

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 1019 of 2002

Shamsher Alam alias Sheru and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-04-2002

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1), 21, 215, 226
Penal Code, 1860 (IPC) — Section 211, 363, 366, 452, 504

Citation : (2002) CriLJ 3588 : (2002) 4 RCR(Criminal) 16

Hon'ble Judges : R.C. Deepak, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : N.I. Jafri, for the Appellant; A.K. Dwtvedi, Amarjeet Singh and Awadhesh Rai, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

1. The petitioners have come up with a prayer to quash the First Information Report dated 24-1-2002 giving rise to registration of Case Crime No. 53 of 2002, P.S. Kotwali Mau, District Mau, under Sections 363/366/506, I.P.C. (as contained in Annexure 1) by granting a writ of certiorari. Their second prayer is to command the Police not to arrest them in relation to Criminal Case aforementioned. Their last prayer is to issue any other writ, order or direction of suitable nature which may be deemed fit and proper.

2. A perusal of the impugned First Information Report shows, inter alia, that respondent No. 3 herein Jafrul Hasan lodged a written report on 24-1-2002 to the effect that her daughter Kumari Rumi Parveen, who is a student of IInd year B.A. of Degree College Talimuddin Niswaj Mau in the morning of 10th January, 2002 had gone out for her studies along with her friends Nasreen and Pinki but she did not return back to home after closure of the school and then an enquiry was made on which it transpired that while returning from the School, petitioner No. 1 herein Shamsher Alam alias Sheru son of Ziyaul Hasan, Ansar Ahmad Son of Hafiz, Ikramul Son of Mohd. Mustafa alias Lali all residents of Mohalla Pathan

Tola and petitioner No. 2 herein Mohd. Sahid son of Mushtaq Ahmad resident of Bans Ki Masjid had enticed and kidnapped her away on a Tata Sumo vehicle; that in the act of kidnapping of his daughter, Ikramul and Mohd. Sahid had also associated, and thus the request for registration of a First Information Report and taking steps for safe recovery of his daughter.

3. The petitioners assert, inter alia, that the entire case set up is absolutely false and concocted, as a matter of fact Rumi Parveen, who was born on 7-7-1980 meaning thereby is 22 years of age, was major, who of her own accord and free will without any pressure or threat, married petitioner No. 1 under Muslims rites and customs, a true copy of their Nikahnama dated 14-1-2002 is appended as Annexure 2; after the marriage, the couple came up to Mau; respondent No. 3, after having come to know of the Nikah felt annoyed as it was solemnized against his wishes; on account of intervention of some respectable persons and relatives of the petitioners, the matter was pacified and respondent No. 3 accepted her marriage, however, on 24th January 2002, respondent No. 3 at the behest of the persons, who are inimical to the petitioners, approached the Police; no offence has been made out by the petitioners, who are illegally tried to be arrested by the Police without collecting any evidence and thus the petitioners are seriously prejudiced. The affidavit attached with this writ petition has been sworn by Rumi Parveen.

4. On 18-2-2002 we had passed the following order:

The main thrust of the submissions made by Mr. N.I. Jafri, learned counsel appearing on behalf of the petitioners who have come up with a prayer to quash the impugned First Information Report are that the entire allegations therein are concocted for the reason that Miss Rumi Parvin, Daughter of the informant (Jafrul Hasan) respondent No. 3 on the face of it was a Graduate student and adult who of her own will has married petitioner No. 1 Shamsheer Alam alias Sheru in support of which he produces Miss Rumi Parvin before us.

In the larger interest of justice, we interrogated her who claimed that she is Miss Parvin Daughter of Jafrul Hasan, that she is a student of B.A.; that her date of birth as mentioned in her School Certificate is 7th July, 1980 which, however, is at her father's residence; and that she of her own will had married petitioner No. 1.

In the backdrop aforementioned, we issue notice by Regd. Post and Ordinary mode to respondent No. 3 to show cause why this writ petition be not allowed making the Rule returnable on 2nd April, 2002. Necessary requisites etc. to be filed within two weeks from today.

Liberty is granted to respondent Nos. 1 and 2 who are represented by Sri A.K. Dwivedi, learned Additional Government Advocate, to file counter in the meantime.

We, in the interest of justice, direct Miss Rumi Parvin to appear in the Court of

the Chief Judicial Magistrate, Mau and make her statements before him, which after its recording shall be transmitted to this Court while retaining a copy of the same by the Chief Judicial Magistrate, Mau.

Adverting to the prayer for grant of stay, in the facts and circumstances mentioned above as also in the writ petition, we restrain the Police from coercing the petitioners pursuant to the impugned First Information Report dated 24th January, 2002 giving rise to registration of Case Crime No. 53 of 2002, under Sections 363, 366 and 506, I.P.C., P.S. Kotwali (Mau), District Mau till further orders to the contrary.

The office is directed to handover a copy of this order, if possible, by tomorrow to Sri A.K. Dwivedi, learned Additional Government Advocate, for its intimation to and follow up action by the Police.

Sd/- Binod Kumar Roy, J. Sd/- R.C. Deepak, J.

5. Two counter-affidavits have been filed in this writ petition.

5.1 In his counter-affidavit respondent No. 3 asserts, inter alia, that his daughter is an innocent girl, who was kidnapped by the petitioners and their colleagues, who are involved in anti social activities of kidnapping girls and supplying drugs, his daughter was kept under threat in their illegal custody, who was produced before this Court without her impleadment; he is in utmost doubt that the girl produced before us was his daughter or some one else, he has been receiving threats and pressure from the petitioners and his colleagues to compromise the matter and on 6th March 2002 they with open knife gave threat to kill his daughter and the members of his family by entering his house for which the Police was informed and Case Crime No. 109 of 2002 under Sections 452/504/506, I.P.C.. P.S. Kotwali Mau, District Mau was registered, (a copy of the FIR is appended as Annexure CA-2); the notice given to him under the provisions of the Special Marriage Act has been replied vide the document appended as Annexure CA-2 and CA-2A; and that the writ petition is liable to be dismissed.

5.2 In the counter-affidavit filed on behalf of the State sworn by Sohan Lal Sharma, the Sub-Inspector, P.S. Kotwali District Mau, it has been stated, inter alia, that according to the statements given by the Informant to him, his daughter was born in the year 1980; that he could not record the statements of the victim Kumari Rumi Parveen and as such is not in a position to state whether the so-called marriage was performed as per her wish or not; that after the registration of the case, he visited the houses of the accused persons but could not succeed in finding them; and that the present writ petition being devoid of merit, is liable to be dismissed.

6. Rumi Parveen filed rejoinder to the counters by and large reiterating the statements made in her affidavit that she was not kidnapped; that as a matter of fact she and petitioner No. 1 both had fallen in love with each other and thereafter they had performed Nikah, and now are living as husband and wife,

that the petitioners had never given any threat to respondent No. 3; on the other hand on account of fear and terror of respondent No. 3, petitioner No. 1 and Rumi Parveen are not in a position to go to Mau before the C.J.M. Mau, that the deponent is not aware of the lodging of the subsequent First Information Report though the allegations made therein are absolutely false and concocted one on the face of it, which was lodged with a mala fide intention and with ulterior motive on account of his annoyance.

7. On 9-4-2002 we had passed the following order:--

Perused the counter-affidavit of respondent No. 3 -- the informant of the impugned First Information Report and the petitioner's rejoinder thereto which has been sworn by none else than the daughter of respondent No. 3. We have had the advantage of hearing the deponent of the rejoinder affidavit in person at some length during which she complained that she has been given threats by her brother Shahid Parvez that she will be done away with death if she makes any statement to the contrary made by father, in presence of a person Imtiaz both of them being residents of Mohalla Pathan Tola, District Mau, who were present in Court.

Only yesterday a ghastly murder has taken place of one of the writ-petitioners though outside the Court premises. Being the guardian of the Constitution and the laws so far as this State is concerned, we owe a sacred constitutional duty to protect the life guaranteed to every person under Article 21 of the Constitution of India and cannot allow the petitioners or the deponent of the counter-affidavit to die so as to obstruct our administration of justice which has been prima facie attempted to be breached by the aforementioned two persons.

Being vested with the powers vested under Article 215 of the Constitution of India we, thus, exercise that power suo motu in the interest of justice and direct the police authorities of the District of Allahabad headed by the Senior Superintendent of Police, Allahabad to arrest the aforementioned persons and produce them for proceeding further in the matter while adjourning the further hearing of this writ proceeding to day after tomorrow.

We also command the Senior Superintendent of Police, Allahabad to give all possible police protection to the petitioners and the deponent of the rejoinder affidavit Smt. Rumi Parveen, who is present in Court, who shall be taken to a safe place as per their choice at the cost of the State.

Let a copy of this order be handed over to Mr. Amarjeet Singh, learned A.G.A., in course of the day for a follow up action by the Senior Superintendent of Police, Allahabad at once.

Sd/- Binod Kumar Roy, J. Sd/- R.C. Deepak, J.

8. Mr. Jafri, learned counsel appearing on behalf of the petitioners contended as follows:--

(i) In view of the statements made by Rumi Parveen before us and her affidavits, it is crystal clear that she and petitioner No. 1 both were major who had fallen in love with each other and had performed Nikah as per the Muslims rites and customs and both of them are free to lead their lives in their own way as guaranteed under Articles 19 and 21 of the Constitution of India untrammelled with the annoyance of the respondent No. 3 and any one.

(ii) In view of the categorical admission of respondent No. 3 in his counter-affidavit that Rumi Parveen was born in the year 1980, and thereby her majority stands proved and on the facts and circumstances, it stands further proved beyond doubt that the accusations made in the First Information Report were not correct as no ingredients of kidnapping etc. Stands prima facie constituted.

Mr. Jafri also takes up a stand that having regard to the fact that respondent No. 3 by virtue of performance of the solemn Nikah become father-in-law of petitioner No. 1 he is not at all interested in pressing the third prayer before us under which he was contemplating to pray for issuance of a direction to lodge a prosecution u/s 211 of the Indian Penal Code against him for having falsely filed the First Information Report against the petitioners.

9. Sri Amarjeet Singh, learned A.G.A. takes up a stand that having regard to the facts stated by the Investigating Officer in Paragraph 6 of the counter-affidavit that according to the Informant himself Rumi Parveen was born in the year 1980, therefore, he is not in a position to oppose the prayers made by the petitioners.

10. Sri Awadhesh Rai, learned counsel appearing for the respondent No. 3 the Informant too in view of the facts and circumstances aforementioned finds himself in difficulty to validly oppose the prayers pressed before us.

11. The facts speak for themselves and need no further reiteration or detailed comments of ours. According to the stand taken by the respondents in their respective counter-affidavits, it is crystal clear that Rumi Parveen was born in 1980. Thereby admittedly she was major on the alleged date of occurrence. She is a College going student. She has every right to take an independent decision in regard to performance of her marriage to lead her life as per her own wishes. From her averments on the record, it is clear that she of her own sweet will, after having fallen in love with petitioner No. 1, had performed Nikah with petitioner No. 1.

12. Article 19(1)(a), (b), (d) and (e) of the Constitution of India reads as follows:--

19. Protection of certain rights regarding freedom of speech etc.-- (1) All citizens shall have the right--

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) ...

(d) to move freely throughout the territory India;

(e) to reside and settle in any part of the territory of India;

13. From a conjoint in depth reading of the aforementioned Article it is clear that the Constitution guarantees its citizens freedom of expression, who can meet peaceably, but without arms, and move freely, reside and settle throughout the country. Thus petitioner No. 1 and Rumi Parveen both have the aforementioned freedoms.

14. Article 21 of the Constitution of India reads as follows:--

21. Protection of life and personal liberty.-- No person shall be deprived of his life or personal liberty except according to procedure established by law.

14.1 Its bare perusal shows that life and liberty of petitioner No. 1 and Rumi Parveen both stand guaranteed except according to the procedure established by law. Both being adults the law does not prohibit them to love each other. They have a right to live with dignity and honour and make their life meaningful. In *Kharak Singh Vs. The State of U.P. and Others*, *Gobind Vs. State of Madhya Pradesh and Another*, and *People's Union of Civil Liberties (PUCL) Vs. Union of India (UOI) and Another*, it was held that Article 21 guarantees the right to privacy.

15. Section 363 of the Indian Penal Code reads as follows:--

Punishment for kidnapping-- Whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

(Emphasis supplied by us)

15.1 Apparently Rumi Parveen right from the day when she became major ceased to be under the guardianship of her father respondent No. 3.

16. Section 366 of the Indian Penal Code reads as follows:--

Kidnapping, abducting or inducing woman to compel her marriage, etc.--- Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punished as aforesaid.

(Emphasis supplied)

16.1 Here the statement of Rumi Parveen is that she had gone and married petitioner No. 1 of her own will and love.

17. Section 506 of the Indian Penal Code reads as follows:--

Punishment for criminal intimidation. -- Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both,

and if the threat be to cause death or grievous hurt, or to cause the destruction or any property by fire, or to cause an offence punishable with death or (imprisonment for life), or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

(Emphasis supplied)

18. None of the ingredients constituting the offences described in Sections 363 and 366 prima facie are found in the impugned F.I.R. in view of the moot issue that Rumi Parveen being major was not under the guardianship of her father and that she had left the paternal home and had married petitioner No. 1 of her own free will. The remaining allegations in the F.I.R. that once the boys that threatened to kidnap the girl, in view of our findings, does not even prima facie constitute the committal of the offence u/s 506 of the Indian Penal Code.

19. Accordingly, vested with powers under Article 226 of the Constitution of India and upholder of the freedoms guaranteed under Articles 19 and 21 of the Constitution, we quash the First Information Report aforementioned since it contained wrong facts and command the respondents not to interfere with the life and liberties of the petitioners and Rumi Parveen.

Let a writ of certiorari and a writ of mandamus issue accordingly. This writ petition is allowed but without cost.

20. It is also clarified that vide our earlier orders we had directed the Allahabad Police to protect the lives of the petitioners and Rumi Parveen aforementioned, which have been faithfully complied. We now direct the Allahabad Police to take them to the place of their choice and thereafter their responsibility will cease.

21. Let a copy of this order be handed over by tomorrow to Sri Amarjeet Singh, learned Additional Government Advocate, for its intimation to the authority concerned and also be dispatched at once to the Chief Judicial Magistrate, Mau for an intimation that he is no longer required to take any action concerning the case crime in question since it has been quashed by us.