
(2007) 04 AHC CK 0114
In the Allahabad High Court

Smt. Alam Kaur and Dharamvir Singh	APPELLANT
Vs	
State of U.P. and Ram Naresh Chaudhry	RESPONDENT

Date of Decision : 26-04-2007

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 200
Evidence Act, 1872 — Section 35
Penal Code, 1860 (IPC) — Section 120B, 323, 363, 366, 504

Citation : (2007) 04 AHC CK 0114

Hon'ble Judges : Vinod Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vinod Prasad, J.—The prelude to the these two connected revisions lies in the proverb that love and Lordship has no fellowship. In the present case the progenitores turned destroyers of the neupital life of their own daughter Komal Singh because to them virtuosity of clan , caste and status is more sacrosanct than the love of their own daughter in this ephemeral life.

2. The four revisionists in these two connected criminal revisions - Smt. Alam Kaur and Dharamvir Singh, in criminal revision No. 173 of 2006 and Monu @ Kuldeep and Sandeep Chaudhari, in criminal Revision No. 259 of 2006 have challenged their summoning order dated 28.11.2005 passed by Chief Judicial Magistrate, Ghaziabad in case No. 10940 of 2005, State v. Monu @ Kuldeep and Ors. under Sections 363/ 366 /120B, IPC (relating to crime number 412 of 2005).Since both the revisions arises out of the same criminal case and in both the same impugned order has been challenged therefore both these revisions were directed to be clubbed together and both are being disposed off by this common order.

3. The genesis of the factual matrix lies in the love between Sandeep Chaudhari, son of revisionists Smt. Alam Kaur and Dharam Veer Singh with Komal Singh,

daughter of respondent No. 2 and culmination of the same into marital relationship between the two on 5.6.2005 in district Chandausi, UP. in the temple of Lord Shiva according to Hindu customs and rites. Various photos of the marriage are annexed as annexure 1 to the affidavit filed in support of this revision. The newly wed also got their marriage registered on 14.7.2005 with the Registrar of Marriages, Moradabad which is annexure No. 2. Both bride and the bride groom belongs to the same caste Jats. In Criminal Revision No. 259 of 2006 the revisionist No. 1 is the real brother of the aforesaid Sandeep Chaudhari revisionist No. 2. How ever the marriage of Komal Singh became an eyesore to her father Ram Naresh Chaudhari, respondent No. 2. who lodged a FIR, annexure No. 3 on 19.7.2005 at 8.15 p.m. at police station Kavi Nagar District Ghaziabad, for offences under Sections 363, 366, 506 IPC against Smt. Alam Kaur, her husband Dharamveer, the two Revisionist, and their sons Sandeep @ Kallu and Monu, mentioning that he is the resident of Raispur District Ghaziabad and on 12.7.2005 the accused have enticed away and abducted his minor daughter Komal Singh aged about 16 years and 3 months whose date of birth was 31.3.89 in their Maruti car No. UP 14 H 7074 with golden colour with black window panes. Her daughter had left the house with cash of Rs. 48000/- along with 9-10 Tolas of ornaments and after that he is receiving threats. The FIR of respondent father was registered as crime No. 412 of 2005.

4. It transpires from the affidavit filed in support of this revision that when Komal Singh aforesaid came to know of the said FIR she filed complaint case No. 9037/9 of 2005, Komal Singh v. Ram Naresh Singh and Ors. under Sections 323/504 IPC in the court of CJM, Moradabad on 29.8.2005 against her father Ram Naresh Singh and her two uncles Kishanvir and Sudhir which complaint is annexure No. 4 to the affidavit. She alleged in her complaint that she is residing with her husband Sandeep Kumar Chaudhari who had got the business of interior decorator. Her father wanted to get her married with a middle aged person of 45 years of age to which she was not agreeable and therefore she married with Sandeep Chaudhari on her own sweet will and got her marriage registered in Moradabad on 14.7.2005(Annexure No. 2). Annoyed by her wedlock her father and uncles collected a Panchayat on 21.7.2005 and became Panchas themselves along with two other relatives as Panchas and without giving her any opportunity of hearing passed order for annihilating her and her husband and since then she is living in district Moradabad. She is not endeavouring to enter her parental village because of fear that she and her husband will be burnt alive as in district Muzaffar Nagar and Meerut many such incidents of killing love married couples had occurred. She had made many complaints to the police as well. She also mentioned that she is inter pass from CBSE Board and she can look after her welfare well. She further alleged that her father had lodged a false FIR against her husband on 28.8.2005 at 8.30 p.m. On the occasion of Krishna Janmashtami, her father and aforesaid two uncles even tried to abduct her from Shiv Temple situated at Ram Ganga Vihar, Civil Lines, Moradabad but because of presence of large crowd they failed in their attempt. In endeavouring her

abduction she was slapped and abused also by them. She prayed that the accused be summoned and be punished. In her statement recorded on 29.8.2005 itself, u/s 200 Cr.P.C, annexure No. 5, she disclosed her age to be 19 years and repeated her version mentioned in the aforesaid Complaint and stated that she was tried to be abducted in a Indica car on gun and pistol points.

5. Apprehension of being arrested by the police compelled the couple to file Criminal Misc. Writ Petition No. 9329 of 2005 in this Court arraying father as respondent No. 2 and praying for quashing of the FIR and stay of arrest. A division bench of this Court stayed the arrest of the petitioners (The couple) in that writ petition on 8.9.2005 after hearing Komal Singh in person. Vide annexure No. 8 to the affidavit. On 2.12.2005 both the rival sides Komal Singh and Sandeep Chaudhari the petitioner's side and Ram Naresh Chaudhari and his wife Smt. Urmila Devi for the respondents appeared in this Court in that writ petition and the parents of the Komal Singh gave an under taking that they will not interfere in the marital life of Komal Singh vide annexure No. 10 to the affidavit. The said writ petition was, however finally disposed off on that day by this Court.

6. Ram Naresh Singh, father of Komal Singh not being satisfied filed habeas Corpus Writ petition in this Court being Habeas Corpus Writ petition No. 59522 of 2005 Ram Naresh Singh v. Sandeep Chaudhari where in this Court ordered for the medical examination of Komal Singh for determination of her age by Chief Medical Officer Allahabad who reported that Komal Singh was aged about 19 years and hence on 6.1.2006 the said habeas Corpus Petition was dismissed by this Court.

7. However the police in the FIR lodged by Ram Naresh Singh submitted a charge sheet on 24.11.2005, annexure No. 13, against the revisionists in the court of Chief Judicial Magistrate, Ghaziabad for offences under Sections 363/366/506/ 120B IPC, on the basis of which CJM Ghaziabad took the cognizance on 28.11.2005 and criminal Case No. 0940 of 2005 was registered against the revisionists in his court in which on the same day the Chief Judicial Magistrate Summoned the revisionists and fixed 20.1.2006 for their appearance, hence these two criminal revisions challenging the summoning order.

8. During the course of hearing of these revisions it was stated by the counsel for the revisionist that Komal Singh is living with Sandeep Chaudhari as his wife and she is in a family way therefore both, the parents and the couple, were directed to appear in person in this Court for settlement between themselves if possible as the dispute was matrimonial between parents and daughter and her husband. Komal Singh on the date so fixed, 24.1.2007, appeared along with her husband and her parents also appeared in this Court. Komal Singh stated before the court that she had married with Sandeep Chaudhari on her own accord and she is aged about 20 years and has studied upto class 12 th. She also expressed her desire to go along with her husband who had come to the High Court along with her. Her statement was taken down which has been signed by her as well.

9. On the above factual Matrix, I have heard Sri Viresh Misra Learned Senior counsel for the revisionist in the two revisions and Sri Virendra Singh learned Counsel for the respondent informant and the learned AGA in opposition.

10. Sri Misra contended that the whole prosecution of the revisionists is malafide and Komal Singh being a major was free to marry with Sandeep Chaudhari and live with her husband. He contended that no offence u/s 363 IPC is made out as Komal Singh was more than 19 years of age and no offence of abduction is made out as she had left her home out of her sweet will. He further argued that in the complaint case filed by her she had stated her age to be 20 years. He further submitted that in the Criminal Misc. Writ Petition No. 9329 of 2005 Komal Singh appeared in person and she had stated before a division bench of this Court that she has married with Sandeep Chaudhari out of her own accord and her medical report of S.R.N. Hospital Allahabad which was produced by her in court on that day 8.9.2005 indicated that she was pregnant as well. He contended that Komal Singh again appeared on 2.12.2005 before the division bench of this Court in the aforesaid writ petition and she was allowed to meet separately with her parents and that day also Komal Singh has said that she was aged about 19 years. He further submitted that informant had given an undertaking that he will not disturb the marital life of her daughter and the arrest of the couple was stayed by this Court. However, since the charge sheet was submitted the parties were directed to take recourse in Habeas Corpus Writ Petition No. 59522 of 2005 which was subsequently dismissed and hence the summoning order be quashed. He also argued that the whole proceeding is malafide and respondent No. 2 only wants to ruin three lives of Komal Singh, Her husband Sandeep Chaudhari and the child. He concludingly submitted that the summoning order be quashed as no offence is made out.

11. Sri Virendra Singh contrarily contended that the charge sheet has been rightly submitted and Komal Singh being a minor was kidnapped from her lawful guardianship and abducted therefore offence is made out and since the charge sheet has been submitted therefore disputed questions of fact should not be decided in revision and the both the revisions should be dismissed.

12. I have considered the arguments of both the sides and have gone through the record of both the connected revisions. It is born out from the record and also from the submissions of the parties that it is not in dispute that Komal Singh is the daughter of respondent No. 2 Ram Naresh Singh. It is also not in dispute that She has married with Sandeep Chaudhari who is the son of revisionists in Criminal Revision No. 173 of 2006 and brother of Revisionist Monu @ Kuldeep one of the two revisionist in Criminal Revision No. 259 of 2006. It is also not in dispute that in Criminal Misc. writ Petition No. 9329 of 2005 Komal Singh v. State of U.P. and Ors. her father Ram Naresh Singh was respondent No. 4. It is also not disputed that in the aforesaid writ petition Komal Singh appeared along with her husband Sandeep Chaudhari one of the revisionist and she had made a statement that she was major aged about 19 years and her medical examination

report indicated that she was pregnant. She had also made a statement that she had married with Sandeep Chaudhari according to her own wish. She had also filed a criminal case against her father and uncles with the allegations that she was major and had married with Sandeep Chaudhari on her own accord as her father wanted to get her married with an elderly person of 45 years of age and in her that complaint case she had mentioned her age to be 20 years in her statement u/s 200 Cr.P.C. recorded by the Magistrate. It is also not in dispute that Ram Naresh Singh had filed Habeas Corpus Writ Petition No. 59522 of 2005 claiming custody of her in which both the sides appeared in person and were heard in person as well. It is also not disputed that the said Habeas Corpus Petition was dismissed on 6.1.2006 and that order of dismissal of Habeas Corpus Petition became final as the counsel for the respondent did not argue that the order passed in that habeas Corpus petition was challenged in the Apex Court at any point of time. From such facts it is clear that the detention of Komal Singh with revisionist Sandeep Chaudhari was not declared to be illegal and respondent No. 2 failed in his attempt to get the custody of Komal Singh. Further from the order passed in Criminal Misc. writ Petition it leaves no doubt that arrest of accused in crime number 412 of 2005 was stayed by this Court. The said order is referred to below:

Amitava Lala, J. The matter was placed yesterday i.e. on 1 st December, 2005 when the petitioner contended before this Court for quashing of F.I.R. lodged on 19.7.2005, under Sections 363, 366, 506 I.P.C., P.S. Kavi Nagar, District Ghaziabad. Further prayer is made not to arrest her.

Learned counsel appearing for the respondent No. 3 in presence of Sri Ram Naresh Singh, father of the girl and Smt. Urmila, mother of the girl, in this Court contended that they have apprehension that the girl (the petitioner) is not alive or somewhere taken. Therefore, there was lot of hue and cry before the Court and the mother of the girl started crying on such apprehension.

Learned Government Advocate contended before this Court that charge sheet has been filed, but he is not specific regarding such submission without instruction.

Under such circumstances, the matter was directed to be placed today (2.12.2005) to produce the girl before this Court with the help of the police. The girl has been produced before the Court accompanied by her husband. The parents of the girl met with her separately pursuant to the direction of the Court. Thereafter, the father of the girl has made an allegation against the girl about the past incident which he hid till this date. He also said that he facing problem in the society for this girl's activities. The girl said before the Court that she is aged about 19 years. According to Sri Viresh Misra, learned Senior Counsel appearing for the petitioner, she has already been medically examined by the Chief Medical Officer, Ghaziabad, which report says that her age is above 19 years. According to school leaving certificate, which has been shown by learned Counsel for the complainant, her date of birth is 31 st March, 1989. However, there is no scope

of passing any order in respect of the facts hereunder except recording the above statements.

Learned Government Advocate contended before this Court that charge sheet has already been filed and cognizance has been taken. Photocopy of the charge sheet has been placed before this Court which is kept with the record. Therefore, no further order is needed to be passed with hope and trust on the assurance of the parents, who are present herein that they will not disturb the peaceful life of the petitioner and both the parties will co-operate with the Investigating Officer in further, if any. If any further order is required, prayer/s can be made before the Bench taking the Habeas Corpus Writ Petition No. 59522 of 2005. However on the basis of the consensus as arrived by the parties and their Advocates the boy and girl will be sent to their respective places, from where they have taken by the police. Presently on the basis of the statement as made by the learned Government Advocate himself, the arrest of the petitioner is stayed for a period of eight weeks, within which period she will apply for bail in connection with Crime No. 412 of 2005, under Sections 363, 366, 506 I.P.C., P.S. Kavi Nagar, District Ghaziabad.

With the above observations and order, the writ petition is disposed of without imposing any costs.

13. The above order dated 2.12.2005 passed more than a year before was not challenged in any higher forum and attained finality. It is also recalled that the habeas Corpus Petition filed by the father too was dismissed a year before. Thus at least in two other forums respondent No. 2 had failed to get the custody of Komal Singh who always desired to live her husband with who she had married with her own sweet will.

14. Now coming to the age of Komal Singh which according to her father is recorded in school as 31.3.89. According to Komal Singh her date of birth is 31.3.87. Respondent No. 2 was allowed time to file counter affidavit on 31.7.2006 but no counter affidavit has been filed by him till date. In her deposition before the court in her complaint case Komal Singh has stated her age to be 20 years. She was medically examined also and her age was determined to be 19 years by the doctor. In her deposition before this Court also on more than one occasion she has disclosed her age to be 19/20 years. Thus, but for a bald statement of fact mentioned in the FIR, there is no other proof filed by respondent No. 2 showing her date of birth to be of the year 1989. No doubt charge sheet has been submitted against her husband and in laws but on the peculiar facts of the case I am inclined to take a beneficial view regarding her age as at least three lives, if not more, are involved in the case and they are husband, wife and the newly born baby who is the apostle of love between her parents as Komal Singh never made any complaint regarding her torture and maltreatment from her husband and in -laws. Since there is no counter affidavit therefore bald allegation in the FIR can not be accepted as correct and looking into the facts of this case I am inclined to hold that Komal Singh is a major and

the charge sheet was wrongly submitted by the police against the revisionists and their summoning order is bad in law. In the case of Ravinder Singh Gorkhi Vs. State of U.P., The Apex Court has held as under:

21. Determination of the date of birth of a person before a court of law, whether in a civil proceeding or a criminal proceeding, would depend upon the facts and circumstances of each case. Such a date of birth has to be determined on the basis of the materials on records. It will be a matter of appreciation of evidence adduced by the parties. Different standards having regard to the provision of Section 35 of the Evidence Act cannot be applied in a civil case or a criminal case.

15. It has further been held in the same judgement as follows:

37. The age of a person as recorded in the school register or otherwise may be used for various purposes, namely, for obtaining admission, for obtaining an appointment; for contesting election; registration of marriage; obtaining a separate unit under the ceiling laws; and even for the purpose of litigating before a civil forum, e.g. necessity of being represented in a court of law by a guardian or where a suit is filed on the ground that the plaintiff being a minor he was not appropriately represented therein or any transaction made on his " behalf was void as he was minor. A court of law for the purpose of determining the age of a party to the lis, having regard to the provisions of the Section 35 of the Evidence Act will have to apply the same standard. No different standard can be applied in case of an accused as in a case of abduction or rape, or similar offence where the victim or the prosecutrix although might have consented with the accused, if on the basis of the entries made in the register maintained by the school, a judgement of conviction is recorded, the accused would be deprived of his constitutional right under Article 21 of the Constitution, as in that case the accused may unjustly be convicted.

16. I am also taking the above view because to me the whole prosecution of the revisionist seems to be malafide and illegal.

17. Resultantly both the above criminal revisions Criminal Revision No. 173 of 2006 Smt. Alam Kaur another v. State of U.P and Anr. AND criminal Revision No. 259 of 2006 Monu @ Kuldeep and Anr. v. State of U.P. and Anr. are allowed and the impugned order of summoning dated 28.11.2005 passed by Chief Judicial Magistrate, Ghaziabad in case No. 10940 of 2005, State v. Monu @ Kuldeep and Ors. under Sections 363/ 366 /120B, IPC (relating to crime number 412 of 2005) is hereby quashed.