
(2013) 02 AHC CK 0040
In the Allahabad High Court
Case No : H.C. W.P. No. 42701 of 2012

Smt. Anita and Another	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 05-02-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 363, 366

Citation : (2013) 2 ACR 2026 : (2013) 81 ALLCC 140

Hon'ble Judges : Ravindra Singh, J; Anil Kumar Agarwal, J

Bench : Division Bench

Advocate : Chandrabhan Kushwaha, for the Appellant; S.K. Tewari and Vivek Tripathi, for the Respondent

Final Decision : Dismissed

Judgement

Ravindra Singh and Anil Kumar Agarwal, JJ.—Heard Sri Chandra Bhan Kushwaha, learned counsel for the petitioners, learned A.G.A. for the State of U.P.-and Sri Vivek Tripathi, counsel appearing for respondent No. 5 Ahalkar. This habeas corpus writ petition has been filed on behalf of the corpus Anita wife of petitioner No. 2 Shyamveer Singh with the prayer to quash the order dated 1.8.2012 passed by learned A.C.J.M., Court No. 2 Badaun in Case Crime No. 163 of 2012 under Sections 363 and 366, I.P.C., P.S., Dataganj, District Badaun and the corpus Anita may be released from Nari Niketan, Bareilly by giving her custody to petitioner No. 2 Shyamveer Singh or any other order which this court deems fit and proper may be passed.

2. The facts in brief of this case are that an F.I.R. has been lodged by respondent No. 5 Ahalkar on 14.4.2012 at 5.30 p.m. in respect of the incident allegedly occurred in the night of 10.4.2012, the F.I.R. has been registered in Case Crime No. 163 of 2012 under Sections 363 and 366, I.P.C., P.S., Dataganj, District Badaun against accused Shyamveer and three others. It is alleged that the accused Shyamveer Singh was living at the house of his brother-in-law Udal. Km.

Anita aged about 14 years, the daughter of the first informant was enticed and taken away by Shyamveer and others in the night of 10.4.2012, after lodging the F.I.R. of the above mentioned case the corpus was recovered, she was medically examined. According to her medical examination report dated 28.7.2012 she was aged about 18 years, her statement u/s 164, Cr. P.C. was recorded. During investigation an application was moved by Gedan Lal claiming himself to be father-in-law of the corpus that the corpus may be given in his custody because she had performed the marriage with his son Shyamveer Singh on 18.7.2012, she was aged about 22 years, she was residing at his house for the last seven months. The another application was moved by respondent No. 5 Ahalkar by mentioning therein that the corpus is his daughter, she was kidnapped on 10.4.2012 by Shyamveer and others, she was recovered by the police of P.S. Dataganj, she was aged about 14 years and according to the school record her date of birth was 20.7.1998. Being father he was her natural guardian, therefore, the corpus may be given in his custody. After considering the facts, circumstances of the case, the learned A.C.J.M. Court No 2 Badaun passed an order dated 1.8.2012 by which the corpus was sent to Nari Niketan, Bareilly. The corpus Km. Anita was summoned by this court vide order dated 16.10.2012. On 16.10.2012 the respondent No. 5 Ahalkar and Sri Anil Kumar Rastogi, Head Master, Junior High School, Sisaieeya Gusaee, District Badaun also appeared in person alongwith school register in which the name of Sunita daughter of Ahalkar was registered at serial No. 1514, she had taken the admission in VI class on 6.7.2009, her photograph was also affixed therein, its copy has also been filed. In pursuance of the order dated 16.10.2012 the corpus Anita appeared on 30.10.2012. Her face was tallied with photo available in the school register, she was the same girl who was admitted in the Junior High School, Sisaieeya Gusaee, District Badaun in the name of Sunita. On query made by the court she stated the she was not knowing her date of birth, she was uneducated girl, her name was Anita and not Sunita, Sunita was her younger sister whose documents have been filed. She was having six brothers and sisters, she performed the marriage with Shyamveer Singh but could not disclose the place of marriage, she wanted to go with Shyamveer, she refused to go with her father Ahalkar. On query made by the court, the respondent No. 5 Ahalkar stated that he wanted to keep his daughter, being her father he is natural guardian. The marriage certificate dated 16.2.2012 has also been filed by the Registrar, Hindu Marriage Officer (Sadar), Badaun in which the date of her marriage with Shyamveer Singh was mentioned as 18.7.2012. According to the certificate marriage of the corpus was after the date of issuance of the certificate. Therefore, the Registrar, Hindu Marriage (Sadar) was also summoned who produced the Hindu Marriage Register which shows that they fulfilled all the required formalities. The certificate was issued for which he tendered his apology, the same was accepted. Thereafter, it was submitted by counsel for respondent No. 5 that now the corpus was ready to go with her father then she was directed to produce before the C.J.M., Badaun for recording her statement. It is reported by C.J.M., Badaun by letter dated 9.1.2013 that the corpus was summoned in the court where her statement was

recorded, she refused to go with her parents.

3. It is submitted by learned counsel that the petitioners that the petitioner No. 1 is major girl. According to the medical examination report her age is 18 years, she does not want to live in Nari Niketan. She has performed the marriage with Shyamveer, she may be released from Nari Niketan. Bareilly and may be given in custody of Shyamveer.

4. In reply of the above contention, it is submitted by learned A.G.A. and counsel for respondent No. 5 that the corpus is minor girl, her name is Sunita and not Anita, her date of birth is 20.7.1998, she may be given in custody of her father who is the natural guardian.

5. Considering the submission made by learned counsel for the petitioners, learned A.G.A., learned counsel for the respondent No. 5 and from the perusal of the record it appears that in the present case the corpus has been produced before this Court, she stated that she was major and has performed the marriage with Shyamveer, she stated that she is uneducated girl. But according to the record produced by Head Master of Junior High School, Sisaieeya Gusaee, District Badaun, she was admitted in the school. Her date of birth is 20.7.1998 and her name is Sunita, her father stated that her alias name is Anita but in school she was admitted in the name of Sunita. The corpus had refused to go in the company of her father. According to her school record she is minor, she may not be given in custody of Shyamveer Singh, petitioner No. 2 who is accused in Case Crime No. 163 of 2012, under Sections 363 and 366, I.P.C. There is no other option except to keep her in Nari Niketan as directed by learned A.C.J.M.-II. Badaun. The impugned order dated 1.8.2012 passed by learned A.C.J.M. Court No. 2, Badaun is not suffering from any illegality or irregularities. The prayer for quashing the same is refused and the prayer to give the custody of the corpus to petitioner No. 2 Shyamveer Singh is also refused. Accordingly this petition is dismissed.