
(2012) 07 AHC CK 0238
In the Allahabad High Court
Case No : H.C.W.P. No. 21540 of 2012

Smt. Arti and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 02-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 97

Citation : (2012) 3 ACR 2658

Hon'ble Judges : Ramesh Sinha, J; Dharnidhar Jha, J

Bench : Division Bench

Advocate : S.S. Shah and Smt. Farida Jamal, for the Appellant;

Judgement

Dharnidhar Jha and Ramesh Sinha, JJ.—We have before us Smt. Arti one of the petitioners who was directed to be produced before us by our earlier order dated 22.5.2012. We have talked to her and have attempted to gather informations regarding incidents or developments which had occurred after Smt. Arti was put into the custody of her father Sri Mahendra Singh, respondent No. 4. We feel inclined to speak something on the order passed by the Deputy District Magistrate/S.D.M., Rampur Maniharan, District Saharanpur dated 26.4.2012 by which he directed the Superintendent of Nari Niketan, Meerut to hand over the custody of Smt. Arti to her father Sri Mahendra Singh and her mother Smt. Kamla who had sworn an affidavit assuring the learned S.D.M. about the security concerns of that particular officer. We want to have a glance of some of the facts leading to the present habeas corpus petition. Smt. Arti appeared before the Officer-in-charge of Nanauta Police Station with complaint against her parents and supposed threat to her life at their hands, as appears from the order passed by the S.D.M. above named on 30.12.2011. Accordingly, the lady petitioner was put into custody of Superintendent, Mahila Sarnalaya, Meerut. Subsequently, claims were made by the parents of petitioner Smt. Arti as also by the co-petitioner Lokesh who claimed himself to be the husband of petitioner Smt. Arti. The learned S.D.M., Rampur Maniharan, considering that the lady was not aged

about 18 years or above on the day she had walked out of her parents' house, inspite of having found that the lady had fallen in love for petitioner Lokesh and had on that count walked out her parents' house out of her own free will, was not inclined to set the petitioner Smt. Arti free. He, as such, went into the question of her age and after considering so many aspects as may appear from the impugned order dated 26.4.2012 directed the lady petitioner to put into the custody of her parents.

2. We have already noted that the lady petitioner had fallen in love for co-petitioner Lokesh and what appears to us is that she had herself married petitioner Lokesh in some temple. We are conscious of the fact that in view of her statement which was made earlier during the proceedings before the learned S.D.M., Rampur Maniharan, there could not be any question of offence being constituted at any rate. The question of custody might have been decided by the appropriate authority only when the case of petitioner Smt. Arti being wrongfully confined by any person could have been made out. We have no hesitation in pointing out to S.D.M., Rampur Maniharan, that he did not have a jurisdiction to proceed in the matter, inasmuch as, his jurisdiction was clearly cut out by Section 97. Cr. P.C. that if he had the reason to believe that any person was confined under such circumstances that the confinement amounts to an offence, he may issue a search warrant and direct it to be addressed to any person for search of the wrongfully confined person and if the person so wrongfully confined, was to be produced before him in execution of the search warrant. If it had been a case of Smt. Arti being wrongfully confined, then only the matter would have created a jurisdiction into the S.D.M. above said to proceed in the matter and that too When such a wrongful confinement could have constituted an offence.

3. We have already noted the bare facts of the case. Those facts did not Indicate commission of any offence by any person. The lady was very categorical that she out of love for Lokesh had come out of her parents' house and was feeling threatened to her life by her parents and as such was approaching the officer-in-charge of Nanauta Police Station for seeking the police protection. It is true that the officer-in-charge of the police station was under some confusion or may be was in state of being at a loss as to what to do so as to dealing with such a complex situation, might have produced the lady before the S.D.M., Rampur Maniharan, but the primary issue before the S.D.M. was that he should have himself examined whether he had legally constituted jurisdiction to go into the matter so elaborately as to passing an order which has become the basis of filing present petition before this Court. We are very clear in our mind that the learned S.D.M., Rampur Maniharan did not have any jurisdiction in the matter at least under the Cr. P.C. and he did not have any jurisdiction to treat the petitioner Smt. Arti as if she were a commodity to be consigned into any custody as per his whims. The S.D.M., Rampur Maniharan was completely in error and was acting definitely without jurisdiction and against the law.

4. What we have noted may properly explain as to how the illegal order passed on 26.4.2012 has jeopardized not only the feelings and sentiments of the petitioner Smt. Arti of enjoying her liberties and exercising her right to freedom and expression, but also highlights as to how an illegal exercise of powers which were not available to an authority could entail and thrust inhuman treatment upon the lady of such tender age. The lady has pointed out to us that after being put into custody of her parents she was forced to marry a man, she had not desired or willing to marry. She stated that she could not oppose the cruel acts of the parents who were simply brutal in confining her and subjugating her soul, body and will to submit herself to a man whom she was not willing to recognize and accept as her life partner.

5. The officer-in-charge of Nanauta Police Station, who has accompanied the lady petitioner Smt. Arti alongwith the lady constable has produced before us couple of photographs of the unfortunate incident of forcing the lady to marry an unacceptable groom and her face itself appears the index as to how demoralized and dejected she could have been on that particular occasion. We appreciate the index that the face appears of lady petitioner Smt. Arti in one of the photographs which depicts in volume the disappointment which she had to bear on account of the forced illegal act of her parents or may be of so called conscious keepers of the Society. The S.D.M., Rampur Maniharan could not escape the responsibility of such brutal acts perpetrated on a lady of such tender age. The order appears the genesis of one of the most unconstitutional and in human behaviour of the Society towards a young, upcoming lady and could not it be right for us to note that she could not be carrying a happy image of an officer like S.D.M., Rampur Maniharan.

6. The order passed on 26.4.2012 in our opinion was quite illegal not because we view it in the light we have just noted. The S.D.M., Rampur Maniharan did not even care, inspite of having no jurisdiction, to seek the assistance of some of the doctors by issuing a proper direction to the officer-in-charge of Nanauta police station to produce the lady petitioner Smt. Arti before a board of doctors, so as to getting her age assessed and then to proceed in the matter. This is the reason that we scrap the order passed by the S.D.M., Rampur Maniharan on 26.4.2012 and direct the Sub-Inspector Sri Om Pal Singh and the lady constable Susri Ravita Chaudhary, accompanying the lady petitioner Smt. Arti to put her back into Mahila Sarnalaya, Meerut.

7. We direct the Sub-Inspector, namely, Sri Om Pal Singh to inform the officer-in-charge Nanauta Police Station in writing that the Court has ordered him to request the Chief Medical Officer, Meerut to constitute a board of doctors for assessing the age of Smt. Arti and produce the report immediately before us latest by 18.7.2012 so that we could further examine the prayer of the petitioners about restoring the liberty to Smt. Arti. Sri R.P. Mishra. learned A.G.A. is also requested to inform the S.H.O., Nanauta Police Station about the directions of this Court regarding the formation of a Medical Board by the Chief

Medical Officer, Meerut before whom the lady petitioner has to be produced by the Superintendent of Nari Niketan and produce the report immediately before us in this writ petition.

The two photographs produced by Sub-Inspector Om Pal Singh, be treated as documents relevant for the disposal of the present petition and as part of the present record.

This petition shall be listed in our Chambers on 19.7.2012 at 3.45 p.m.