
(2012) 07 AHC CK 0004

In the Allahabad High Court

Case No : Habeas Corpus Writ Petition No. 21540 of 2012

Smt. Arti and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 97
Penal Code, 1860 (IPC) — Section 363, 366, 366A

Citation : (2012) 8 ADJ 688

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

Bench : Division Bench

Advocate : S.S. Shah and Smt. Farida Jamal, for the Appellant; Abhishek Pandey and A.G.A., for the Respondent

Judgement

1. Sri Abhisekh Pandey, Advocate appears on behalf of respondent No. 4, father of Smt. Arti-petitioner No. 1. Sri R.A. Mishra, learned A.G.A. has placed before us the original copy of the report of the Medical Board regarding assessment of age of petitioner No. 1 Smt. Arti as per which the Board of Doctors had assessed her to be aged about 17 years. We had passed a detailed order on 2.7.2012, on which date petitioner No. 1 Smt. Arti was produced under police custody from the custody of her father respondent No. 4. We had held the very order handing over the custody of petitioner No. 1 to respondent No. 4, her father as unsustainable in law as the authority who had passed the order did not have that jurisdiction, inter alia, for the reason that the S.D.M., Rampur, Maniharan could have acted in the matter only when there was full-fledged application u/s 97 Cr.P.C. he had also noticed unfortunate consequences, which had entailed due to the passing of a completely illegal order by applying a jurisdiction, which was never vested in S.D.M., Rampur Maniharan and had high-lighted the plight of the lady being forced to marry to another man whom she did not like nor chose as her life partner.

2. We had under the above circumstances noted that the order of the S.D.M.,

Rampur Maniharan and the action of father of Smt. Arti, respondent No. 4 was quite unconstitutional and unsustainable in law. Under the above premises, we had directed Smt. Arti to be taken back to Superintendent, Nari Niketan, Meerut and, accordingly, she is lodged there presently.

The learned counsel appearing for father, respondent No. 4 contests the prayer of the petitioners to allow Smt. Arti to enjoy her freedom by being released from custody she has presently been put in on the ground that the lady was got married to a man after respondent No. 4 got her custody by virtue of an order passed by the S.D.M., Rampur, Maniharan on 26.4.2012.

3. The learned A.G.A. also contests the prayer of petitioners on the ground that petitioner- Smt. Arti was aged about 17 years and she was below 18 years of age and she could not be directed to be set free and the custody of the father could be the only legal custody. The contention of Sri Mishra, the learned A.G.A. hinges upon the medical report, we have just noted. We simply want to refer to the case of *Jaya Mala Vs. Home Secretary, Government of Jammu and Kashmir and Others*, which is widely being followed by all Courts to hold that three years have to be added to the age of a victim of an offence whose age has been medically assessed. Following that particular principle, if we add up three years to 17 years which is the age assessed by the Board of Doctors, we obtain 20 years, which could be said to be the approximate age of Smt. Arti. She is not a victim of an offence. There is no case registered on allegation that she was enticed or taken away rather she herself walked into the police station seeking protection of Nanauta Police on account of the supposed threat to her life at the hands of respondent No. 4 and others. These are all noted by the S.D.M., Rampur Maniharan, in his order dated 30th of December, 2011 and accordingly the lady was handed over to the Officer Incharge of that particular police station, who prayed for keeping the lady in custody of Superintendent, Mahila Sharnalaya, Meerut, from where, we have noted earlier, the lady was handed over to her father.

4. As regards the liberty of a person, there could not be any particular age as the constitution does not provide 18 years of age. Age of under 18 years of a lady could be relevant only when we are called upon to consider the release of such a lady, if there is a report of commission of offences under Sections 363, 366 and 366A I.P.C. There being no case registered and also there being no allegation coming from any corner whatsoever that the lady was taken or enticed away by any one, we cannot suppose things which are not available to us from the record. As such, the contention of the counsel for the respondent No. 4 or the learned A.G.A. in our opinion, does not hold good because when the constitution does not require liberty to be granted to any person of any particular age then it is universally available to all who live within the territory of India irrespective of the fact, whether he is a citizen of India or is an outsider. We were, simply, fortifying ourselves that the lady has a right to exercise her option as a matter of exercising her liberty and freedom granted under the constitution to chose her

own life partner and our views stand vindicated that in absence of an allegation and the lady being major had all the rights to walk out of her parents house, out of her own volition, to go with a man of her choice to settle down in her life and there was no legal impediment in the affairs of Smt. Arti and no one including respondent No. 4 could have been within his right to create any impediment in enjoyment of right of freedom and liberty of choosing a life partner. We, as such, direct the Superintendent Nari Niketan to set Smt. Arti free so that she walks out of the institution freely and goes wherever she likes. The learned counsel appearing on behalf of respondent No. 4 was raising a preliminary objection also on the ground that the lady had got married to a man after her custody was handed over to his father, respondent No. 4. We have already detailed the circumstances under which the marriage was thrust upon the lady against her will and she had pointed out to us as may appear from our earlier order dated 2.7.2012, that she was deeply humiliated and brutalized on account of being subjected to the rituals of such a marriage and desires of a man, who was never a man of her liking or choice.

In our opinion, it could be falling some where between a void and voidable marriage and could not have the sanction of law because a marriage forced upon a major lady could not be upheld under the facts and circumstances we have just noted as it simply appears violative of her fundamental human rights of marrying a man of her own choice, specially, when she had already got herself married to a man. Such marriage if upheld would only continue violation of the basic human right of the lady.

With the above, which we have recorded presently, we finally dispose of the present petition.

Learned A.G.A has filed a photocopy of the medical report after we have dictated the order and that be kept on record as part of the present proceeding.

Let learned A.G.A. inform the Superintendent Nari Niketan, Meerut about the order of setting Smt. Arti free, immediately.