
(2002) 05 AHC CK 0118
In the Allahabad High Court
Case No : Criminal M.W.P. No. 5667 of 2001

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

Date of Decision : 17-05-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 154, 156
Penal Code, 1860 (IPC) — Section 363, 366
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 154, 156
Penal Code, 1860 (IPC) — Section 363, 366
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 154, 156
Penal Code, 1860 (IPC) — Section 363, 366

Citation : (2002) 3 AWC 1792 : (2002) CriLJ 3680 : (2002) 4 RCR(Criminal) 128

Hon'ble Judges : S.R. Singh, J;R.K. Dash, J

Bench : Division Bench

Advocate : Party in person, Dinesh Kumar in person and M.L. Srivastava, for the Appellant; Ram Babu Sharma, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

R.K. Dash, J.—This writ petition has been filed seeking quashing of first information report in Case Crime No. 155 of 2001, under Sections 363/366, I.P.C.. police station Zarif Nagar, district Badaun. A report was lodged by Vinay Kumar, respondent No. 4 complaining that on his sister Km. Kamlesh, aged 15 years had been to the school, to prosecute her study, but did not return home. He made a search during which two persons, namely, Natthu and Ram Mohan informed him that they had seen her going with Dinesh, petitioner No. 2 towards Dharampur. When her whereabouts could not be traced, he lodged report for taking appropriate legal action against petitioner No. 2. On the basis of the aforesaid report, the police registered a case sprang into action. Petitioner No. 2 in order to avoid arrest, has filed the present writ petition arraying Km. Kamlesh

as a co-petitioner.

2. The case of petitioner No. 2 is that Km. Kamlesh was major being aged 19 years and both were intensely lovelorn which drove them to marriage. They got their marriage registered before the Registrar of Marriages, Ghaziabad on 20.8.2001. The fact that Km. Kamlesh was major by the time she left her parental home, is certified by the Chief Medical Superintendent, Rampur. In view of such fact, it is urged that Km. Kamlesh having entered into marriage tie with him on her freewill, no offence under Sections 363/366, I.P.C. can be said to have been made out. against him and, therefore, aforementioned first information report should be quashed in exercise of extraordinary Jurisdiction under Article 226 of the Constitution.

3. The informant, respondent No. 4 has filed his return traversing the allegations made in the writ petition. He has asserted that at the time of incident. Km. Kamlesh, his sister, was minor being aged 15 years and this gains support from the school living certificate, Annexure-CA-1. The plea taken by petitioner No. 2 that Km. Kamlesh was 19 years of age is untrue and the medical certificate filed in support thereof has been procured for the purpose of this case.

4. From the materials on record, it is borne out that parties belong to village Vijaigarh, Zarif Nagar. district Budaun, whereas the marriage between petitioner No. 2 and Km. Kamlesh, as stated in the writ petition, was registered in Ghaziabad district and medical certificate with regard to the age of Km. Kamlesh was obtained from the Chief Medical Superintendent of district Rampur. Since both boy and the girl belong to all together a different district. Chief Medical Officer, Rampur, was noticed to show cause how and under what circumstances he examined the girl and Issued certificate. Pursuant thereto, he appeared and filed affidavit stating, inter alia that on the direction of the City Magistrate, Rampur, he examined the girl and Issued certificate. In support thereof, he has filed the copy of the application of Km. Kamlesh on which the aforesaid direction was given by the Magistrate.

5. It has become a common feature that as soon as report is lodged with the police that a minor girl has been kidnapped, the kidnapper in connivance with District Medical Officer or any other Government doctor procures certificate that the girl is major and armed with the said certificate, he approaches the Court seeking judicial intervention in the matter of investigation by the police. When the girl's father, mother or any other relative has made specific allegation in the first information report that she is minor, it is the statutory duty of the police to proceed with the investigation in the manner as provided in law. The Court should be slow to interfere in the functioning of the police except in an appropriate case where there is convincing and undisputed material to show that girl is major and prosecution has been launched with mala fide intention.

6. Privy Council in AIR 1945 18 (Privy Council) observed that there is statutory right on the part of the police to investigate the circumstances of a cognizable

crime. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always of course, subject to the right of the Court to intervene in an appropriate case. Therefore, unless an extraordinary case of gross abuse of power is made out, the police should be allowed to discharge its obligation to investigate into the cognizable offence.

7. In *S.N. Sharma Vs. Bipen Kumar Tiwari and Others*, , the Apex Court held :

"It appears to us that, though the Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed, in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer mala fide, the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal powers."

8. In *State of Haryana and others Vs. Ch. Bhajan Lal and others*, -the Apex Court by way of illustrations pointed out the circumstances when the High Court can interfere in the function of the police in the matter of investigation.

9. Keeping in mind the settled position of law with regard to Court's power of interference in the investigation in exercise of power under Article 226 of the Constitution as mentioned above, we shall proceed to find whether mainly relying upon the medical certificate issued by the Chief Medical Superintendent, Rampur, that Km. Kamlesh had become major by the time of the alleged incident, the first information report can be quashed.

10. As stated earlier, there are two versions, one by the informant, respondent No. 4 that Km. Kamlesh was minor being aged 15 years and in support thereof he relies upon the copy of school leaving certificate and the other by petitioner No. 2 that she was major being aged 19 years and in support thereof he relies upon medical certificate issued by the Chief Medical Superintendent, Rampur.

11. Needless to say, it is the duty of the Investigating Officer to get Km. Kamlesh examined by way of ossification test to ascertain her age. Besides, he is also required to collect other evidence, such as horoscope, school leaving certificate and ocular version of the parents and other near relatives. Till now, the Investigating Officer has not been able to get Km. Kamlesh medically examined in view of the interim order passed by the Court restraining police to arrest the petitioner No. 2 in whose custody she is expected to be. In that view of the matter, no implicit reliance can be placed on the medical certificate produced by petitioner No. 2 and quash the first information report at the threshold.

12. It may be noted, doctor's opinion about the age of Km. Kamlesh is not conclusive as provided u/s 45 of the Evidence Act. It is an opinion evidence and,

therefore, its probative value can be judged along with other evidence.

13. Doctor is not always truthful. As has been well said, "It is safe as a general rule to assume that a professional expert witness is a partisan, willing and eager to serve the party who requests his service. Indeed all experts, whether professional or non-professional, are very apt to zealously espouse the cause of the party by whom they are called. There are to be sure exceptions to the general rule but they are not numerous enough to more than prove the rule. The witnesses now in worst repute are called expert witnesses that is, witnesses retained and paid to support by their evidence a certain view on a scientific or technical question. We have all heard the old jeer about the three kind of liars--white liars, black liars and expert witnesses." (Woodroffe and Amir Alis Evidence Act 14th Edition, page 1293).

14. Before parting with, we like to express our displeasure about the roll played by the City Magistrate, Civil Lines, Rampur. But as he is not before us and we have not noticed him to explain his conduct, we refrain from making any observation against him. However, his direction to the Chief Medical Superintendent to medically examine Km. Kamlesh does not come within his administrative or judicial function. He overstepped his jurisdiction and issued such direction with a view to save petitioner No. 2 from criminal charge.

15. In view of the discussions made above, we feel not inclined to quash the first information report in Case Crime No. 155 of 2001, under Sections 363/366, I.P.C., police station Zarif Nagar, district Budaun in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India.

16. We direct petitioner No. 2 to produce Km. Kamlesh before the Investigating Officer within two weeks hence in order to enable him to get her medically examined by way of ossification test to ascertain her age.

17. In the result writ petition fails and the same is dismissed.