
(2012) 04 AHC CK 0181
In the Allahabad High Court

Case No : Civil Miscellaneous Habeas Corpus Writ Petition No. 10715 of 2012

Smt. Kavita

APPELLANT

Vs

State Of U.P. and Others

RESPONDENT

Date of Decision : 30-04-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 363, 366

Citation : (2012) ACR 2713 : (2012) 6 ADJ 273

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

Bench : Division Bench

Advocate : Manoj Kumar Srivastava, for the Appellant; A.K. Pandey and A.G.A, for the Respondent

Judgement

1. We have directed the petition to be listed in our chambers. Accordingly, we have heard again Sri Manoj Kumar Srivastava, Sri A. K. Pandey and Sri S. M. Pandey, learned counsel for the parties We have with us, in our Chambers, Smt. Kavita, the solitary petitioner, alongwith her counsel Sri Manoj Kumar Srivastava. The present petition seeks an order for quashing the orders dated 12.12.2011 passed by the learned Chief Judicial Magistrate, Aligarh, and that of dated 19.12.2011 passed by the learned Sessions Judges, Aligarh (Annexures 5 and 6 to the petition, respectively). By order dated 12.12.2011, the learned Chief Judicial Magistrate observed that the petitioner was below 18 years of age and as such was a minor who should not be handed over in the custody of her lawful guardian who had not come up before the Court for the purpose. The Chief Judicial Magistrate, therefore, ordered confinement of the petitioner, Smt. Kavita in Nari Niketan, Mathura, in connection with case crime No. 256 of 2011 under Sections 363 and 366 I.P.C. That order appears challenged before the learned Sessions Judge in Criminal Revision petition No. 815 of 2011 and by order dated 19.12.2011 the learned Sessions Judge confirmed the order passed by the learned Chief Judicial Magistrate.

2. During the course of hearing, it was brought to our notice that the petitioner

was aged about 18 years on account of having been born on 15.4.1992 as appears from Annexure 1 to the counter-affidavit filed by the State of U.P. Thus, on the day the petition was filed, she was about 18 years of age. Our attention was also drawn to the medical examination report which appears at pages 21 to 23 of the present petition to submit that the doctor appears not having expressed his opinion as regards determination of age of the petitioner inspite of carrying out the ossification test. We find that the doctor inspite of having recorded the complete or partial fusion of different joints or epiphyses, was not finally opining as to what could be the age of Smt. Kavita. We are of the opinion that the doctor was probably working under some influence and was not discharging his official duties in spite of having been asked by the Chief Medical Officer, Aligarh, in that behalf as appears from the part of report which appears at page 23 of the present petition. We record our disapproval on the manner Dr. R.K. Goel discharged his duties and we direct the Chief Medical Officer, Aligarh, to be vigilant about the official performance of duties by Dr. R.K. Goel.

3. However, we are conscious of the fact that there might be some dispute regarding the petitioner being aged below 18 years or more than that age, on the date of occurrence, but we have considered the age recorded in her school records which was 15.4.1994. We do not have any hesitation in recording that the lady, Smt. Kavita is aged about 18 years of age. The medical assessment of age may also not be conclusive. The determination of age is always in the realm of being the estimated age on account of scientific exercise. This is the reason that the Supreme Court in the case of *Jaya Mala Vs. Home Secretary, Government of Jammu and Kashmir and Others*, , had observed that if the age has been determined by the doctor medically then three years have to be added to such assessed age. That judgement has consistently been followed in the cases of the present nature to give weightage to assess the age of the victim so as to appreciating the evidence of minority/majority of the victim in favour of the accused. In addition to that, it is trite that if the girl who is at the verge of majority, walks out of her parent's house to go with any man, then it could not be a case of kidnapping as the same could not be said to be an act of taking away or enticing away a woman below 18 years of age. It could be a mere case of elopement. This proposition was laid down by the Supreme Court in the case of *S. Varadarajan Vs. State of Madras*, . We are not concerned with that aspect of the matter. We are mainly concerned as to whether a lady who is 18 or more years of age, could be directed to be confined. Even assuming that the lady was below 18 years of age, we have to keep in our mind that Smt. Kavita was not an accused, she has not committed any offence. Legally, her custody could not be authorised by any Court in connection with any offence which is alleged having been committed on account of taking or enticing her away from her lawful guardianship. It would have been in the fitness of things that the learned Chief Judicial Magistrate should have appreciated that position of law and should not have directed the confinement of the lady in Nari Niketan, as he did. He could have directed her to be set at liberty, at any rate.

4. We have just recorded that the lady is aged 18 years or more than that and is thus, major and her liberty could never be confined by an order which might be having the tinge of judicial sanctity. Usually judicial sanctity is attached to resisting such order so as to resisting the release of such confined persons. But the balance of reasonableness, which is the hallmark of judging such orders, convince us that any judicial order, which failed the scrutiny on reason-ableness could not be upheld. The lady, Smt. Kavita, was more than 18 years of age and as such, the order of the Chief Judicial Magistrate and that passed by the learned Sessions Judge in the form of Annexure 5 and 6 respectively, could not be upheld. We are clearly of the view that the lady was wrongfully confined in exercise of an illegal judicial jurisdiction. We, as such, direct that the lady, Smt. Kavita, be set at liberty immediately so that she could go to the place or to a person, she likes or chooses to.

With the above directions, we dispose of the present petition.

Let a copy of this order be made over to Sri R. A. Mishra, for onward communication to the concerned authorities. Sri Mishra shall, in the meantime, communicate by any means of communication, the gist of this order and that may be treated as the result of the petition, so that the lady may not be confined further.