
(1998) 07 AHC CK 0080
In the Allahabad High Court
Case No : Writ Petition No. 316 (H/C) of 1998

Smt. Pragya Jaiswal	Vs	APPELLANT
Shiv Prasad Yadav and another		RESPONDENT

Date of Decision : 16-07-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 363, 366

Citation : (1999) 1 AWC 807

Hon'ble Judges : Dev Kant Trivedi, J

Bench : Single Bench

Advocate : A.N. Srivastava, for the Appellant; S.C. Sitapuri, for the Respondent

Final Decision : Dismissed

Judgement

Dev Kant Trivedi, J.—Heard Sri A. N. Srivastava, Advocate, learned counsel for the petitioner, Sri Janardan Singh, learned A. G. A. on this habeas corpus petition. Also heard Sri S, C. Sitapuri, Advocate for opposite party No. 2.

2. Sri Prabhat Kumar, Superintendent of Police, Kheri is present in person. Opposite party No. 1 S.I. Shiv Prasad Yadav, the Investigating Officer of case Crime No. 196/98 registered at police station. Kotwali, Kheri is also present in person and so also constable Jai Jai Ram is present in person in pursuance of the orders of this Court passed on 9.7.1998.

3. G. D. from 23rd May, 1998 to 3rd June. 1998. has also been produced as directed by this Court.

4. Constable Jai Jai Ram has been examined on oath. His statement has been recorded on separate sheet wherein he has denied the allegation of misbehaviour with the petitioner.

5. By means of the present writ petition filed by Ratnesh Kumar acting as next friend of Pragya Jaiswal, opposite parties S. P. Yadav. Sub-Inspector of Police

posted at police out-post Misrana. P. S. Kotwali, Kheri and Dr. Chanda Kumar. Jaiswal, who is the father of the alleged detainee Smt. Pragya Jaiswal, were required to produce her. Smt. Pragya Jaiswal appeared in this Court on 9.7.1998 and stated that she was released on 3.6.1998.

6. Hence the present writ petition has in essence become infructuous inasmuch as Smt. Pragya Jaiswal was set free on 3rd June. 1998 itself as is also mentioned in the order sheet of this Court on 9.7.1998. The petition, however, could not be disposed of as Smt. Pragya Jaiswal had stated about misbehaviour of a constable Jai Jai Ram and also on the score that Smt. Pragya Jaiswal remained in police custody for about ten days.

7. Constable Jai Jal Ram has denied the allegation of Pragya Jaiswal on oath. I find no sufficient reason to doubt his statement and, therefore, it is held that Constable Jai Jai Ram did not misbehave with Pragya Jaiswal nor did he have any "opportunity to do so as Pragya Jaiswal was accompanied by her mother and also Manila Constables.

8. It is admitted to the opposite party No. 1 that he took Pragya Jaiswal to the police station Kotwali. It is averred in the counter-affidavit that Pragya Jaiswal was reported to be a victim of an offence in a first information report lodged by her father opposite party No. 2 on 16.3.1998 and a case Crime No. 196/98 was registered at P. S. Kotwali, Kheri. The investigation of case Crime No. 196/98 was entrusted to S.I. opposite party No. 1.

9. In the intervening period, it appears that a petition for habeas corpus was filed against Ratnesh Kumar and others which came up for hearing on 13th April, 1998. This Writ Petition No. 176 (H/C) of 1998 was disposed of on the basis of the statement of Pragya Jaiswal and she was set at liberty to go to the place of her choice, it was specifically observed in the said order that the parents, if so advised, may seek remedy from the appropriate forum.

10. Since case Crime No. 196/98 of Police Station Kotwali, Kheri u/s 363/366. I.P.C. regarding kidnapping of an allegedly minor girl was already under investigation, it was the duty of the Investigating Officer to search for the alleged victim, to interrogate her, to get her medically examined for ascertaining the age and also to get her statement recorded u/s 164. Cr. P.C. Moreover, none of these questions has been decided in the order dated 13.4.1998 passed in Writ Petition No. 176/98 (HC).

11. It was the duty of opposite party No. 1, the Investigating Officer of the Crime No. 196/98 to work out the crime in question and in doing so. he was to take all the necessary steps. It has been averred in his counter-affidavit by the opposite party No. 1 that he was not aware of the orders dated 13.4.1998 passed by this Court in habeas corpus Petition. It. therefore, cannot be said that opposite party No. 1 in any manner overstepped his authority when he searched out Pragya Jaiswal as he was only performing his obligations under the law. The Investigating Officer has categorically mentioned that Pragya Jaiswal was sent to

District Hospital for medical examination along with Mahila police constable. Her X-ray examination was also got conducted. She was also produced before a Magistrate who recorded her statement. It has also been stated in the counter-affidavit that C.J.M, has specifically directed on 30th May. 1998 that Pragya Jaiswal would remain in the custody of police constables Smt. Neeraj Misra and Smt. Uma Awasthi. On 1st June, 1998 learned Magistrate again passed similar order in this regard. On 3rd June. 1998, an order was passed by the learned Magistrate holding that Pragya Jaiswal was major. Learned Magistrate also passed an order that she may go to any place of her liking.

12. It is really unfortunate that the petitioner Pragya Jaiswal, daughter of opposite party No. 2 Dr. Chandra Kumar Jaiswal, thought it fit to make an allegation against constable Jai Jai Ram and Ratnesh Kumar moved the present habeas corpus Petition knowing it full well that a case was registered u/s 363/366. I.P.C. against him for the alleged kidnapping of a minor girl. Ratnesh Kumar knew it all along that he was wanted by the police in a criminal case relating to an allegedly minor girl. He had also moved application for custody of Pragya Jaiswal before the Magistrate which was-rejected by the Court.

13. Looking into the averments made in the counter-affidavit and all the circumstances of this case in which the opposite party No. 1, S.I. Shiv Prasad Yadav, Investigating Officer of the crime was only performing his duties under the law and that Pragya Jaiswal was produced before the Medical Officer as well as before the Magistrate and during that period, her mother and Mahila police constable were present all along, it cannot be said that they had illegally detained. Pragya Jaiswal. No one will be made to suffer only because he was discharging his legal obligations. In the present case, it is evident that Pragya Jaiswal was never illegally detained by opposite party Nos. 1 and 2.

14. It may be seen that it cannot be said that opposite party No. 1, the Investigating Officer of Crime No. 196/98 had overstepped his authority as there was sufficient material before him to proceed in the matter particularly when the parents of the alleged victim were claiming that their daughter has been taken away for immoral purpose and that their daughter was minor and the fact was being sought to be established by the High School Certificate, according to which Pragya Jaiswal was a minor, her recorded date of birth being 8.4.1981.

15. The writ petition, thus, is liable to be dismissed and is accordingly dismissed.

16. There is nothing on record which may necessitate any action against any of the opposite parties, namely, Sri S. P. Yadav, S.I. and Dr. Chandra Kumar, father or against Sri Prabhat Kumar. Superintendent of Police. Kheri and Constable Jai Jai Rain. Notices issued to them are hereby discharged.