
(2003) 02 AHC CK 0143

In the Allahabad High Court

Case No : Habeas Corpus Writ Petition No. 54624 of 2002

Smt. Shahana alias Shanti

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-02-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 97

Citation : (2003) CriLJ 3438

Hon'ble Judges : U.S. Tripathi, J;D.P. Gupta, J

Bench : Division Bench

Advocate : Sarvesh, for the Appellant; Mohd. Shabbir, A.G.A., for the Respondent

Final Decision : Disposed Of

Judgement

1. The petitioner has filed this petition for issue of a writ, order or direction in the nature of habeas corpus commanding the respondents to set her at liberty immediately and a writ, order or direction in the nature of mandamus commanding the respondent No. 2 to produce her before this Court,

2. It is alleged by the petitioner that she is the wife of Damodar Das with whom she married in the month of February, 2002 with her own free will and she changed her name as Shanti and started living with her husband. After her marriage with Damodar Das she conceived and is in a family way. The petitioner went to her parental place in the month of May, 2002 where she was beaten and threatened with dire consequences for marrying a Hindu boy. She was asked to sever all her relations with Damodar Das. When she refused to do so, she was assaulted and threatened that her husband would be sent to jail. However, the petitioner escaped from her parental house and reached her in-laws place on 18-8-2002 and after some time she started living at Pilibhit. Thereafter, her father, uncle and brother along with some other relatives came to the house of petitioner and scolded her saying that she had lowered down their image and reputation. They tried to forcibly take her away, but she was saved by the

neighbours. The petitioner along with her husband went to the police station to lodge report of the occurrence, but her report was not written by the police. She was very much disappointed and, shocked. Then she filed a complaint against the accused persons, which was registered as Case No. 1543 of 2000 under Sections 323: 304: 504 and 452, IPC and got her statement recorded u/s 200, Cr. P.C. before the Additional Chief Judicial Magistrate IIInd, Pilibhit. The father of the petitioner lodged a FIR against her husband under Sections 363, 366 and 376. IPC. In the said case her husband was released on bail on 1-11-2002. The petitioner was detained by the police and therefore her father-in-law made an application before the Additional Chief Judicial Magistrate, VII, Bareilly in connection with Case Crime No. 335 of 2002 under Sections 363: 366 and 376, IPC, P.S. Nababganj, district Bareilly and also made an application for the custody of the petitioner. The A.C.J.M. VII, Bareilly passed an order on 30-9-2002 summoning the petitioner fixing 30-10-2002. However, on the request of father-in-law of the petitioner the case was fixed for 7-10-2002 and thereafter on 8-10-2002. On 8-10-2002 the Magistrate passed an order directing the police to set the petitioner at liberty to go to place of her choice. Father and brother of the petitioner filed revision against the order of the Magistrate before Sessions Judge. The Revisional Court stayed the order of the Magistrate and the petitioner is languishing in Nari Niketan where she had been tortured and beaten.

3. A counter-affidavit was filed by Km. Tahira Begum, In-charge Assistant Superintendent, Nari Niketan, district Bareilly deposing that the petitioner was admitted in Nari Niketan by the order of the Court and she had not been tortured or ill treated.

4. Heard Sri Sarvesh, learend counsel for the petitioner, Mohd. Shabbir, learned counsel for respondent No. 3 and learned A.G.A. for respondent Nos. 1 and 2 and perused the record.

5. It is not disputed that the petitioner was produced before A.C.J.M. Court No. 7, Bareilly in connection with Case Crime No. 335 of 2002 under Sections 363: 366 and 376, IPC on 8-10-2002. The learned A.C.J.M. perused the case diary and medical report. According to medical report the age of the petitioner was found as 17 years. Considering the above age ascertained on ossification of bone test and giving grace of two years on both sides and the statement of the petitioner the learned Magistrate directed to release the petitioner to go to place of her choice vide order dated 8-10-2002. Annexure-3. It is also not disputed that thereafter Nanhe, respondent No. 3, father of the petitioner filed Criminal Revision No. 605 of 2002 before the Sessions Judge, Bareilly. The Revisional Court on 11-10-2002 passed following order :--

"Heard. Admit.

Issue notice fixing 23-10-2002 for disposal. Meanwhile, Smt. Shahana will remain in Nari Niketan. Transfer to the Court of Special Judge S.C. and S.T. Act."

6. It is also clear from the counter-affidavit of Km. Tahira Begum, respondent No.

2 that the petitioner is detained in Nari Niketan by the order of the Revisional Court. It is also not disputed that the above revision has yet not been finally decided.

7. The contention of the learned counsel for the petitioner was that the petitioner was not an accused in any case and she is major and had married with Damodar Das with her own free will and she cannot be detained in Nari Niketan under any law. That the petitioner is above 19 years of age and in medical report, her age was wrongly assessed as 17 years. He also placed reliance on Division Bench decisions of this Court in *Tara Chand Seth v. Superintendent, District Jail, Rampur* 1983 (2) ACC 168 : 1983 ALJ 16; *Smt. Raj Kumari Vs. Superintendent, Women Protection House and Others*, *Smt. Parvati Devi v. State of U. P.* 1982 (19) ACC 32 : 1982 ALJ 115 and single Judge decision in *Pushpa Devi alias Rajwanti Devi v. State of U. P.* (1995) 1 JIC 189.

8. In the case of *Parvati Devi* (supra) the mother of Smt. Parvati Devi lodged a report u/s 366, IPC against Jokhu alleging that he had enticed away Smt. Parvati Devi, who was a minor girl. The police arrested Jokhu and also recovered Smt. Parvati Devi from his house and produced Smt. Parvati Devi before the Judicial Magistrate, Handia and prayed for appropriate orders for her custody. The Magistrate took steps to obtain medical report with regard to age of Smt. Parvati Devi and directed that in the meantime she be kept in the Nari Niketan, Khuldabad, Allahabad. On the above act it was held that the confinement of Smt. Parvati Devi in Nari Niketan, Khuldabad, Allahabad against her wishes could not be authorised either u/s 97 or u/s 171, Cr. P.C. The respondents failed to bring to the notice of the Bench any legal provision whereunder the Magistrate has been authorised to issue direction that a minor female witness shall, against her wishes, be kept in Nari Niketan.

9. In the case of *Smt. Raj Kumari* (supra) the mother of Raj Kumari moved an application before the City Magistrate, Bulandshahar for issuing search warrant and for recovery of Raj Kumari. The City Magistrate issued search warrant u/s 97, Cr. P.C. The petitioner was recovered and the City Magistrate ordered her detention in Government Women Protective Home, Meerut. Her medical examination was also got done and according to medical report the age of the petitioner was about 19 years. While the petitioner was detained in the Government Protective Home, filed Habeas Corpus Petition. Considering the various decisions of the Apex Court and of this Court, Division Bench of this Court held as below :--

"In view of above it is well settled view of this Court that even a minor cannot be detained in Government Protective Home against her wishes. In the instant matter petitioner has desired to go with Sunil Kumar, besides this according to the two medical reports i.e. of the Chief Medical Officer and LLRM, Medical College, Meerut, the petitioner is certainly not less than 17 years and she understands her well being and is also capable of considering her future welfare. As such we are of the opinion that her detention in Government Protective Home,

Meerut against her wishes is undesirable and impugned order dated 23-11-96 passed by the Magistrate directing her detention till the party concerned gets a declaration by the civil Court or the competent Court of law regarding her age, is not sustainable and is liable to be quashed."

10. In the instant case Magistrate had directed the petitioner to be released and to go to place of her choice. However, a revision was preferred against the said order and the Revisional Court directed detention of petitioner in Nari Niketan. Bareilly. Undisputedly, the petitioner is not an accused in any offence. Assuming that her age is about 17 years she cannot be detained against her will as provisions of Sections 97 and 171, Cr. P.C. do not justify detention of the petitioner. No other provision has been shown under which the petitioner could be detained against her wishes. Therefore, we are of the view that detention of the petitioner in Nari Niketan Bareilly is illegal and order directing her detention passed by the Sessions Judge, Bareilly in Criminal Revision No. 605 of 2002 being against law is quashed. The respondent No. 2, Superintendent, Nari Niketan, Bareilly is directed to release the petitioner forthwith to go to place of her choice.

11. Copy of this order may be made available to the learned counsel for the petitioner within 48 hours on payment of usual charges. Office is also directed to send copy of this order immediately to Superintendent, Nari Niketan. Bareilly for information and compliance.