

(2012) 01 AHC CK 0256

In the Allahabad High Court

Case No : Criminal Misc. Writ Petition No. 443 of 2012

Smt. Shivani and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164
Penal Code, 1860 (IPC) — Section 363, 366

Citation : (2012) 01 AHC CK 0256

Hon'ble Judges : Vinay Kumar Mathur, J;Devendra Pratap Singh, J

Bench : Division Bench

Judgement

1. Heard learned counsel for the petitioners and the learned A.G.A. This writ petition has been filed by the petitioners for quashing of FIR of case crime No. 1643 of 2011 under sections 363, 366 IPC, Police Station Nawabganj district Bareilly.
2. The petitioners Smt. Shivani and Daya Ram are present in this Court and they have been identified by their lawyer. Petitioner No. 1 Smt. Shivani claims to have voluntarily married Daya Ram, the petitioner No. 2 out of her own sweet will and is living with him without any coercion and compulsion, and denies that she has ever been kidnapped by petitioner No. 2 or the other petitioners.
3. In paragraph No. 6 of the writ petition, it is mentioned that petitioner No. 1 is major and aged about 20 years, but no reliable proof regarding her age has been annexed with the petition.
4. Since, there is no conclusive dependable proof of age of Smt. Shivani, we direct her to appear before the Chief Judicial Magistrate/Magistrate, Bareilly within two weeks from today, who shall direct the Investigating Officer to produce her before the C.M.O. Bareilly for the purpose of getting her medical examination done for ascertaining her age as per her appearance and also by a radiological examination.

5. The age certificate will bear the self attested photograph of Smt. Shivani.
6. In case, the CMO reports that she is 18 years in age or above, the I.O. concerned shall record her statement u/s 161 Cr. P. C. and shall produce Smt. Shivani before the CJM/Magistrate concerned for getting her statement recorded u/s 164 Cr. P. C., who shall duly record the same.
7. The I.O. shall provide proper security to the petitioner No. 1 Smt. Shivani ensuring compliance of the aforesaid directions.
8. In case the said statements are favourable to the accused petitioners, the I.O. shall consider the appropriateness of submitting a final report in this case and the CJM concerned may also pass appropriate orders in this regard.
9. In case the petitioner No. 1 Smt. Shivani is found to be minor, then the CJM/Magistrate concerned shall pass appropriate orders regarding her custody as he deems fit and proper.
10. For the future security of the petitioner No. 1 Smt. Shivani, the petitioner No. 2 Daya Ram is directed to deposit Rs. 50,000/- (Fifty thousand) in a nationalized bank/post office in the form of fixed deposit for a period of not less than three years within one month in the exclusive name of the petitioner No. 1 Smt. Shivani.
11. The amount so deposited shall not be withdrawn before its maturity under any circumstances except with the leave of the CJM/Magistrate concerned.
12. The concerned bank/post office shall be instructed by the depositor (petitioner No. 2 Daya Ram) to make a specific note in the record as well as on the fixed deposit receipt that the same shall not be encashed before maturity except with the leave of the CJM/Magistrate concerned.
13. The petitioner No. 2 Daya Ram is directed to furnish proof before the CJM/Magistrate concerned on or before 15th of February 2012 that he has made out the fixed deposit receipt as directed above in the name of the petitioner No. 1 Smt. Shivani.
14. Till the disposal of the aforesaid proceedings before the CJM concerned as provided herein above, the arrest of the petitioners in the aforesaid Case Crime No. 1643 of 2011 under sections 363, 366 IPC, Police Station Nawabganj district Bareilly, shall remain stayed.
15. In case the petitioner No. 2 Daya Ram fails to fulfill any of the conditions mentioned herein above, the stay of arrest granted by this Court shall stand vacated. With the aforesaid observations, the writ petition is disposed off.