
(2001) 04 PAT CK 0027
In the Patna High Court
Case No : Cr.W.J.C. No. 32 of 2001

Smt. Sweta Priyadarshini

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 20-04-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 34, 363, 366A

Citation : (2001) 3 PLJR 304

Hon'ble Judges : R.N. Prasad, J;A.K. Sinha, J

Bench : Division Bench

Advocate : A.P. Prabhakar, Maheshwar Kumar Singh and S.K. Deepak, for the Appellant; Amar Nath Singh, Balram Kapri and R.K. Mishra for State, for the Respondent

Judgement

1. The Petitioner who is daughter of Respondent Nos. 4 and 6 has moved this Court under Article 226 of the Constitution of India for issue of a writ in the nature of habeas corpus commanding the Respondents to release her from the Remand Home, Gaighat, Patna.

2. The relevant facts of the case are that Respondent No. 6, the mother of the Petitioner, lodged a first information report on 2.7.2000 against Respondent No. 3 Satish Kumar and others for the offence under Sections 363 & 366A/34 of the Indian Penal Code alleging therein that Respondent No. 3 and others, kidnapped her daughter, the Petitioner. The Petitioner is not an accused in the said case. Her statement u/s 164 of the Code of Criminal Procedure was recorded by the Judicial Magistrate. She in her statement u/s 164 of the Code of Criminal Procedure stated that she married Respondent No. 3 on 4.1.2000 out of her free will and without any coercion in a temple at Baikunth Dham Mandir. The certificate of the priest is Annexure-4. On" 5.1.2000 her uncle Ranjit, her father and other family members came and took her to" their house. They removed Mangal sutra, vermilion, Bangles etc. and said that no marriage has been

solemnised. They used to assault during the stay and were saying not to live with Respondent No. 3. However, she ran away from the house on 27.6.2000 at about 1 A.M. and went to the house of her husband, Respondent No. 3. On 2.7.2000 her husband was arrested. She has not been kidnapped and she, out of her free will married Respondent No. 3. The allegation against her husband is false and concocted as she solemnised marriage out of her free will. She was examined by the Doctor on the direction of the court. The doctor after holding radiological test came to the conclusion that she is aged about 17 to 19 years. On 12.12.2000 she was produced from the Remand Home before the Chief Judicial Magistrate. She stated before the court that she was major and she does not want to go to her parents. She may be released from the Remand Home. The informant of the case protested release of the Petitioner from the Remand Home on the ground that she is minor. The court considering the report and the other documents produced by the parties came to the conclusion that she is major and accordingly released the Petitioner from the Remand Home and directed to take her to her parents and to obtain a written receipt from the parents. Pursuant to the order of the court the Petitioner was taken to her parents but the parents refused to accept her and as such she was again taken to Remand Home. The report of the authority is Annexure-6 to the petition.

3. In the counter-affidavit filed on behalf of Respondent Nos. 4 & 6 stand has been taken that the Petitioner is minor and as such there cannot be any valid marriage and she may be released in their favour.

4. Pursuant to the order dated 19.4.2001 the Petitioner was produced from the Remand Home. Respondent Nos. 4 & 6 are present physically in the Court. Respondent No. 3 is also present physically in the Court. The Petitioner is a young girl and from look she appears to be major. In presence of parties and their counsel the court put questions to the Petitioner. She stated in presence of the parties and their counsel that she married Respondent No. 3, Satish Kumar, out of her free will and without any coercion on 4.1.2000. She is curious to live with Respondent No. 3 as husband and wife and she would not go to her parents. The Court persuaded her to live with her father and mother but she refused to live or go with her father and mother. She stated that her parents used to assault and torture. They also threatened to kill her. She is major and out of her free will she married Respondent No. 3 and accordingly requested to release her from the Care Home and allow to go with Respondent No. 3 from the Court itself. The Court also put questions to Respondent No. 3. He categorically stated that he out of his free will married the Petitioner and is ready to keep the Petitioner as wife with all dignity and protection. He is employed as salesman in cloth shop and getting Rs. 3000/- per month. He will not create nuisance or torture the Petitioner in any manner if she is allowed to live with him as husband and wife. The mother of Respondent No. 3 on question stated that she is fourth grade employee in Bihar State Electricity Board and getting salary. She has no financial problem. The Petitioner is her daughter-in-law. She will keep Her with dignity and respect as her daughter-in-law. She will not create trouble or torture her in

any manner. She has sufficient means to keep the Petitioner as daughter-in-law with respect and dignity. The mother and father of the Petitioner i.e. Respondent Nos. 4 & 6 accepted that when she was taken to their house they did not accept her as she was refusing to live with them.

5. On consideration of the entire facts and circumstances as discussed above, it is manifest that the Petitioner is not accused in any case. The court below also came to the conclusion that she is major. We also find that she is major. The Petitioner and Respondent No. 3 stated that they out of their free will solemnised the marriage. The Petitioner is willing to live with Respondent No. 3 and Respondent No. 3 is also ready to keep her as wife with all respect and dignity. The mother of Respondent No. 3 is also ready to keep the Petitioner as her daughter-in-law with all respect and dignity. Therefore, in such a situation and undertaking given by Respondent No. 3 and her mother, Respondent No. 5, we do not find any reason to release the Petitioner in favour of her father and mother, Respondent Nos. 4 & 6.

6. Thus the Petitioner is set at liberty and released from the Care Home and she is allowed to go with Respondent No. 3, Satish Kumar from this Court itself. It is, however made clear, in view of undertaking given by Respondent No. 3, that he will keep the Petitioner as wife with all dignity and respect and he will not torture in any manner. Respondent No. 5 shall also keep the Petitioner as daughter-in-law with all dignity and respect and shall not, ill-treat and harass the Petitioner in any manner.

7. The application is accordingly disposed of.