
(2012) 05 AHC CK 0241

In the Allahabad High Court

Case No : Civil Miscellaneous Habeas Corpus Writ Petition No. 22819 of 2012

Smt. Vinita

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-05-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 164, 483
Penal Code, 1860 (IPC) — Section 363, 363A, 366

Citation : (2012) ACR 2715 : (2012) 6 ADJ 277

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

Bench : Division Bench

Advocate : S.S. Tripathi and A.P. Tiwari, for the Appellant;

Final Decision : Allowed

Judgement

1. Smt. Vinita had filed a Criminal Misc. Writ Petition No. 3559 of 2012 in which we had issued the following direction on 29.3.2012:

There is no authentic evidence to satisfy us as to the claim of the victim Smt. Vinita that she was 18 years or above that age on the date of occurrence. The learned counsel appearing on behalf of the petitioners submitted that the petitioner No. 1, Smt. Vinita is desirous of appearing before the police and getting her age determined by a Medical Board within 15 days. We direct her to appear within 15 days from today before the Investigating Officer of Case Crime No. 94 of 2012 under Sections 363 and 366 I.P.C. registered by Wazirganj Police Station of District Budaun. The Investigating Officer of the case shall immediately request the Magistrate to record her statement u/s 164 Cr.P.C. and at the same time, request the Chief Medical Officer of Budaun to constitute a Board of Doctors for determining the age of petitioner No. 1-Smt. Vinita. The Investigating Officer shall forward a copy of the statement of the victim to this Court on or before 1st of May, 2012. The Chief Medical Officer shall also forward a copy of the medical report regarding the determination of age of Smt. Vinita-petitioner

No. 1 to this Court so as to reaching the Court prior to 1.5.2012. On which date this petition shall be listed before an appropriate Bench.

So long as the above proceedings are carried out, the petitioner No. 1 Smt. Vinita shall not be arrested by the police in connection with the aforesaid case and shall also not be allowed to meet any person so as to get influenced in her decision making.

Let a copy of this order be transmitted to the Magistrate concerned.

It appears that from the facts admitted which are asserted by the petitioner herself, she did not comply with the orders of the Court passed in the above noted Criminal Misc. Writ Petition on 29.3.2012 and she roamed around with accused Manoj. Because the direction was also equally compelling for the police officers so they arrested accused Manoj and the present petitioner and thereafter appear to have produced accused Manoj and the present petitioner Vinita before the learned Judicial Magistrate 1st Class, Budaun. Before her production, the police got petitioner examined by doctor and that report appears at page Nos. 29 to 32 as also at page 32. The report indicates that the lady was carrying a foetus in her womb of about six weeks and further that she was aged about 18 years. In her statement u/s 164 Cr.P.C. which was recorded by the learned Judicial Magistrate, 1st Class, Budaun, gist of which appears at page Nos. 34 and 35, the lady stated that she had herself, out of her own free will, had went out of her parents' house to go with accused Maonj. She was never enticed or taken away by accused Manoj and further that they loved each other, as such they got wedded to each other. The lady stated that after getting married to Manoj, she consummated the marriage.

2. The learned A.C.J.M. II, Budaun finding that the father was vying with the petitioner to have her custody, whereas the petitioner was unwilling to go with him on the ground that her life was in danger, thought it fit that the lady should be put into Nari Niketan, Bareilly by his order dated 21.4.2012. Thus, the lady petitioner is confined there and urges that the order of the learned A.C.J.M. II, Budaun dated 21.4.2012 was not only illegal but unreasonable and unconstitutional, inasmuch as there was no reason for the Court below to authorize her detention in Nari Niketan, Bareilly inasmuch as she was aged about 19 years as per her own statement recorded u/s 164 Cr.P.C., and as such, was grown up enough to take her own decision.

3. We have pointed out on many occasions earlier, such as in Habeas Corpus Writ Petition No. 19037 of 2011 Smt. Saroj v. State of U.P. and others, decided on 8.5.2011, that the victim of an offence under Sections 363, 363A or 366 I.P.C. may not be confused as an accused. She may also not be treated, if she is below 18 years of age as a juvenile in conflict with law, and the law applicable to juvenile may not be applicable to such a victim of the offence. We have also noted at some earlier occasions that even a child had its rights internationally recognized which as per cultural, heritage and constitutional provisions inherently

assumed the character of fundamental rights of a child and no Court could have the authority to encroach upon those rights even of a child. Here in the present case the report of the doctor was that the petitioner was aged about 18 years. The report at page No. 32 was made on the basis of ossification test carried out as per the advise of the doctor who had advised obtaining radiological report regarding the fusion of different epiphyses and we find from the report appearing at page No. 29 that all epiphyses of different joints of the lady had completely fused. Thus, we also do not have any doubt that the lady might be of 19 years or above. Even if she could be aged about 18 years of age, we cannot get a final calculation as regards the age of a victim unless we have added 3 years to the assessed age of the victim and that way also, we could be getting an inference which could be pointing out that the lady was above 18 years of age.

4. The lady has stated in her statement u/s 164 Cr.P.C. that she herself walked out of her parents' house to go with accused Manoj to get married to him and started living as if she were his wife. The fact stated by the victim does not indicate that she was taken or enticed away from the keeping of her lawful guardian or that she had been given any sort of blandishment to come out of her parents' house to go with the accused. This fact itself indicates that the victim was acting out of her own volition and free will and as such it may not be a case of taking or enticing away.

5. We had no reason to say all these things. But, we are aware of our lawful duties u/s 483 Cr.P.C. to guide the Magistracy and exercise our control over those Courts.

6. In our considered opinion, in exercise of its powers of superintendent over the Magistracy, this Court is to ensure that the matters are disposed of expeditiously and properly. When it comes to expeditious and proper disposal, we cannot point out that the clear position of law has to be pointed out by this Courts to the Magistrate so that unnecessary harassment is not meted out to any person on account of passing, out and out, an erroneous order on account of misappreciation of facts and law. The victim of offence is not an accused. She could not be directed to be detained by any Court of law if she is above 18 years of age in a case under Sections 363 and 363A or 366 I.P.C. and she states that she herself had went away with the accused. Under the circumstances, it could be a simple case of elopement and in that background also, no Court could legally authorize the detention of such a lady because she being a major had a Constitutional right of freedom of expression and movement also. We want to point out that freedom of expression may taking into its ambit the right to express her desire to choose a person as her life partner and that freedom cannot be curtailed even in such a situation, as has been pointed out before us. We, as such, find that the order passed by the learned A.C.J.M., II, Budaun on 21.4.2012 in case crime No. 94 of 2012 by which the petitioner was detained in Nari Niketan, Bareilly was completely outside four walls of law and the same could not be allowed to continue. We, as such, quash the said order in exercise

of our powers under Article 226 of the Constitution of India and directed that the present petitioner Smt. Vinita, who is confined in Nari Niketan, Bareilly be released by the Superintendent of Nari Niketan, Bareilly forthwith so that she goes to place where she wishes to.

The petition is, accordingly, allowed but without any order of cost.

Let the learned AGA convey this order by any means of communication to the Superintendent, Nari Niketan, Bareilly immediately so that the lady petitioner Smt. Vinita may be released forthwith.

Let a copy of this order be supplied to the learned AGA for compliance free of cost.