
(2016) 02 PAT CK 0050

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 88 of 2016 (Arising out of PS.Case No. -455 Year-2015 Thana -K. Nagar (Maranga) District-Purnia)

Sunita Kumari

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 11-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 2 ECRC 368

Hon'ble Judges : Hemant Gupta, J.

Bench : Single Bench

Advocate : Vijay Shankar Shrivastava, Advocate, for the Appellant; Satyendra Rai, A.C. to S.C., for the Respondent

Final Decision : Disposed off

Judgement

Hemant Gupta, J.(Oral) - Heard learned counsel for the petitioner and the State.

2. The petitioner has sought direction for her release from Women Protection Home where she was remanded for her proper safety and security till she attains the age of majority vide order dated 04.11.2015 passed by the learned Chief Judicial Magistrate, Purnea in connection with K. Nagar (Maranga) P.S. Case No. 455/2015.

3. As per the petitioner, her father lodged a complaint under Section 366 A of the IPC against one Dallu Mehta and Pinku Yadav alleging therein that on 15th September, 2015 his daughter, the present petitioner, aged about 14 years, had gone to Kamat but she had not returned to her house. An FIR was lodged on the complaint of the father of the petitioner. The Investigating Officer produced the petitioner before the Chief Judicial Magistrate, Purnea. The learned Magistrate found her to be minor vide order dated 19th September, 2015. It was on 23rd September, 2015, the statement of the petitioner was recorded under Section 164 Cr.P.C., wherein she stated that she married Randhir Mehta @ Dallu Mehta in

a temple and that she had gone with Dallu Mehta on her own free will and she wants to go with Dallu Mehta.

4. The learned Chief Judicial Magistrate found that there is no substantive piece of evidence to assess as to whether the petitioner is either major or minor. Therefore, keeping in view the safety of the petitioner, she was sent to Women Protection Home as she did not want to go with her father. On 19th October, 2015 the learned Chief Judicial Magistrate considered an application filed by Arbind Mehta, father of Dallu Mehta, wherein it was pleaded that in medical test, the petitioner had been found to be of 16-17 years of age, whereas the court has assessed her age as 18 years, therefore, the custody of the victim be handed over to him. Another application was filed by the petitioner to the effect that she should be sent to her matrimonial home after setting her free from the Women Protection Home. On the other hand, father of the petitioner asserted that she is of 14 years of age and has passed eight Class and produced School Leaving Certificate from Middle School, Chapay Gangeli.

5. It is thereafter on 4th November, 2015 the Chief Judicial Magistrate decided the applications filed by the petitioner, her father and her father-in-law concluding that the petitioner is less than 18 years of age in view of the document produced by the father of the petitioner and the medical evidence that the petitioner is less than 18 years of age. Thus, she be sent to Women Protection Home as she is not willing to go with her father.

6. In these circumstances, the petitioner has approached this Court to set aside the orders passed by the Chief Judicial Magistrate from time to time with a prayer that she be permitted to join her matrimonial home instead of Women Protection Home.

7. In this regard learned counsel for the petitioner placed reliance on a Single Bench judgment of Jharkhand High Court in the case of Shashank Mandal @ Bapi Mandal v. State of Jharkhand and Anr. 2016 (1) East Cr C 17 (Jhr) and a Division Bench judgment of this Court in the case of Sahebi Khatoon @ Sahebi v. State of Bihar and Ors. (Cr.W.J.C. No. 991 of 2010) to contend that petitioner even if minor cannot be sent to the Women Protection Home.

8. I have heard learned counsel for the parties and find no merit in the present petition. There is no documentary evidence produced by the petitioner to assert that she is more than 18 years of age on the date of her marriage i.e. 15th September, 2015. In ossification test, the petitioner had been found to be 16-17 years of age, whereas School Leaving Certificate produced by the father of the petitioner shows her date of birth 20th December, 1998 and, thus, she was minor on the date of her alleged marriage and thus, incompetent to consent for marriage. In view of the best documentary evidence on record, i.e. School Leaving Certificate, the argument that the petitioner is major cannot be accepted.

9. The judgment of the Division Bench of this Court deals with the situation where there was no documentary evidence of date of birth. The age was

determined on the basis of ossification test as 16 to 17 years. Keeping in view the uncertainty of the age in the ossification test, the benefit was given to the woman holding her to be major. Thus, the aforesaid judgment is not helpful to the arguments raised as there is a documentary evidence of the date of birth of the petitioner which shows that she is minor.

10. I am also unable to agree with the view taken by the Jharkhand High Court in Shashank Mandal's case, as, a minor who is not competent to marry, cannot give consent for her marriage. Such marriage cannot be made basis for her discharge from the Women Protection Home at this stage. In view of the documentary evidence of School Leaving Certificate produced by father of the petitioner which discloses her date of birth as 20th December, 1998, the petitioner is minor. As a minor she is not competent to marry to the person of her choice.

11. The petitioner is not willing to go to her parental house, as stated by learned counsel appearing for the petitioner. Thus, in the absence of her unwillingness to join her parental house and in the absence of her valid marriage, there is no option but to keep the petitioner in a Women Protection Home till the time she attains the age of majority i.e. on 20th December, 2016.

12. In view of the said fact, I do not find any error in the order passed by the learned Chief Judicial Magistrate.

13. The writ petition stands disposed with observation that the petitioner will be entitled to be released by the authorities of the Women Protection Home after she attains the age of majority in accordance with law.