
(1994) 12 P&H CK 0036

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 163 of 1994 and Criminal Writ Petition No. 288 of 1994

Tulsi Devi

APPELLANT

Vs

Sheesh Pal Pujari

RESPONDENT

Date of Decision : 21-12-1994

Acts Referred:

Citation : (1994) 12 P&H CK 0036

Hon'ble Judges : V.K.Jhanji, J

Advocate : Ajai Lamba, Rajbir Sahrawat, Advocates for appearing Parties

Judgement

V.K. Jhanji, J.

1. Petitioner Tulsi Devi widow of Aan Singh, filed this criminal writ petition for issuance of a Writ in the nature of habeas Corpus and directing respondents No. 1 and 2 to produce Asha wife of Shiv Kumar Sharma, daughter of Tulsi Devi, alleged to be in illegal custody of respondents No. 1 and 2 and for a direction to respondents No. 3 and 4 to take active steps for searching and producing Smt. Asha.

2. Upon notice, reply was filed on behalf of respondents No. 1 and 2, who in their reply, mentioned that they had no knowledge of whereabouts of Smt. Asha nor is she in their custody.

3. Vide order dated July 14, 1994, Inspector General of Police, U.T., Chandigarh was asked to take personal interest in the matter for locating Smt. Asha. He was also asked to send his report to this Court within three months.

4. Mr. Ajai Lamba, Advocate, counsel for U.T. placed on record report dated 10.11.1994 of S.C. Abrol, Deputy Superintendent of Police (Detective), U.T. Chandigarh, in which it has been stated that on account of concerted efforts, detailed investigation and particularly the interrogation of various persons, letters, polygraph tests and interrogation of the husband of Smt. Asha Rani, Shri Shiv Kumar, the Investigating Officer developed the opinion that Shish Pal Pujari

positively had a hand in the occurrence. Shish Pal Pujari was intensively interrogated and on 1.11.1994, he sought 24 hours" time to give a clue of the whereabouts of Asha Rani. The Investigating Officer was informed on 3.11.1994 in the morning by the brother of Smt. Asha Rani that she had come home the earlier evening. Statement of Smt. Asha Rani was recorded in order to ascertain and verify her whereabouts right from 3.2.1994 till her appearance. She also gave her statement before Shri G.S. Matharoo, Judicial Magistrate, Chandigarh, under Section 164, Cr.P.C. in which she stated that she had developed illegal relations with Shish Pal Pujari. For the reason that he was already married and he could not remarry, she was married to Shiv Kumar on 3.12.1993. She was pregnant at the time of marriage. Thereafter, she went to Ambala to live with Shish Pal Pujari of her own will, who kept her at Ambala and used to visit that place some times. During that period, she gave birth to a daughter on 22.8.1994. On 2.11.1994, she came to her parents on the asking of Shish Pal Pujari of her own accord and nobody pressurised her for that.

5. After the report had been put on record, Asha Rani vide her application dated 28.11.1994 alleged that she was made to give her statement before the Magistrate under pressure and that her statement was also not correctly recorded. In this regard, she filed some statement which is undated. On 1. 12.1994, this statement was taken on record and copy thereof was given to Mr. Ajai Lamba, Advocate, counsel for U.T. Though it has been mentioned in order dated 1.12.1994 that the statement is by way of affidavit, yet perusal of the statement shows that it is not by way of affidavit.

6. Upon notice of this application, respondent, No. 1 has appeared along with his big counsel I, Mr. H.S. Gill, Senior Advocate.

7. Mr. Ajai Lamba has placed on record another affidavit of Satbir Singh, incharge, C.I.A. Staff I, Sector 11, Chandigarh, along with documents. On the last date of hearing i.e. on 14.12.1994, Asha Rani, who was present in Court wanted that respondent No. 1 be ordered to pay maintenance to her and her child and Shiv Kumar may also be directed to return all the articles of dowry and jewellery alleged to be in his possession. Mr. Gill counsel for respondent No. 1 has contended that respondent No. 1 can only persuade Shiv Kumar to make provision for the maintenance of Asha Rani and her child.

8. The scope of this petition of habeas corpus is restricted only to the production of the detenu. She having been produced in Court, no further order can be passed in this petition with regard to entitlement of Asha Rani to receive payment of maintenance or return of articles of dowry either from Shish Pal Pujari or her husband Shiv Kumar. As to whether the child is legitimate or illegitimate child of Shish Pal Pujari or born out of the marriage with Shiv Kumar or as to whether she was kept against her will or she had gone of her own accord, are the disputed questions of fact and Asha Rani, if so advised, may approach a Court of competent jurisdiction in this regard.

9. This Court gave a direction to the Inspector General of Police, U.T., Chandigarh to locate Asha Rani only because respondent No. 1 Shish Pal Pujari in his affidavit dated 3.5.1994 had denied any knowledge of her whereabouts. Rather, he had submitted that Asha Rani was not in his custody at any stage nor he has any concern with her disappearance. From the report submitted by the police, it becomes clear that affidavit dated 3.5.1994 where he denied his hand in her disappearance, is totally false. It was because of this affidavit that a direction was given to the Police and State had to spend considerable amount in publishing the photograph of Asha Rani in various newspapers in local as well as papers having wide circulation in U.P. Not only this, a reward of Rs. 10,000/ was announced to any person who would give a clue of Asha Rani. A large number of posters having photographs of Asha Rani were widely circulated including the offices of the Superintendents of Police at District Headquarters all over the country. A message regarding missing report of Smt. Asha Rani along with her photograph was also telecasted on Doordarshan. Nearly 112 persons were interrogated at various places including Saharanpur, Muzaffarnagar and Sardulgarh. Respondent No. 1 Shish Pal Pujari thus cannot escape the consequences of filing a false affidavit. Accordingly, he is burdened with costs of Rs. 20,000/. A sum of Rs. 2,500/ in cash has been paid to Asha Rani today in Court and the balance amount of Rs. 17,500/ shall be deposited with the Registrar of this Court within a period of two months from today. Out of the said amount of Rs. 17,500/, a sum of Rs. 7,500/ shall be paid to Asha Rani and for the balance of Rs. 10,000/, F.D.R. in the name of the child shall be taken in a Nationalised Bank and the amount shall be paid to the child on her attaining majority.

10. As regards return of dowry and jewellery, it shall remain open to the petitioner or Asha Rani to approach a competent Court of jurisdiction in this behalf as also regarding her claim for her maintenance and that of her child.

11. With this direction, this petition stands disposed of