

(2010) 12 GUJ CK 0090
In the Gujarat High Court

Case No : Special Criminal Application No. 2347 of 2010

Vasantbhai Keshavlal Patel

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 15-12-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 114, 498A

Citation : (2010) 12 GUJ CK 0090

Hon'ble Judges : Vijay Manohar Sahai, J;A.M. Kapadia, J

Bench : Division Bench

Advocate : Rekha Kapaida, for Bhunesh C. Rupera, for the Appellant; L.B. Dabhi, APP for Respondent Nos. 1 - 3, for the Respondent

Judgement

A.M. Kapadia, J.—RULE. Mr. L.B. Dabhi, learned APP appears and waives service of notice of Rule on behalf of Respondent Nos. 1, 2 and 3 i.e. State of Gujarat, Police Commissioner, Ahmedabad and Police Inspector, Naroda Police Station, Naroda, Ahmedabad whereas Respondent No. 4 Kishansing Sarnamsing Bhadoria appears in person and also accepts the service of notice of Rule. So far as Respondent Nos. 5 and 6 are concerned, notice of rule issued not be served upon them as the corpus is already traced out and produced before this Court.

2. By means of filing this petition under Article 226 of the Constitution, the Petitioner has prayed to issue a writ of Habeas Corpus or any other appropriate writ, direction or order directing the Respondent No. 3 to trace out the corpus 'Dipti', daughter of the Petitioner, who is allegedly in illegal detention of Respondent No. 4-Kishansing Sarnamsing Bhadoria and to hand over her custody to the Petitioner.

3. As per the averments made in the petition, the Petitioner has three children, daughter Dipti, who is elder whereas two sons, namely, Sandeep and Dhruvit, are younger. Dipti is aged 21 years and has been prosecuting her study in M.A. On 13.9.2010, in morning round about 10.00 a.m. Dipti went to her college for

attending study but she did not return. Therefore, the Petitioner had tried to find out the whereabouts of his daughter at the places of relatives but he could not find out his daughter-Dipti. On the next day i.e. on 14.9.201, the Petitioner approached the Respondent No. 3 Police Inspector, Naroda Police Station, Naroda,

3.1 It is further averred in the petition that the Respondent No. 4 did not find at his home from that day i.e. 13.9.2010 and the Petitioner came to know that his daughter Dipti has been forcibly kidnapped her by inducing her. It also came to the knowledge of the Petitioner that the Respondent No. 4 is a married person having minor son aged about 7 years. His wife, namely, Pinkiben lodged the complaint before Ramol Police Station u/s 498A and 114 of the Indian Penal Code on 21.9.2010 against her husband - Respondent No. 4 and in-laws, in which she has stated that on 14.9.2010, her father-in-law informed to her over telephone that his son Respondent No. 4 has remarried with Dipti.

3.2 It is also averred in the petition that the Petitioner came to know that the Respondent No. 4 married with his daughter by way of playing fraud by with her and also misguided and misled the Marriage Registrar. From the marriage certificate it is clearly transpired in the column of marriage status of Respondent No. 4 is unmarried. It is further averred in the petition that the daughter of the Petitioner's sister-in-law informed the Petitioner that his daughter Dipti met her at bus stand at Himatnagar and informed her that the said Respondent No. 4 is a married person and having one child and that facts were never informed by Respondent No. 4 and, therefore, his daughter Dipti had no knowledge about his marital status at the time of marriage. It is further averred in the petition that now his daughter Dipti wants to stay with her parents, but Respondent No. 4 forced her not to leave his house. Therefore, it is alleged that the Respondent No. 4 has illegally detained his daughter against her wish and will. Therefore, in the aforesaid facts and circumstances, Petitioner has filed the instant petition for the reliefs to which the reference is made in earlier paragraph of the judgment.

4. This Court, vide Order dated 01.12.2010 issued Notice to the Respondents, which was made returnable on 15.12.2010 on condition that the Petitioner shall deposit Rs. 10,000/- as cost to show his bona fide with the Registry of this Court.

5. Today when the matter is called out, Mr. L.B. Dabhi, learned APP, upon instructions received from Mr. N.P. Chavda, Police Constable, Naroda Police Station, who is personally present in the Court, states that, corpus-Dipti is traced out by the Investigating Officer and wants to produce the corpus before the Court. Therefore, we have permitted him to produce the corpus before us.

6. On production of corpus, we have asked about her wish and willingness and also inquired from her that as to whether she is in illegal custody of Respondent No. 4-Kishansing Sarnamsing Bhadoria.

7. She has in unequivocal terms stated before us that she is not in illegal detention of Respondent No. 4-Kishansing Sarnamsing Bhadoria. She has also admitted that her marriage with the Respondent No. 4-Kishansing Sarnamsing

Bhadoria has been solemnized at her own will, which has been registered with the Marriage Registrar, Ward Kalupur, Ahmedabad. She has also stated before us that she knows that the Respondent No. 4 is a married person having one child. It is also stated by her that Respondent No. 4 has already taken divorce from his earlier wife as per the customs prevailing in his caste. She has further stated that she is very happy with the Respondent No. 4-Kishansing

Sarnamsingh Bhadoria as she is his lawfully wedded wife and she wants to permanently reside with him at her matrimonial home. She has categorically denied that she wants to go to her parental house.

8. In the case of *Gian Devi v. The Superintendent, Nari Niketan, Delhi and Ors.*, (1976) 3 SCC 234 the Supreme Court has observed that a woman who is attained majority is free to stay in any place she likes without constraint by her parents or husband. What is held by the Supreme Court in the above referred to case is that against her wishes, a major girl cannot be sent to 'Nari Niketan'.

9. In view of the aforesaid facts and circumstances emerging from the record of the case and more particularly the statements made by corpus -Dipti that she has married the Respondent No. 4-Kishansing Sarnamsing Bhadoria knowing fully well that the Respondent No. 4 is a married person having one child and she is not in illegal detention of Respondent No. 4, so also relying upon the judgment of the Supreme Court referred to hereinabove, we are satisfied that corpus Dipti is admittedly more than 18 years and is sui juris and, hence, no fetters can be placed upon her choice of person with whom she is to stay. We therefore permitted her to go wherever she wants to go.

10. Seen in the above context, instant Habeas Corpus petition lacks merit and deserves to be rejected.

11. At this stage, Ms. Rekha Kapadia, learned Advocate for Mr. Bhunesh C. Rupera, learned Advocate for the Petitioner, upon instructions received from the Petitioner, does not press this petition and seeks leave to withdraw the same.

12. The prayer made by her has not been opposed by Mr. L.B. Dabhi, learned APP for Respondent Nos. 1 to 3.

13. Hence, leave to withdraw the petition is granted. The petition stands disposed as it is withdrawn. Rule is discharged.

14. The amount of Rs. 10000/- deposited by the Petitioner to show his bona fide at the time of issuance of notice is required to pay back to the Petitioner.

15. The Registry is, therefore, directed to pay back the said amount of Rs. 10,000/ to the Petitioner upon due verification.

16. Copy of Marriage Certificate issued by the Marriage Registrar, Ward Kalupur, Ahmedabad and produced by Mr. L.B. Dabhi, learned APP, shall be retained on the record of this case.