

Mohan Lal Vs. Senior Superintendent of Police Pathankot and Others

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Court : Punjab and Haryana

Decided On : Sep-24-2013

Appellant : Mohan Lal

Respondent : Senior Superintendent of Police Pathankot and Others

Judgement :

CRWP-1585-2013 -1- IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH CRWP-1585-2013 Date of decision:

24. 9.2013 Mohan Lal Petitioner Versus Senior Superintendent of Police, Pathankot and others Respondents CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH1 Whether Reporters of the local papers may be allowed to see the judgment?.

2. To be referred to the Reporters or not?.

3. Whether the judgment should be reported in the digest?. PRESENT: Mr. Sanjeev Kumar Bawa, Advocate for the petitioner. Mr. Ankur Jain, AAG, Punjab. Mr. S.K. Arya, Advocate for respondents No.3 and 4. R.P. NAGRATH, J.

The instant petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of habeas corpus, directing respondent No.2 to release and produce detenue-Nisha Devi daughter of the petitioner from illegal custody of respondents No.3 and 4 immediately.

2. Nisha Devi and Vikas Kumar-respondent No.3 are present in person. Kataria Rishu 2013.09.30 18:15 I attest to the accuracy and integrity of this document CRWP-1585-2013 -2- 3. Reply by respondents No.3 and 4 filed in Court today, which is taken on record.

4. The petitioner is father of the girl who was kidnapped by respondents No.3 and 4 on 27.5.2013. The petitioner recorded FIR No.43 dated 31.5.2013, under Sections 363/366/120-B IPC Police Station Kanwan, District Pathankot. As per school certificate Annexure P-1, the date of birth of the girl is 17.12.1996 and, therefore, she was just about 16 years old at the time of kidnapping.

5. On the other hand, the case of respondents is that the daughter of complainant and respondent No.3 solemnized marriage on 27.5.2013. The run away couple filed a petition before Punjab State Human Rights Commission, which was disposed of vide order dated 14.6.2013 (Annexure R-3/3) noticing that the date of birth of the girl is 17.12.1996. This order Annexure R-3/3 states that even marriage certificate was not filed in support of the plea of marriage. Respondents No.3 and 4 have also attached photographs (Annexure R-3/1) of respondent No.3 and the detainee with the reply to support the contention that they have solemnized marriage.

6. After hearing learned counsel for the parties, I am inclined to accept the instant petition in view of the serious allegations which prima facie amount to commission of the offence of kidnapping and rape.

7. In support of his contention learned counsel for respondents No.3 and 4 relied upon the judgments (i) Ridhwana and another Vs. U.T. Administration and others, 2008 (4) RCR (Criminal) 242; (ii) Neelam Rani and another Vs. State of Haryana and others, 2011 (1) Kataria Rishu 2013.09.30 18:15 I attest to the accuracy and integrity of this document CRWP-1585-2013 -3- RCR (Civil) 636; (iii) Sh. Jitender Kumar Sharma Vs. State and another, 2010 (4) RCR (Criminal) 20; (iv) Ravi Kumar Vs. The State and another, (2006 (1) RCR (Criminal) 41; (v) Bhagwan Singh and others Vs. State and another, 2007 (1) RCR (Criminal) 347 and (vi) Rukshana and another Vs. Govt. of NCT of Delhi and others, 2007 (3) RCR (Criminal) 542.

8. I find that investigation in this FIR is still at the threshold. The investigating agency has not been able to arrest respondent No.3 so far nor even the girl is recovered. It is quite clear that respondents No.3 and 4 have not given any chance to the investigating agency to properly proceed with the matter nor statement of girl has been recorded by investigating agency either under Section 161 Cr.P.C. and/or 164 Cr.P.C. by affording reasonable time to the girl to reconcile. Having remained in company of respondent No.3-Vikas Kumar, her medical examination has also not been conducted so far. Relying upon Annexure R-3/1, the photographs of respondent No.3 and the girl cannot be evidence of legal and valid marriage in the absence of performance of essential ceremonies of marriage. There is even no certificate of solemnization of marriage issued by any religious institution in proof of such marriage.

9. Section 361 of the Indian Penal Code says that whoever takes or entices any minor under [sixteen]. years of age if a male, or under [eighteen]. years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship. Therefore, the collection of Kataria Rishu 2013.09.30 18:15 I attest to the accuracy and integrity of this document CRWP-1585-2013 -4- evidence on this aspect is essential part of investigation as the girl was just about 16 years at the time of occurrence.

10. Learned counsel for respondents No.3 and 4 also referred to the judgment of Hon'ble Supreme Court in S.Varadarajan Vs. State of Madras, AIR 1965 SC942 That case arose out of judgment of conviction. The girl was at the verge of attaining majority. She was just about one month less than 18 years old. Even the boy and girl had gone to the office of Sub-Registrar and got the marriage registered whereas in the instant case, the respondents No.3 and 4 are relying upon a photograph Annexure R-3/1 of respondent No.3 and the girl sitting together in bridal robes. Even the girl and respondent No.3, have not yet joined investigation. Therefore, the judgment referred to above would not support the contention of respondents No.3 and 4.

11. There is now a drastic change in the penal provisions introduced by the Criminal Law (Amendment) Act, 2013. Before the amendment, the definition of term rape. given under Section 375 IPC was that a man is said to commit sexual intercourse with a woman under the circumstances falling under any of the six clauses as given therein, and as per sixth clause: with or without her consent when she is under 16 years of age. After the amendment came into force w.e.f. 3.2.2013, various acts have been termed rape. under Section 375 IPC including sexual intercourse with a girl with or without her consent, when she is under 18 years of age.

12. Another serious aspect of the instant case is that the girl was about 16 years old whereas respondent No.3 is 34-35 years old. In the Kataria Rishu 2013.09.30 18:15 I attest to the accuracy and integrity of this document CRWP-1585-2013 -5- circumstances of the case, quick and rapid action is required to collect evidence by the investigating agency for making arrest of accused persons and recovery of the girl.

13. Another contention of learned counsel for respondents No.3 and 4 is that the girl was adamant in not going to her parents house. For that purpose, respondents No.3 and 4 are directed to produce Nisha Devi, before the Chief Judicial Magistrate, Pathankot for recording her statement. Respondents No.1 and 2 are also directed to ensure that the girl is produced before the Chief Judicial Magistrate, Pathankot, within a period of 15 days. In case, girl is not instantly willing to go to her parents when she appears before the Chief Judicial Magistrate, Pathankot, she be sent to an institution like Nari Niketan so that investigation of the case can further proceed. The Investigating Officer, however, would record statement of the girl and also get it recorded by the Area Magistrate under Section 164 Cr.P.C. after some reasonable gap so as to enable her to reconcile.

14. With these directions the instant petition is allowed. A copy of this order be given dasti to learned State counsel under the signatures of Reader attached to the Bench. Copy of this order be also sent immediately to the Chief Judicial Magistrate, Pathankot, for strict compliance. September 24, 2013 (R.P. NAGRATH) rishu JUDGE Kataria Rishu 2013.09.30 18:15 I attest to the accuracy

and integrity of this document

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