

Bitanni and anr. Vs. State of U.P.

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Court : Allahabad

Decided On : Sep-23-1993

Reported in : I(1995)DMC129

Judge : Virendra Saran, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482; Indian Penal Code (IPC) - Sections 3(1), 120B, 363 and 366

Appeal No. : Crl. M.C. No. 565 of 1994

Appellant : Bitanni and anr.

Respondent : State of U.P.

Disposition : Appeal allowed

Judgement :

Virendra Saran, J.

1. Smt. Bitanni and Sunil have filed this application challenging the order dated 12.8.1994 passed by the Chief Judicial Magistrate Sitapur directing the applicant Bitanni to be detained in Nari Niketan.

2. According to the allegations made in the application, the two applicants, namely Smt. Bitanni and Sunil fell in love with each other and they decided to get married,

but Ram Devi, mother of applicant Bitanni was opposed to the love marriage and hence applicant No. 1 Smt. Bitanni left her parental roof; got married to applicant Sunil and both of them started living with each other as husband and wife. However, their happy living together was interrupted on the lodging of First Information Report by Smt. Ram Devi under Sections 363, 366 120B I.P.C. and Section 3(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act at Police Station Kotwali, Sitapur. A case was registered as crime No. 202 of 1994 and on the strength of the First Information Report lodged by Smt. Ram Devi, the police took applicant Bitanni in custody and produced her before the learned Chief Judicial Magistrate, Sitapur who recorded her statement under Section 164 Cr.P.C.

3. In her statement Smt. Bitanni stated that she had not been deceived or lured in any manner and she had gone along with Sunil of her own free Will. She further stated that she and Sunil were living as husband and wife. She insisted that she be allowed to go along with Sunil.

4. The learned Chief Judicial Magistrate, Sitapur passed the impugned order directing that Smt. Bitanni be detained in Nari Niketan. A medical certificate dated 9.3.1994 of the Chief Medical Officer, Lucknow was filed in which age of Smt. Bitanni was described as 18 years. On the other hand, Prosecution relied upon medical certificate of the Womens' Hospital, Sitapur in which age of Smt. Bitanni was opined to be about 16 years. The learned Chief Judicial Magistrate, Sitapur was of the opinion that Smt. Bitanni may be below 18 years of age in view of the opinion of the doctor of the Women's Hospital, Sitapur. He, however, held that in the circumstances of the case, it was not desirable to force Smt. Bitanni to go and live with anyone against her Will and hence the Nari Niketan was the best suited place for her to stay till she attains the age of 18 years.

5. In order to ascertain the wishes of Smt. Bitanni, she was summoned from the Nari Niketan, Lucknow and was produced before me today. She firmly stated that she would go and live only with applicant No. 2 Sunil. From her appearance, Smt. Bitanni appeared to be a grown-up girl and has certainly attained the age of discretion. Medical Certificate issued by the Chief Medical Officer, Lucknow stating

her age to be 18 years appears to be correct. Along with this application, photo copy of agreement of marriage on which photographs of the two applicants are affixed has also been filed as Annexure-1 to the application. In the premise, Smt. Bitanni is at liberty to go and live with Sunil.

6. The application is hereby allowed. Smt. Bitanni is at liberty to go and live with Sunil. Superintendent, Nari Niketan, Lucknow shall release Smt. Bitanni unconditionally on the production of a certified copy of this order.

Appeal allowed.

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