

Krishna Kumar and ors. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : May-20-1993

Reported in : 1993CriLJ3825

Judge : N.L. Ganguly and ;V. Saran, JJ.

Acts : Indian Penal Code (IPC) - Sections 363 and 366; Hindu Marriages Act

Appeal No. : Crl. Misc. Writ Petition No. 9316 of 1993 and Habeas Corpus Petition No. 13325 of 1992

Appellant : Krishna Kumar and ors.

Respondent : State of U.P. and ors.

Advocate for Def. : Ajeet Kumar, Standing Counsel

Advocate for Pet/Ap. : V.D. Ojha and ;Pranav Ojha, Advs.

Judgement :

ORDER

1. This writ petition by Krishna Kumar and three others in which Rachana Agarwal petitioner No. 2 is with a prayer for quashing of the F.I.R. in case Crime No. 109 of 1993 under Section 363/366, I.P.C. P. S. Khurja Nagar Distt. Bulandshahr. The petitioners though have not specifically prayed in the writ petition for quashing of the investigation proceedings, prayed that the Court may pass suitable orders or

direction which may be fit and proper in the circumstances of the case. The F.I.R. in the above crime was lodged on 3-3-93 by Ram Autar Agarwal. The F.I.R. disclosed that Rachana Agarwal is a student of M. A. Prev. Economics of N.R.E.C. College and used to return from College regularly by 12 O'clock. On 22nd February, 1993 she did not return from her College and her whereabouts were not known. The informant made enquiries from his relations but no thereabouts could be found out. The informant learnt that Krishna Kumar, petitioner No. 1 is a student in B.A. IInd year in N.R.E.C. College who lived at a short distance from the informant's house, was also missing from his house since 22nd of February, 1993. The informant suspected that Krishna Kumar by force and inducing Km. Rachana Agarwal, abducted her. He named four other persons namely Manoj Kumar, Lokesh Sharma, Mahesh Chaudhary and Chaman Singh in the F.I.R. It is said that the informant apprehended that the accused persons may have also killed Rachana Agarwal, the daughter of the informant. Action be taken. In pursuance of the F.I.R. investigation proceeded.

2. The petitioners apprehended that the police is likely to arrest the petitioners and attempt to make out a case under Section 363/366, I.P.C. has approached this Court by this writ petition.

3. This petition was presented and the Court was pleased to pass an interim order staying the arrest of the petitioners by order dated 23-3-93. Counter-affidavit has been filed on behalf of the father of Rachana Agarwal with an application for vacating the stay order dated 23-3-93. The petition was directed to be put up for hearing and order on 19-5-93 before us. We had directed that the case be put up today before us in Chambers.

4. Since the Habeas Corpus Petition No. 13325 of 1993 filed by Ram Autar Agarwal is also pending and is listed for orders before Hon'ble S. C. Verma, J. an application was moved by Sri V, D. Ojha, counsel for the respondents before the said Bench for hearing of the case before this Bench on the ground that both the matters are arising out of the same incident. Hon. Mr. Justice S. C. Verma passed an order today for hearing of the case before this Division Bench. We are, thus, proceeding to dispose of the Habeas Corpus petition simultaneously.

5. The criminal case under Section 363/366, I.P.C. arising out of the F.I.R. dated 3-3-1993 and the Habeas Corpus Petition No. 13325 of 1993 can be conveniently decided together only on the question that Rachana Agarwal is whether a major lady and she is under illegal detention of any other person specifically illegal detention by Krishna Kumar. We consider it necessary and appropriate to record her statements in Chambers after giving her more than 2 hours' time for composing herself so that she may make a free independent* statement before the Court. We have recorded her statement in presence of the learned counsel for the parties. The father of Rachana Agarwal namely Ram Autar Agarwal appeared before us and identified that the girl Rachana Agarwal appearing before this Court is the same girl and his daughter. We are, thus, satisfied that the same person makes the statement before us. In the statement Rachana Agarwal categorically stated that she is major, aged about 22 years. She stated that she left her parental home out of her free will without any coercion, allurement, inducement or deception from any one. She stated to have left her parental home on 22nd of February, 1993 with Krishna Kumar, whom she stated to have married according to Hindu rites. An application for registering the marriage was also submitted before the Registrar, Hindu Marriages Act and an application showing the entertainment of the application for registration of the marriage under Hindu Marriages Act is on record. By supplementary affidavit, it has been shown that the marriage was also registered on 22-2-93. After recording the statement of Rachana Agarwal, we are satisfied that she is a major girl, she is not under any type of illegal detention, she also stated that she is happily staying with Krishna Kumar and parents-in-law at her husband's place. The family members of her husband are treating her with all love, affection and respect. In this circumstances, we consider it that no useful purpose would be served if investigation is allowed to continue arising out of the F.I.R. noted above. The Supreme Court in similar circumstances in 1992 SCC (CrI) 391 Sangita Rani (Smt.) alias Mehraj Jahan v. State of U.P. quashed the F.I.R. and investigation. We consider it a fit case in which the F.I.R. dated 3-3-1993 Crime No. 109 of 1993. under Section 363/366, I.P.C., P. S. Khurja Nagar Distt. Bulandshahr is liable to be quashed against all the accused persons, named in the F.I.R. No further investigation is further called for.

6. In view of the statements recorded in Crl. Misc. Writ Petition No. 9316 of 1993, a copy of the said statement duly signed by Rachana Agarwal be placed on the said record of Habeas Corpus Petition No. 13325 of 1993. We are of the view that the Habeas Corpus Petition No. 13325 of 1993 is liable to fail and is hereby dismissed.

7. The Writ Petition No. 9316 of 1993 is allowed. No order as to costs. Habeas Corpus Petition No. 13325 of 1992 is dismissed. No order as to costs in the said petition also.

8. A copy of the judgment be placed in the Habeas Corpus Petition No. 13325 of 1992.

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