

Lilabai Vs. Chandanlal

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Court : Madhya Pradesh

Decided On : Mar-21-1957

Reported in : AIR1958MP24; 1958CriLJ48

Judge : Nevaskar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 100

Appeal No. : Criminal Ref. No. 88 of 1956

Appellant : Lilabai

Respondent : Chandanlal

Advocate for Def. : K.L. Goyal, Adv.

Advocate for Pet/Ap. : S.L. Garg, Adv.;J.D. Patel, Deputy Govt. Adv.

Judgement :

ORDER

Nevaskar, J.

1. This is a report made by the Second Additional Sessions Judge. Indore under Section 438 of the Criminal Procedure Code for revising the order passed by the First Class Magistrate, Mhow under Section 100 of the Criminal P. C.

2. Complainant Chandulal lodged a complaint before the First Class Magistrate, Mhow against one Harishchandra in respect of an offence under Section 366, I. P. C., alleging that the latter had Kidnapped his daughter Lila aged about 17 years with the object of committing illicit intercourse with her. In the course of that proceeding he applied for issue of a search-warrant and for delivery of the custody of his daughter Lilabai to him. The grounds alleged in the application were that in case his daughter is allowed to live with the accused that would 'affect her reputation and her statement, was going to be of some importance in the case'. The Magistrate called upon the accused to reply to this application. On 7-7-1956 complainant filed another application praying for immediate issue of a search-warrant alleging that in case the matter were delayed there would be difficulty in execution of the search-warrant.

This application was allowed and the Court on the same day issued a search-warrant for producing the girl Lilabai in the Court. A reply was filed by the accused on 9-7-1956. In his reply the accused opposed the application. In pursuance of the search-warrant the girl was produced on 10-7-1956. The Magistrate ordered her to be restored to the custody of her father. The girl protested, and complained that she was of 18 years of age and major and that her father intended to surrender her to a military-man after taking money from him. The Court thereupon as an interim measure ordered her to be kept in the custody of one Tarabai.

3. The girl Lilabai thereupon filed a revision petition against the order of the Magistrate removing her from the custody of the accused and relegating her to the custody of Tarabai.

4. It was contended on her behalf that conditions did not exist for the issue of a search-warrant for her production in Court. She was 18 years of age. She went away from her father's house voluntarily. There were no allegations in the application for search-warrant, that she was confined under the circumstances which would amount to an offence. Injury to her reputation and importance of her statement are not the grounds on which a search-warrant could have been issued.

5. These contentions found favour with the learned Additional Sessions Judge who has made this report.

6. Mr. Garg who appears for the petitioner has tried to support the report of the Additional Sessions Judge much on the same grounds as are mentioned in the report.

7. Mr. Goyal who appears for the other side says that the matter now has become of 'academic interest' as in pursuance of an order of the District Court in a guardianship proceeding an order has been already passed by the Additional District Judge for an interim custody of the girl and she is temporarily directed to be placed in the custody of her father. He further frankly conceded that, on the grounds stated in the application for the issue of a search-warrant, a search-warrant could not have been legally issued.

8. In my opinion the order issuing the search-warrant under the circumstances and on the basis of the allegations made by the complainant in his application is not proper. The only allegation made by the complainant in his application dated 3-7-1956 is that if the girl were allowed to live with the accused that would affect her reputation and that her statement was going to be of some importance in the case. In the application of 7-7-1956 no further allegations were made. The only thing which was asserted there was that the search-warrant was likely to be delayed due to the act of the accused.

The learned Magistrate did not hold any independent inquiry for entertaining a belief that the girl was being confined under circumstances which would amount to an offence. In the absence of any allegation to that effect properly supported and in the absence of an inquiry an order passed by the Magistrate for issue of a search-warrant, merely on the allegation that her continued residence at the house of the accused was likely to affect her reputation or that her statement was likely to be of importance, cannot be said to be proper.

9. The recommendation of the learned Additional Sessions Judge contained in the report is therefore accepted and the order passed by the Magistrate for issue of a search-warrant and consequent proceedings thereafter are set aside.