

Ravi Kumar Vs. the State and anr.

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SooperKanoon Citation : sooperkanoon.com/707333

Court : Delhi

Decided On : Oct-05-2005

Reported in : 124(2005)DLT1; II(2005)DMC731

Judge : Manmohan Sarin and; Manju Goel, JJ.

Acts : Hindu Marriage Act - Sections 5, 5(3), 11, 12 and 18; Women and Girls Act; Code of Criminal Procedure (CrPC) - Sections 161, 164 and 482; Indian Penal Code (IPC) - Sections 363, 366, 368 and 376; [Constitution of India](#) - Articles 226 and 227

Appeal No. : WP(Crl.) Nos. 942 and 1369/2005

Appellant : Ravi Kumar;phoola Devi

Respondent : The State and anr.;The State and ors.

Advocate for Def. : Rebecca M. John, amices Curiae, ; Mukta Gupta, Standing Counsel and ;

Advocate for Pet/Ap. : Vikas Sharma, Adv. in W.P.(Crl.) No. 1446/2005 and; Akhileshwar Jha, Adv. in WP(Crl.) No. 1369/200

Judgement :

Manmohan Sarin, J.

1. By this common judgment, the above petitions filed in the nature of Habeas Corpus and seeking other reliefs are being decided.
2. Ingenious but discredited, Lord Chancellor Francis Bacon wrote in his essays, as far back as, in the 16th Century 'You cannot love and be wise.' There are other adages 'Love is Blind' and 'All is fair in love and war' etc.
3. The cases at hand amply demonstrate the truth of the above adages and the resistance thereto from societal norms.
4. The hardships and oppressions entailed to the parties is sought to be mitigated by exercise of jurisdiction under Article 226 of the [Constitution of India](#) and by obviating the need of separate petition under Section 482 of the Code of Criminal Procedure (hereinafter referred to as the Cr.P.C.) for quashing of criminal proceedings.

Ravi Kumar v. State and Anr., WP(Crl.).942/05

Shikha Sharma v. State and Anr., WP(Crl.).1446/05

5. Here are the facts:-

Ravi Kumar, petitioner in W.P. (Crl.) No.942/2005, seeks writ of habeas corpus and release of Ms. Shikha Sharma from the Nari Niketan/Nirmal Chhaya. Petition No.1446/2005 is filed in the name of Shikha Sharma, through Ravi Kumar as parokar seeking her release from detention at Nari Niketan/Nirmal Chhaya.

6. Ravi Kumar, 28 years old, is a vegetable seller by vocation, earning about Rs.5,000/- to Rs.6,000/- per month. He and Shikha Sharma, aged about 16 years and 8 months and having studied up to 8th Class, fell in love. Shikha is the daughter of a driver, currently unemployed, and her mother is a house wife. Her elder sister Shilpi is a sales girl and the bread-winner having control over family affairs. Ravi and Shikha got married on 8.12.2004 at Arya Samaj Mandir situated at Calcutta Gate, Jamuna Bazar, Delhi. Date of birth in the certificate issued by Arya Samaj Mandir, of Shikha is recorded as 10.4.1986. In fact her actual date of birth is 10.4.1988. The couple took a room on rent and stayed there.

7. Shilpi Sharma, elder sister of Shikha Sharma unhappy with the alliance lodged a report on 22.12.2004 which was entered as DD No.12-A, stating that her sister was missing since 8.12.2004. She stated in the report that she suspected Ravi Kumar to have enticed, threatened and kidnapped her sister. She prayed for recovery of her sister. In the event, FIR No.479/04 under Section 363 IPC was registered.

8. Ravi Kumar & Ms. Shikha were apprehended. Ravi Kumar was arrested for kidnapping. Shikha being a minor was sent to Nari Niketan as she was unwilling to go to her parents, with whom her relationship was estranged. Ravi's uncle also sought custody of Shikha. The Metropolitan Magistrate in these circumstances holding that Shikha's will is of lesser importance and considering that trial of Ravi Kumar is to go on and there were possibilities of her being pressurized so as to hamper outcome of the trial, directed her to be kept in Nari Niketan.

9. In the meanwhile, upon statement of Shikha being recorded that they loved each other and she had herself called Ravi Kumar and on her own will got married, Ravi Kumar was granted bail on 8.4.2005. During the course of proceedings in W.P. (Crl.) No.942/2005 vide orders dated 25.7.2005, noting that the girl was minor and in the custody of Nari Niketan, no interim directions were issued. Crl.Ms. No.7469-7470/05 moved by Ravi Kumar in WP (Crl.) 942/2005 for preponement and seeking relief of custody, were dismissed with costs of Rs.5,000/-. Petitioner has moved Crl.M.A.No.9089/05 seeking waiver of cost.

10. W.P.(Crl.) No.1446/2005 came to be subsequently filed by Shikha Sharma, through Ravi Kumar as parokar. Question of maintainability of the petition was raised in view of the pendency of the earlier petition and both petitions were directed to be listed together. Production warrants were issued for Shikha. Petitioner Ravi Kumar was also directed to be present in Court. Notice was also issued to the complainant Ms.Shilpi Anand. On 27.9.2005, the complainant and her mother were present in Court. Statement of Shilpi was recorded on oath. She stated that she now understands that Shikha and Ravi Kumar had got married in Arya Samaj Mandir on 8.12.2004. She stated that she had lodged and FIR in the misapprehension that her sister has been enticed and taken away by Ravi Kumar

and that she now realised that her sister had gone of her own accord with Ravi Kumar and both of them got married. She stated that she was not interested in prosecuting the FIR any further. No further action be taken. The case registered pursuant to her complaint may be quashed. In these circumstances, Shikha was directed to be released from Nari Niketan and permitted to accompany the petitioner Ravi Kumar. Complainant, Shilpi Anand and her mother both expressed their no objection in Shikha cohabiting with the petitioner Ravi Kumar.

Smt.Phoola Devi v. State, W.P.(Crl.) 1369/2005

Petitioner Phoola Devi is a widow having three daughters and two sons and runs the straw business of her late husband. She lives with Ganeshi Rai, her brother-in-law and he helps her sister-in-law in the business. This is a petition for Habeas Corpus filed by Smt.Phoola Devi alleging that her minor daughter had been kidnapped by respondents 3 & 4 who had accompanied her minor daughter to carry and deliver the cash required for their business purpose to the uncle. Respondent No.3, Santosh Rai and respondent No.4, Jhandu Rai were tenants under the petitioner. Respondent No.3, Santosh Rai is a rickshaw puller. FIR No.482/2005 under Section 363 IPC was registered. Sonia, daughter of the petitioner was recovered. In her statement before the Magistrate under Section 164 Cr.P.C, she stated that her earlier statement under Section 161 Cr.P.C. to the effect that she had been enticed and taken away for sex by Santosh Rai was given under coercion. She stated that she had married Santosh Rai on 24.7.2005 and left for her in-laws place at Balia. Marriage was even got registered on 4.8.2005. Petitioner prayed for custody being granted to her of her daughter Sonia. But Sonia refused to accompany the mother and she was sent to Nari Niketan. She continues to be lodged at Nari Niketan. Santosh Rai is in judicial custody. During the course of these proceedings, production warrants had been issued for presence of Santosh Rai as also of Sonia. Notices were also issued for the presence of petitioner Phoola Devi and Ganeshi Rai. On 29.9.2005 statement of Sonia was recorded. She had stated that she was known to Santosh Rai for the last two years and had passed class 10th. She stated that Santosh Rai and Jhandu were their tenants and she started liking Santosh and it blossomed into a love affair. She claimed that she was over 16 years of age. They left the house

since their parents were not going to approve the relationship. She stated that she was the one who suggested to Santosh Rai that they should leave the house and get married. Santosh Rai never suggested to leave the house, rather he left the house on her asking. Statement of Ganeshi Rai, son of Ram S. Rai , who heard the statement of Sonia, was also recorded. He stated that he had heard the statement of Sonia, that Santosh Rai did not entice Sonia to leave the house or take her with him and that rather, Sonia suggested that they should leave the house and get married. He stated that his niece was a minor as she was over 16 years of age but less than 18 years and that the man Santosh Rai should be dealt with in accordance with law. Phoola Devi who was also present in Court only submitted through the counsel that her daughter should at least live with them till she attain the majority. We had spoken to Sonia who incidentally happens to be in family way. She was determined that she does not wish to go to her parents and wanted to live with Santosh Rai and till he was released she would continue to be at Nari Niketan.

The position which emerges is that here is a young girl in family way who is determined not to be with her parents and wants to join her husband who continues to languish in Jail, in a case registered on the complaint of her mother and uncle, namely, Phoola Devi and Ganeshi Rai respectively.

The questions arising for consideration in these petitions are:

1. Whether on account of the minority of the spouse, the marriage entered into is illegal and void-ab-initio?
2. Whether young girls getting married having reached the age of discretion but not attained majority, can be sent in protective custody to a Remand Home against their Will?
3. Whether in a Habeas Corpus petition the Court should entertain the prayer for quashing of the pending criminal proceedings for abduction, rape, kidnapping etc., in exercise of jurisdiction under Articles 226 and 227 of the [Constitution of India](#)?

4. Whether in the present case, the FIR & Criminal Proceedings pursuant thereto for kidnapping are liable to be quashed?

The first two questions raised above can be considered together conveniently.

The question of marriage being illegal or void-ab-initio on account of the minority of a hindu spouse is no longer res-integra.

11. Reference is invited in this connection to Seema Devi @ Simran Kaur v. State of H.P. reported at 1998 (2) Crimes 168. In the cited case, petitioner was found to be 15 years of age. She had married the accused Ajmer Singh of her own accord. Cases under Sections 363/366/368/376 IPC were registered against the accused. The Additional Chief Judicial Magistrate remanded her to the protective custody in view of her minority and his nurturing doubts on the validity of the marriage. The Court held that the marriage, which was performed in contravention of the age prescribed in sub-section (3) of Section 5 of the Hindu Marriage Act, requiring the groom to be of 21 years of age and bride to be of 18 years of age, was neither void nor voidable. This contravention did not fall within the scope of Section 11 or Section 12 of the Hindu Marriage Act. The Court held that such a marriage would only be in contravention of Section 18 of the Act, which provides a punishment, which may extend to imprisonment of 15 days or with fine, which may extend to Rs.1,000/-. The observations of the Additional Chief Judicial Magistrate that the marriage was not a legal marriage, was held to be unwarranted and unsustainable.

Reliance was also placed on Gindan and Ors. v. Barelal reported at : AIR 1976 MP83 , holding that a marriage solemnized in contravention of the age mentioned in Section 5(iii), regarding the age restriction, made it only punishable under Section 18 and the marriage solemnized would remain valid, enforceable and recognizable in Courts of law.

12. As regards remanding the minor bride to protective custody at Nari Niketan, the Court held that there was no provision of law, which permitted such a direction to be given even in case of minors against their will. Even if the minor was about 15 years of age, her wishes should be ascertained before placing her in the

custody of any person or institution. The Court in *Seema Devi @ Simran Kaur v. State of H.P.* (Supra) held that the Additional Chief Judicial Magistrate should have given credence to her wish and directed her custody to be with her accused husband and not with Nari Niketan.

Reference may also be made to *Kalyani Chaudhari v. The State of U.P. and Ors.* The Division Bench of Allahabad High Court held that no person can be kept in Protective Home, unless required to be kept, either in pursuance to the suppression of Immoral Traffic in Women and Girls Act or some other Act for protection in such a Home. The Court also noted that the question of minority was irrelevant as even a minor could not be detained against her will or against the will of her father in a Protective Home. The Division Bench of our own High Court in *Neetu Singh v. The State and Ors.*, reported at 1999 2 AD (Del) 37 placed reliance on *Seema Devi @ Simran Kaur v. State of H.P.* (supra) and *Kalyani Chaudhary v. the State of U.P.* (supra), holding that the marriage of the minor girl of 15 years of age was neither void nor voidable and sending of the girl to Nari Niketan was unwarranted. It was held that such detention would be contrary to law.

13. We, accordingly, hold that the marriage was neither void nor illegal on account of the spouse being less than 18 years of age and being over 15 years of age. The question of contravention under Section 18 is not before us. We further hold that the minor girl cannot, in these circumstances, be directed to be detained in a Remand Home against her wishes.

14. Coming to the next question whether the Court in a petition for habeas corpus should entertain a prayer for which separate proceedings under Section 482 Cr.P.C., or under Articles 226 and 227 of the [Constitution of India](#), are normally instituted. The question turns around on the nature and scope of the constitutional powers under Articles 226 and 227 of the [Constitution of India](#). There are catena of authorities on this question. However, reference may usefully be made conveniently to *Dwarka Nath v. Income-tax Officer, Special Circle D Ward, Kanpur and Anr.* reported at : [1965]57ITR349(SC) . The Court noted:

'This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The

Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression 'nature' for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts, can also issue directions orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself. To say this is not to say that the High Courts can function arbitrarily under this Article. Some limitations are implicit in the article and others may be evolved to direct the article through defined channels. This interpretation has been accepted by this Court in *T.C.Basappa v. Nagappa*; : [1955]1SCR250 and *Irani v. State of Madras* : [1962]2SCR169 .'

15. It would thus be seen that the powers under Articles 226 and 227 are wide and comprehensive subject to self-imposed limitations. Regarding the nature and scope of powers under Articles 226 and 227 of the [Constitution of India](#), reference may also be made to *M/s.Pepsi Food Limited v.* reported at : 1998 CriLJ1 . The Court noted:-

'22. It is settled that High Court can exercise its power of judicial review in criminal matters. In *State of Haryana v. Bhajan Lal* : 1992 CriLJ527 , this Court examined the extraordinary power under Article 226 of the Constitution and also the inherent powers under Section 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any Court or otherwise to secure the ends of justice. While laying down certain guidelines where the Court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulate to be followed by the

Courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any Court or otherwise to secure the ends of justice. One of such guideline is where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. Under Article 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This Article confers vast powers on the High court to prevent the abuse of the process of law by the inferior Courts and to see that the stream of administration of justice remains clean and pure. The power conferred on the High Court under Articles 226 and 227 of the [Constitution of India](#) and under Section 482 of the Code have not limits but more the power more due care and caution is to be exercised invoking these powers. When the exercise of powers could be under Article 227 or Section 482 of the Code it may not always be necessary to invoke the provisions of Article 226. Some of the decisions of this Court laying down principles for the exercise of powers by the High Court under Articles 226 and 227 may be referred to.'

'26. Nomenclature under which petition is filed is not quite relevant and that does not debar the Court from exercising its jurisdiction which otherwise is possesses unless there is special procedure prescribed which procedure is mandatory. If in a case like the present one the Court finds that the appellants could not invoke its jurisdiction under Article 226, the Court can certainly treat the petition one under Article 227 or Section 482 of the Code. It may not, however, be lost sight of that provisions exist in the Code of revision and appeal but sometime for immediate relief Section 482 of the Code or Article 227 may have to be restored to for correcting some grave errors that might be committed by the subordinate Courts. The present petition though filed in the High Court as one under Articles 226 and 227 could well be treated under Article 227 of the Constitution.'

16. Having noted the nature and scope of the powers under Articles 226 and 227 of the [Constitution of India](#), let us examine whether the present cases are fit cases for exercise of this discretionary power.

17. In the first two cases, namely Ravi Kumar v. The State and Anr., and Shikha Sharma v. The State & Anr., the husband is facing trial under Section 363 IPC. By an interim direction, this Court has already permitted Shikha to accompany her husband. The question remaining is only with regard to quashing of pending criminal proceedings, to which we shall advert.

18. As regards the third case, Santosh Rai continues to be in judicial custody pursuant to the case registered vide FIR No.482/2005 under Section 363 IPC. Sonia his wife, happens to be in the family way. She refuses to go to her parental house, alleging ill treatment and lack of any concern for her and is presently lodged at Nirmal Chaya. This is a case, where the husband continues to languish in jail, while the pregnant wife prefers the rigours and cold walls of her remand home to her parental home. Looking at the vocation of Ravi Kumar, who sell vegetables on Rehri and Santosh Rai, who is a rickshaw puller, they do not appear to be possessed of ostensible means to engage counsel and avail of legal remedies by filing separate proceedings. In our view, relegating them to separate proceedings would tantamount to denial of access to justice. We, accordingly, hold that these are fit cases, where the Court should exercise the powers under Articles 226 and 227 of the [Constitution of India](#) and under Section 482 Cr.P.C. to consider whether the pending criminal cases against the husband deserve to be quashed or not?

Ravi Kumar is facing trial under Section 363 IPC. The statement of Shikha his wife has already been recorded that she had herself called Ravi Kumar and of her own will got married to him. The statement of the complainant Shilpi has also been recorded to the effect that she now knows that Ravi Kumar and Shikha had got married and she had lodged the FIR in the mis-apprehension that the sister had been enticed and taken away by Ravi Kumar. She has also stated that she was not interested in prosecuting the FIR and the proceedings thereto any further. She stated that the case against Ravi Kumar may be quashed.

Similar is the position in the case of Santosh Rai, who is in judicial custody, pursuant to the case registered vide FIR No.482/2005 under Section 363 IPC. Respondent No.3 Santosh Rai, a rickshaw puller was the tenant under the

complainant. Sonu the wife has already stated that she had married Santosh Rai on 24th July, 2005. Marriage was registered and they had gone to their in-laws house at Balia. She had stated that she was the one, who suggested Santosh Rai that they should leave the house and got married. Santosh Rai never suggested leaving the house. Rather, he left the house on her asking. The complainant Phoola Devi stated in Court that her daughter should at least live with her till she attains majority. Ganeshi Rai, her brother-in-law stated that his niece was a minor being less than 18 years but over 16 years of age and that Santosh Rai be dealt with in accordance with law.

19. It would be seen that in both the cases notices had been issued to the complainant and they have been heard on the question of continuance of criminal proceedings. Reference may be made to the judgment of the Supreme Court in *S.Varadarajan v. State of Madras* reported at : 1965 CriLJ33 . The Court in the cited case held, 'taking or enticing away a minor out of the keeping of a lawful guardian is an essential ingredient of the offence of kidnapping.' It was further observed as under:-

'But when the girl (who though a minor had attained the age of discretion and is on the verge of attaining majority and is a senior college student) from the house of the relative of the father where she is kept, herself telephones the accused to meet her at a certain place, and goes there to meet him and finding him waiting with his car gets into that car of her own accord, and the accused takes her to various places and ultimately to the Sub-Registrar's Office where they get an agreement to marry registered, and there is no suggestion that this was done by force or blandishment or anything like that on the part of the accused but it is clear from the evidence that the insistence of marriage came from her side, the accused by complying with her wishes can by no stretch of imagination be said to have 'taken' her out of the keeping of her lawful guardianship, that is, the father.

The fact of her accompanying the accused all along is quite consistent with her own desire to be the wife of the accused in which the desire of accompanying him wherever he went is of course implicit. Under these circumstances, no inference can be drawn that the accused is guilty of taking away the girl out of the keeping of

her father. She has willingly accompanied him and the law does not cast upon him the duty of taking her back to her father's house or even of telling her not to accompany him.'

The Court noting the distinction between taking and allowing a minor to accompany a person, held that 'no case of kidnapping was made out.'

20. Applying the ratio of the aforesaid judgment to the cases in hand, it would be seen that there was no taking or enticing away. The essential ingredients of the offence of kidnapping are missing in these cases. The girls having reached the age of discretion had of their own volition accompanied the men of their choice. Rather, it has come in evidence that the initiative came from them and they got married of their own accord and are desirous of living with their respective husbands.

In these facts and circumstances, as noted above, continuance of the criminal proceedings, pursuant to FIR Nos.479/04 under Section 363 IPC, P.S. Sabzi Mandi, Delhi against Ravi Kumar and 482/05 under Section 363 IPC, P.S.Nazafgarh, New Delhi against Santosh Rai would be an exercise in futility, causing further undue misery and unwarranted hardship to which they have already been subjected. In exercise of our powers under Articles 226 and 227 of the [Constitution of India](#) read with Section 482 Cr.P.C., we quash the proceedings, pursuant to FIR Nos.479/04 and 482/05 under Section 363 IPC and direct that Santosh Rai, lodged in judicial custody, be set at liberty forthwith. We also direct that Sonia, presently detained in Nari Niketan be released as and when her husband Santosh Rai appears at Nari Niketan to take her with him. Sonia is free to reside with her husband. We also allow CrI.M.No. 9089/05, moved in WP(Crl.).942/05 and waive the cost of Rs.5,000/- imposed on the petitioner Ravi Kumar. We also wish to record our appreciation for the assistance rendered by amices curiae Ms.Rebecca M.John as also the constructive approach of Ms.Mukta Gupta, Standing Counsel for the State.

Petitions stand disposed of with the above directions.

