

Prasadh Kumar Vs. Ravindran

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Court : Kerala

Decided On : Apr-01-1992

Reported in : 1992CriLJ3203; II(1992)DMC162

Judge : Jagannadha Rao, C.J. and; Krishnamoorthy, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : O.P. (Habeas Corpus) Nos. 2745 and 3771 of 1982

Appellant : Prasadh Kumar

Respondent : Ravindran

Advocate for Pet/Ap. : K. Sasikumar, Adv.;None

Disposition : Petition dismissed

Judgement :

Krishnamoorthy, J.

1. In both these Original Petitions a common question arises and accordingly they are disposed of by a common judgment. The question involved in O.P. No. 3771 of 1992 is as to whether the petitioner is entitled to maintain a petition for the issuance of a writ of habeas corpus for the production of a girl, Deepa Ravindran, who is the daughter of the 1st respondent. The further question to be decided is as

to whether the custody of a parent in the circumstances can be said to be unlawful, warranting interference by this Court.

2. Petitioner alleges in his petition that himself and Deepa Ravindran were neighbours and that they have been in love for long ever since their childhood. The parents and other relatives were not agreeable to their relationship and on 11-3-1992, petitioner and Deepa eloped from their respective houses and were staying with the petitioner's mother's sister's daughter at a place called Narakathodu. It is further alleged in the petition that they entered into a registered marriage agreement (No. 42/82) dated 12-3-1992 before the Sub-Registrar's Office, Thengana; a copy of the above agreement is produced as Ext. P1. According to the petitioner, they became husband and wife by execution of that registered document and they were residing as such in his sister's house at Narakathodu. While so, on 16-3-1992, father of Deepa and two other persons represented to them that they will conduct a formal marriage between the petitioner and Deepa and on that pretext took Deepa also along with them, who is now residing with her parents. According to the petitioner, the representation made by the 1st respondent was only a ruse to take Deepa Ravindran out of the custody of the petitioner and she is kept in illegal custody against her wish by the respondents. The 1st respondent is the father of Deepa and the 2nd respondent is his sister's son.

3. Petitioner alleges that intention of the respondents was to separate Deepa from him and she is kept in illegal custody against her wish. It is also alleged by him that she is a major and is capable of expressing her free will. According to him, it is against her will and desire that the respondents have been illegally detaining her. In these circumstances, the petitioner has filed this petition for the issuance of a writ of habeas corpus directing the respondents to produce the body of Deepa Ravindram, wife of the petitioner, in Court and order her release.

4. The first question to be decided is as to whether a petition for the issuance of a writ of habeas corpus is maintainable at the instance of the Petitioner. Petitioner throughout in the petition maintains that he is the husband of the girl Deepa, on the basis of a registered document executed by the petitioner and Deepa on 12-3-1992 before the Sub Registrar's Office, Thengana. Both parties are Hindus and it is well-

settled that in order to claim the status of a husband, they should have undergone a form of marriage prescribed under law. Executing a registered document and declaring that they are husband and wife will not confer the status of a husband on the petitioner because it is not one of the recognised forms of marriage in law. There is no case for the petitioner that he had married Deepa in the customary form. In these circumstances, we have to proceed on the basis that the petitioner is not the husband of Deepa.

5. The question involved in the case is regarding the custody of a girl, though, no doubt, according to the petitioner, she is a minor. Even assuming that she is a minor, the question is whether in such circumstances, the petitioner is entitled to maintain an application for the issue of a writ of habeas corpus for the production of her body and also as to whether the custody of the father in such circumstances can be said to be unlawful. We do not think that having control and supervision of an aged girl by the parents will amount to illegal custody warranting the issue of a writ by this Court. Parents will naturally be interested in the welfare of their children and unless there are extraordinary circumstances, normally they will be the proper persons to take decisions concerning the career and future of their children. Parents will be entitled to have control over the children, especially if they are daughters, to protect them from the vagaries of adolescence.

6. Petitioner claims to be the husband of only on the basis of the registered document which will not confer on him the status of a husband. A person like the petitioner is not entitled to maintain a petition for the issue of a writ of habeas corpus for the release of a girl, especially when she is only in the custody of the father. In *Mohd. Ikram Hussain v. State of U.P.*, (AIR 1964 S.C. 1625), the Supreme Court has laid down the principles applicable in such circumstances. The Supreme Court observed ;

'A writ of habeas corpus at the instance of a man to obtain possession of a woman alleged to be his wife does not issue as a matter of course. Though a writ of right, it is not a writ of course especially when a man seeks the assistance of the Court to regain the custody of a woman. Before a Court accedes to this request it must satisfy itself at least prima facie that the person claiming the writ is in fact the

husband and further whether valid marriage between him and the woman could at all have taken place.'

7. Counsel for the petitioner placed great reliance on the decision of the Supreme Court in *Gian Devi v. The Superintendent, Nari Niketan, Delhi & Others*, (1976) 3 SCC 234 and also on the Division Bench decision of this Court in *Krishna Baj v. State of Kerala*, ILR 1980 (1) Ker. In *Gian Devi's* case the petition was filed by the woman herself when she was ordered to be detained in Nari Niketan, Delhi, by the Judicial Magistrate. It was in that context that the Supreme Court said that no fetters can be placed upon her choice of the person with whom she is to stay. In the latter decision, the question as to whether such a petition is maintainable by a person other than the husband was not considered at all, as no such contention was taken in the case, as seen from para 37 of that judgment to the following effect :

'37. Incidentally, we may record that Counsel for the 4th respondent did not contend for the position that without a finding on the alleged marriage between the petitioner and Prabha, no writ could issue. He fairly conceded that the present case can be treated as an application by 'some other person' within the meaning of the proviso to Rule 160.'

Thus, these two decisions can have no application to the facts of this case.

8. In O.P. No. 2745 of 1992, the petitioner is a Hindu belonging to the Scheduled Caste community and according to him, he fell in love with the 5th respondent who belonged to the Muslim community. He alleged that she was 21 years old and on 2-2-92, the 5th respondent on her own will left her family and accompanied him to his house for living as husband and wife. On 3-2-92 the petitioner and the 5th respondent contracted a register marriage at the SubRegistry, Sreemoolanagaram in Ernakulam District; a copy of the marriage contract is produced as Ext. PI. According to the petitioner, on 8-8-1992, a police jeep came to his house and three police men of the Chengamanadu Police Station arrested the petitioner, his wife and his mother and took them to the said Police Station. Though the petitioner stated that the petitioner and the 5th respondent are married, they took away the 5th respondent from his custody and her whereabouts are not known to him.

Petitioner alleges that he has not seen her thereafter. According to him, the 5th respondent is detained against her wish and will by the 6th respondent, her father, and she is not able to communicate with the outside world. In these circumstances, he prays for a writ of habeas corpus commanding respondents 2, 3 and 4 to produce the 5th respondent before Court and to release her from the illegal confinement made by the father, the 6th respondent.

9. The 6th respondent, father of the 5th respondent, has filed a counter-affidavit in which he has alleged that she is his youngest daughter and that she is a minor. In support of the fact that she is a minor, he has produced as Ext. R6(B) the relevant pages of the ration card issued during 1985-86 which shows her age. So also, the new ration card for the year 1991 (the relevant pages produced as Ext. R6(C)) also shows her age as 12. He denied the fact that the 5th respondent is a major. According to him, the 5th respondent was found missing and a complaint was launched by his son before the Vellamunda Police Station. On the basis of the investigation, they traced the 5th respondent from the house of the petitioner. Later, the 5th respondent was produced before the Magistrate, Mananthavady and she expressed her desire to go with her parents and the Court permitted her to do so. According to him, she is living with them on her own free will and she is not in illegal confinement.

10. We got down the records of the police case initiated on the basis of the complaint made by the 6th respondent.

11. In this case also it can be seen that the petitioner is claiming to be the husband of the 5th respondent (Nabeesa) only on the basis of a registered document dated 3-2-92 produced as Ext. P1. There cannot be any doubt that the petitioner cannot become the husband of the 5th respondent by this registered document alone. Petitioner has not alleged that he has married the 5th respondent in any legal manner. In that view of the matter, for the reasons we have already stated, the petitioner is not entitled to any relief.

12. There are other reasons also for refusing the relief claimed by the petitioner. First of all, the 6th respondent has clearly alleged in the counter-affidavit that the 5th respondent is a minor, prima facie, the ration card for 1985-86 shows that she

was only 7 years old at that time. Ext. R6(C) the rationcard for the year 1991 shows her age as 12. Petitioner contended that in theregistered document Ext. PI her age is shown as 21.The age in the ration cardwould have been supplied by the parents who are competent to mention theage of the 5th respondent and it has to be remembered that it was at a timewhen there was no dispute regarding her age. There is no reason why the 6threspondent should give a false age of Nabeesa for obtaining a ration card sothat prima facie the age given in the ration card has to be accepted for thepurpose of this case at least, Petitioner has not satisfactorily proved that the5th respondent is a major. In that view of the matter also the petitioner is notentitled to any relief.

13. Moreover, on the basis of the cumplaint made by the 6th respondent, the police took custody of the 5th respondent and produced her beforethe Magistrate, Mananthavady. The Magistrate questioned her and she hadclearly stated before him that she wants go along with her parents who werewaiting outside in the verandah. She clearly expressed her desire to go wtihthe parents and accordingly the Magistrate ordered that she is given liberty togo with her parents. Accordingly she joined her parents and is now staying withthem. It can thus be seen that when she was questioned by the Magistrate, shehad categorically stated that she desired to go with her parents which clearlyshows that there is nothing to show any sort of illegal confinement by theparents or that she is being kept against her wishes. We are satisfied from thestatement recorded by the Magistrate that she is staying with her parents onher own will and there is no illegal confinement is alleged by the petitioner.

14. In the light of what is stated above,there is no merit in these twoOriginal Petitions and they are accordingly dismissed.