

Heera Vs. State of Rajasthan

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SooperKanoon Citation : sooperkanoon.com/765340

Court : Rajasthan

Decided On : Mar-11-2002

Reported in : 2002(3)WLN509; 2002(3)WLN509

Judge : Sunil Kumar Garg, J.

Acts : Hindu Marriage Act - Sections 9; Indian Penal Code (IPC) - Sections 363 and 376; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482

Appeal No. : S.B. Criminal Misc. Petition No. 182 of 2002

Appellant : Heera

Respondent : State of Rajasthan

Advocate for Def. : D.D. Kalla, Public Prosecutor

Advocate for Pet/Ap. : Rakesh Arora, Adv.

Disposition : Petition dismissed

Judgement :

Garg, J.

1. Heard at admission stage.

2. This misc. petition under Section 482 Cr.P.C. has been filed by the accused petitioner against the order dated 18.1.2002 passed by the learned Additional Sessions Judge No.3, Udaipur in Criminal Revision Petition No. 46/2001 (112/2001) whereby he dismissed the revision petition filed by the petitioner by which custody of Mst. Mangi being father of Mst. Mangi was sought and by the same, order dated 4.7.2001 passed by the learned Additional Chief Judicial Magistrate, Vallabh Nagar by which he ordered to send Mst. Mangi to Nari Niketan, was also set aside and it was further ordered that Mst. Mangi be handed over to respondent No.2 Shankar Lal.

3. It arises in the following circumstances :

(i) That Mst. Mangi is daughter of present petitioner and she was married to one Jagannath 4 years' back and before two years, Gona ceremony was also performed and Mst. Mangi started living with her husband Jagannath.

(ii) On 6.5.2001, Mst. Mangi was abducted by respondent No.2 Shankar Lal and FIR of that incident was lodged by Udai Lal, brother of Mst. Mangi and that FIR was registered as FIR No. 74/2001 at the Police Station Kherota. In that FIR police submitted challan against respondent No.2 Shankar Lal and charges for offence under Sections 363 and 376 I.P.C. were framed against respondent No.2 and the learned Additional Sessions Judge No. 3 acquitted the accused respondent No.2 for all the charges framed against him through judgment dated 18.1.2002.

4. It may be stated that during investigation of aforesaid FIR, Mst. Mangi was got medically examined and where her radiological age was determined as above 17 years and below 18 years on 21.5.2001. As per the School Certificate, the date of birth of Mst. Mangi was 5.4.86, Jagannath who claims himself to be husband of Mst. Mangi has also filed a petition under Section 9 of the Hindu Marriage act for restoration of conjugal rights. After lodging of FIR No. 74/2001, Mst. Mangi was produced in the court by the police on 4.7.2001 and at that time an application was filed by the petitioner by which he sought custody of Mst. Mangi, but Mst. Mangi stated before the concerned Magistrate that she wanted to live with Shankar Lal, respondent No.2. Since her age as per the medical certificate was below 18 years, therefore, through order dated 4.7.2001, the learned Magistrate ordered to send

her to Nari Niketan, Jaipur.

5. Aggrieved from the order dated 4.7.2001, the present petitioner and respondent No. 2 both preferred revision petitions before the learned Sessions Judge, Udaipur and both were transferred to the Additional Sessions Judge No.3, Udaipur and both were decided by judgment dated 18.1.2002.

6. The learned Additional Judge through his judgment dated 18.1.2002 dismissed the revision petition filed by the petitioner and accepted the revision filed by respondent No.2 and it was ordered that Mst. Mangi be handed over to Shankar Lal inter alia holding that by judgment dated 18.1.2002, the accused respondent No. 2 was acquitted by the same court and in that case, the learned Additional Sessions Judge held that Mst. Mangi was major lady and all the charges framed against respondent No.2 were not found proved and he was acquitted. Not only this, he has further observed that during the course of revision on 3.12.2001. Mst. Mangi appeared before the additional Sessions Judge and at that time also Mst. Mangi narrated her age to be 20 years and further desired that she wanted to go with Shankar Lal.

7. Aggrieved from the judgment dated 18.1.2002, this criminal misc. petition has been filed by the petitioner.

8. In my considered opinion, this criminal misc. petition is baseless and deserves to be dismissed at admission stage.

9. The main grievance of the learned counsel for the petitioner is that since Mst. Mangi was minor and respondent No. 2 was not her husband, therefore, her custody should have been handed over to the petitioner who is the father of Mst. Mangi, This argument does not carry any weight because of following reasons;

(i) That in Sessions case, she was found major by the learned Additional Sessions Judge.

(ii) That she has uttered before the Magistrate as well as before the learned Additional Sessions Judge that she wanted to go with the respondent No. 2 Shankar.

(iii) For the sake of argument, if it is held that she is near about 16 years of age, even then wishes of Mst. Mangi should prevail and specially when she is near about 16 years of age as this age can be classified as the age of discretion.

10. Therefore, in all such matters the determining factor is wishes of the person and from this point of view also, if she has desired that she wanted to go and live with respondent No. 2, Shankar Lal, therefore, such wishes should be respected and if the learned Additional Sessions Judge has ordered to hand over Mst. Mangi to respondent No. 2, he has committed no illegality or irregularity in passing that order.

11. Hence, this misc. petition has no force and the order passed by the learned Additional Sessions Judge does not call any interference by this Court and this misc. petition is liable to be dismissed.

For the reasons mentioned above, this misc. petition is dismissed after confirming the judgment dated 18.1.2002 passed by the learned Addl. Sessions Judge No. 3, Udaipur.