

Ani Alias Hanif and ors. Vs. Superintendent, District Jail and Central Jail

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Court : Rajasthan

Decided On : Feb-05-2001

Reported in : 2001CriLJ2103; 2001(2)WLC246; 2002(2)WLN424

Judge : Arun Madan and; K.S. Rathore, JJ.

Acts : Indian Penal Code (IPC) - Sections 147, 148, 149, 307 and 302

Appeal No. : D.B. Civil Writ Petn. No. 3628 of 1999,

Appellant : Ani Alias Hanif and ors.

Respondent : Superintendent, District Jail and Central Jail

Advocate for Def. : P.K. Sharma,; Ramesh Chand Goswami,; Sarpanch Nagesh Son

Advocate for Pet/Ap. : Ali Mohd. Khan, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

1. Ani alias Hanif, Gani alias Gani Mohd., Babu alias Abdul Guarum and Guddu (petitioners) have sought direction to release them on parole on the ground of marriage of their sisters, in this writ petition. The petitioners in Sessions Case No. 81/84 were convicted and sentenced to life imprisonment by the Sessions Judge,

Kota for offence under Sections 147, 148, 149, 307 and 302, IPC under its judgment dated 2-11-1987 which was set aside by this Court in D.B. Criminal Appeal No. 447/87, but in State appeal, the Hon'ble Supreme Court of India maintained their conviction and sentence under its judgment dated 13-1-1997 and in pursuance thereof, they have been undergoing the life imprisonment. Ani has been confined in Open Jail Bharatpur while other petitioner Nos. 2, to 4 in Central Jail Kota.

2. The marriage of their sisters namely Riyana and Anjum were said to have been scheduled to 21-7-1999 and 22-7-1999 and in support of this assertion the petitioners had annexed a printed marriage invitation card along with a handwritten certificate of Sarpanch dated 11-7-1999 as Annexures 1 and 2. The writ petition came up for consideration on 20-7-1999 when Ms. S. Goyal Govt. Advocate appearing for the State submitted that false documents and affidavit have been filed along with application for grant of parole. One week's time was granted to file reply to the writ petition. In reply to the writ petition it has been submitted that upon inquiry made into the facts stated in the writ petition as to the marriage of the said sisters, it was revealed that the petitioners are seven brothers out of whom Hamid had died whereas two brothers Salim and Ishaq have been living in village Ballupura inasmuch as they did not have any said sisters and the girls named as Riyana and Anjum and daughters of Salim (brother of petitioners) and moreover their marriages were not at all arranged or fixed on the alleged dates (supra). In support of aforesaid reply, an affidavit of Rajendra Kumar, Dy. Jail Superintendent, Central Jail Kota so also of Laluram Verma. SHO PS, Shimlya (Kota) was also filed.

3. On 29-7-1999 this Court after having taken into consideration aforesaid facts stated in the writ petition and the reply thereto passed a detailed order observing as under :-

From the reply submitted by the, State it appears that false ground is made out for releasing the petitioners on parole. The petition is supported with the affidavit of Abdul Salim and a certificate is filed by one Ramesh Goswami, Sarpanch of Gram Panchayat Bhora. According to the reply the contents of the petition are false and

are intended to get the benefit of release of the petitioners on parole by misleading the Court.

Under these circumstances, the office is directed to issue notice to Abdul Salim s/o Shri Abdul Razak resident of Ballampura, Police Station Sultanpur, District Kota and Ramesh Goswami, Sarpanch of Gram Panchayat Bhora, Panchayat Samiti Sultanpur, District Kota to remain present in the Court and submit reply to show cause as to why the prosecution should not be ordered against them. They shall be directed to remain present in the Court on 27-8-1999.

4. On 26-10-1999 the office was directed to issue notice for personal presence of aforementioned persons (Abdul Salim and Ramesh Goswami). It appears that the service of notice for personal presence was being avoided though power was filed by Mr. Nagesh Sorai on behalf of Abdul Salim. Hence this Court having taken serious note of the matter directed on 7-12-2000 to issue bailable warrant in a sum of Rs. 10000/- for appearance of aforementioned persons, who appeared on 21-12-2000. Salim has filed reply to show cause notice issued by this Court on 29-7-1999 and similarly Ramesh Goswami has also filed his reply along with their affidavits through their counsel. Ramesh Goswami has been denied to have issued any alleged certificate as to the marriage of daughters of Abdul Salim s/o Abdul Razak or to have attested or signed thereon, rather he pleaded ignorance in the matter. Moreover Salim in this reply so also affidavit stated that he had got the marriage card printed at the advise of All Mohd. Khan Advocate for getting release of his brothers (writ petitioners).

5. Having considered the facts appearing from the writ petition, reply thereto, and reply to the show cause notices issued to Abdul Salim and Ramesh Goswami (Sarpanch) for launching prosecution against them, prima facie we are of the view that firstly the grievance for release on parole of the petitioners sought in this writ petition (does not survive but also on the basis of inquiry as stated in reply to the writ petition, itself, this writ petition has not only become infructuous but also is devoid of any merit. Hence this writ petition shall stand dismissed.

6. However, as regards prosecution of Abdul Salim and Ramesh Goswami (Sarpanch) after having taken into consideration their reply to the show cause

notice and the reply to the writ petition, we are prima facie of the view that all the facts appearing in the writ petition, reply along with annexures thereto, besides reply filed by aforementioned persons and rejoinder thereto require a detailed investigation, inquiry and trial for the commission of the alleged acts and to find out as to who has given false evidence or whether any offence of false evidence against public justice or relating to documents or any other criminal offence has been committed punishable under the Indian Penal Code. This Court invoking extra ordinary jurisdiction cannot be probe into the matter.

7. Therefore, we direct the Deputy Registrar (Judicial) of this Court that certified xerox copy of (1) writ petition along with its annexures including affidavits, (2) reply to the writ petition filed by Shri Ajay Purohit Govt. Advocate dated 20-7-1999 along with its annexed affidavit and documents, (3) orders dated 29-7-1999 and 7-12-2000 (4) replies to the show cause notice for prosecution filed on 8-1-2001 by Abdul Salim and Ramesh Goswami along with supporting affidavits, and (5) counter filed by Mr. Ali Mohd. Khan Advocate, be sent to the Superintendent of Police, Kota to get lodged first information report and get the matter investigated through their subordinate police officers and on the basis of the investigation a charge sheet be filed against the offenders whosoever for commission of their criminal acts punishable under the Indian Penal Code by proceeding in accordance with Code of Criminal Procedure. The investigating agency/officer will be free to interrogate aforementioned persons Abdul Salim Ali Mohd. Khan and Ramesh Goswami (who are directed to appear before the S.P. Kota or the investigating officer on 19-2-2001 and subsequently whenever required, otherwise the SP or the IO will be free to apprehend them according to law) and any other persons for aforeordered investigation.

8. However, it is made clear that the investigating agency and criminal Court of law will not be influenced by any of the observations made in any of the orders of this Court and they will be free to act in accordance with law because we refrain from expressing any opinion on merits of the matter in dispute as to the commission of criminal offence.

9. The Investigating agency is also directed to send to this Court about progress report of the investigation till the charge sheet is filed on competent Court of law against the offenders.

10. A copy of this order be sent to the S.P. concerned for compliance forthwith.

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