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Court : Rajasthan

Decided On : Jan-28-1988

Reported in : 1988(1)WLN469

Judge : M.M. Kasliwal, J.

Appeal No. : S.B. Cr. Misc. Petition No. 30 of 1988

Appellant : Munna

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. Dhankar

Judgement :

N.M. Kasliwal, J.

1. I have heard Mr. Dhankar, learned Counsel for the petitioner and Shri Shrimal, learned Public Prosecutor for the State.

2. This petition under Section 482 Cr. PC has come before this Court in unusual circumstances. Mst. Asharfi who is a married wife of Baney Khan and is also having six small children is expressing her desire to go and live with one Munna resident of Dholpur. Learned Magistrate by his order given a direction to the police Investigating Officer to leave Mst. Asharfi at the house of Banny Khan and to see that no illegal act is done by her. In this petition it has been contended that Mst.

Asharfi is a major woman of more than 30 years of age and she is free to go to any place of her choice. Reliance in support of the above contention is placed on Mst. Gurnamo v. State, 1987 Cr. LR (Raj.) 394.

3. There can be no manner of doubt that a person has a fundamental right of moving to any place of his choice and no restraint can be put on such freedom without authority of law. In the present case, Mst. Asharfi at present has been ordered to stay at her husband's house Baney Khan. The contention of the petitioner is that she does not want to live with Baney Khan and wants to live with the petitioner Munna. Admittedly Mst. Asharfi is the legally wedded wife of Baney Khan and she has six minor children also. There is nothing wrong in the order if she is allowed to remain at her husband's house with her consent. However, in case Mst. Asharfi does not want to live at the house of Baney Khan, she cannot be compelled to do so. From the impugned order passed by the learned Additional Chief Judicial Magistrate, Dholpur, no restraint has been put on the liberty of Mst. Asharfi on her movement. The apprehension of the petitioner is that under the pretext of this order the police authorities and Baney Khan are not permitting Mst. Asharfi to go to the place of her choice. The above apprehension of the petitioner is not well founded. In the order there is no direction given to the police authorities to put any restraint on the movement of Mst. Asharfi. However, it is further made clear that Mst. Asharfi would be free to move to any place of her choice and no restraint would be put on her movement by the police authorities or by Baney Khan or his family members. In case any restraint is now put on the freedom of movement of Mst. Asharfi, she or the petitioner would be free to move an application before the learned Additional Chief Judicial Magistrate, Dholpur for taking appropriate action for setting Mst. Asharfi at liberty. Learned Additional Chief Judicial Magistrate, if such application would be moved, would call Mst. Asharfi and after knowing her desire will take appropriate steps in this regard.

4. With these observations this petition is accordingly decided.