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Court : Delhi

Decided On : Sep-12-2011

Judge : Badar Durrez Ahmed; Veena Birbal, Jj.

Acts : Indian Penal Code (IPC) - Sections 363, 366, 376, 468, 471; Code of Criminal Procedure (CrPC) - Section 195

Appeal No. : W.P.(CRL) No. 1073/2010

Appellant : Manoj Singh

Respondent : State and ors

Advocate for Def. : Mr Pawan Sharma, Adv.

Advocate for Pet/Ap. : Ms Parul Goel, Adv.

Judgement :

1. This writ petition has been filed seeking a writ of Habeas Corpus requiring the production of Kamlesh, who is alleged to be the petitioner's wife. On issuance of notice, Kamlesh had been produced before this court from Nari Niketan as she had been sent there pursuant to an order of the learned Metropolitan Magistrate dated 24.03.2010 in a case registered against the petitioner in Police Station Sangam Vihar under Section 363/366/376 IPC. Thereafter she has been produced before this Court from Nirmal Chhaya, Nari Niketan on different dates. Kamlesh's father, Sh. Ram Khiladi has also been appearing before this court on several

occasions.

2. The learned counsel for the State submitted that Kamlesh had filed a writ petition being W.P.(Crl) No. 1278/2009 wherein it was prayed that FIR No. 312/2009 under Sections 363 IPC registered at Police Station Sangam Vihar in which the present petitioner is an accused, be quashed. The said writ petition, was dismissed by an order dated 02.02.2010 passed by the learned Single Judge of this court. We are informed by Mr Pawan Sharma, the learned counsel for the State, that Kamlesh has preferred a Special Leave Petition against the aforesaid order before the Supreme Court which is pending.

3. In another writ petition being W.P.(Crl) No. 1316/2009 filed on behalf of Kamlesh's father, Sh. Ram Khiladi, a direction was issued, while disposing of the petition, by the Division Bench of this court for carrying out the necessary verification of age of Kamlesh. Pursuant thereto the Investigating Officer of the case got the ossification test of Kamlesh conducted from All India Institute of Medical Sciences. There is a report dated 17.09.2009 given by one Dr Archana, Sr Radiologist of the said hospital wherein the age of Kamlesh has been opined to be between 14.5 to 14.9 years at the time of examination.

4. It is thereafter that the present writ petition came to be filed by the petitioner seeking a writ of Habeas Corpus directing the "release" of Kamlesh from Nirmal Chhaya, Nari Niketan.

5. In the status report dated 27.09.2010 filed on behalf of the respondent - State, it has been indicated that the school leaving certificate given by Sh. Ram Khiladi, who is the father of Kamlesh had been verified from the Principal of Gyan Jyoti Kiran Vidhya Mandir School, Sarsawa Kanshi Ram Nagar, U.P. and it was found that the said certificate had not been issued by the said school as Kamlesh was never a student of that school. The date of birth as per that certificate was 25.12.1995 which would make her less than 16 years old even today. However, that certificate cannot be relied upon.

6. The status report dated 04.10.2010 indicates that pursuant to the verification of the said school certificate which was found to be fake, FIR No. 333/2010 dated

29.09.2010 has been registered under Sections 468/471 IPC at Police Station Sangam Vihar against the said Sh. Ram Khiladi.

7. It is pointed out by the learned counsel for the State that the investigation in respect of the said FIR No. 333/2010 has been completed and the charge sheet has been filed before the learned Metropolitan Magistrate, Saket Court, New Delhi. We are also informed that the learned Metropolitan Magistrate has already taken cognizance and summons were issued and Sh. Ram Khiladi appeared before the said Metropolitan Magistrate on 16.05.2011.

8. At this juncture, the learned counsel for the petitioner, however, has taken the plea that the Metropolitan Magistrate could not have taken cognizance in view of Section 195 Cr.P.C. She drew our attention to Section 195(1)(b)(ii) which makes it clear that no court shall take cognizance of, inter alia, any offence punishable under Section 471 IPC when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate. The learned counsel for the petitioner has submitted that since the school leaving certificate was submitted before this court, it was only this court which could have initiated action against Ram Khiladi by making a complaint in writing. She further submitted that this court did not make any such complaint and, therefore, the Metropolitan Magistrate ought not to have taken cognizance in the matter.

9. Although it is correct that no complaint has been made by this court either by the learned Single Judge or by the Division Bench in respect of the said school certificate, we are of the view that the plea taken by the learned counsel for the petitioner would more appropriately be dealt with either by the learned Metropolitan Magistrate who is seized of the matter or by Sh. Ram Khiladi moving an appropriate application for discharge/quashing before the appropriate court.

10. We now come to the aspect as to whether Kamlesh is to continue to reside at Nirmal Chhaya, Nari Niketan or not. We have had a meeting with Kamlesh in Chambers and she has clearly indicated that she does not wish to reside at Nirmal

Chhaya, Nari Niketan any longer. She has also stated in Chambers as well as in court that she is over 18 years of age. She is quite firm about that. We have already noticed that the school leaving certificate cannot be relied upon. The only other evidence available with us is the bone age report prepared by Dr Archana, Sr Radiologist, All India Institute of Medical Sciences which indicates Kamlesh's age to be between 14.5 to 14.9 years as on 17.09.2009. There are several decisions of the Supreme Court wherein it has been held that while determining the age of a person based upon the ossification report or the medical opinion of a Radiologist, a margin of +/- 2 to 3 years is usually applied. Reference may be made to the Supreme Court decisions in the cases of Jaya Mala v. Home Secretary, J&K; AIR 1982 SC 1297, State of Rajasthan v. N.K.; 2000 (5) SCC 30 and Ram Suresh Singh v. Prabhat Singh; 2009 (6) SCC 681. Thus, if the margin of error of 2 years is given on the higher side, the age of Kamlesh as on 17.09.2009 would be between 16.5 to 16.9 years and, her age as on today would be between 18.5 to 18.9 years. By giving the said benefit, we find that the medical opinion would be in consonance with the assertion made by Kamlesh that she is over 18 years of age as of now.

11. Since she is an adult, and since she does not want to continue to reside at Nirmal Chhaya, Nari Niketan, this court has no option but to direct that she need not continue to reside at Nirmal Chhaya, Nari Niketan. She is, therefore, free to reside wherever she wishes. She need not return to Nirmal Chhaya, Nari Niketan.

12. We may mention that Sh. Ram Khiladi is also present and he has now expressed that he has no objection to the marriage of the petitioner with his daughter Kamlesh. We also note that the present petitioner as well as Kamlesh and her father Ram Khiladi have amicably settled all disputes among themselves. In these circumstances, the learned counsel for the petitioner submitted that no useful purpose would be served by continuing any of the pending proceedings, civil or criminal, and the parties shall co-operate with each other in putting an end to all litigation.

13. The writ petition stands disposed of in accordance with the directions and observations mentioned above.

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