

Khet Singh Vs. State and ors

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Court : Rajasthan Jodhpur

Decided On : Aug-13-2013

Appellant : Khet Singh

Respondent : State and ors

Judgement :

1 DB Habeas Corpus Petition No.10024/2013 25 D.B. Habeas Corpus Petition No.10024/2013 Khet Singh Vs. State of Rajasthan & Ors. DATE OF ORDER:

13. h August 2013. HON'BLE MR. JUSTICE DINESH MAHESHWARI HON'BLE MR. JUSTICE NARENDRA KUMAR JAIN-II Mr. Khet Singh, petitioner present in person. Mr. B.K. Mehar, Government Counsel. Mr. Rajendra Singh SHO, SI, PS Bagra, District Jalore Mr. Mool Chand, Constable (No.193). Ms. Mukesh Lady Constable (No.812), present in person. <><><> The daughter of the petitioner appeared before us alongwith the respondent No.4 yesterday and having regard to the circumstances, the following order was passed directing recording of her statement under Section 164 Cr.P.C. and her medical examination:- The petitioner is present-in-person. The daughter of the petitioner has appeared before us alongwith the respondent No. 4 and has asserted that she has contacted marriage with him; and that she is major in age. It is also submitted that both the respondent No. 4 and the daughter of the petitioner are at present putting in a hotel at Jodhpur. We have gone through the case diary. We have conferred with the daughter of the petitioner in camera and thereafter also permitted her parents to confer with her. Prima facie, the daughter of the petitioner has maintained that she had contacted

marriage with the respondent No. 4 of her own accord and wants to live with him only. However, having regard to the circumstances of the case, we consider it appropriate that before proceeding further in the matter, the requisite parts of investigation be carried out and for that purpose, her statement under Section 164 Cr.P.C. be recorded as also her medical examination for the purpose of age determination be also carried out. The IO concerned is directed to produce the daughter of the petitioner before the Chief Judicial Magistrate, Jodhpur District, Jodhpur for recording her statements under Section 164 Cr.P.C. today itself. Her medical examination be also got carried out at the earliest. The Chief Judicial Magistrate shall send the statement recorded under Section 164 Cr.P.C. in a sealed cover to the Deputy Registrar (Judicial) of this Court to be produced before us tomorrow. The medical report be also obtained by tomorrow. List the matter tomorrow, i.e., 13.08.2013. 2 DB Habeas Corpus Petition No.10024/2013 Today, the Dy. Registrar (Judl.) has placed before us the statement of the daughter of the petitioner recorded by the CJM, Jodhpur District on 12.08.2013. The medical report on age determination has also been forwarded by the Medical Jurist, MG Hospital, Jodhpur. In the medical report, the opinion is that the age of the daughter of the petitioner is between 20 to 22 years. She has also asserted her age to be 22 years. The transfer certificate of the school also appears to be carrying her date of birth as 01.07.1991. Having regard to the material available and having conferred with the daughter of the petitioner, prima facie, she appears to be major and above 20 years of age. Today again on being asked, the daughter of the petitioner has specifically declined to go with the petitioner and has expressed her desire to go with the respondent No.4 only. However, while going through the statement under Section 164 Cr.P.C., we have found her having made rather uncertain and incongruous statement, which does not specify as to whether her marriage in accordance with law has taken place or not; and she has made rather contradictory statement as regards the factum of marriage. Apart from the above, we have noticed rather an intriguing aspect in the case diary that the IO had, on 31.07.2013, proposed filing of the negative Final Report in the matter with the suggestion that after investigation, the allegations in the F.I.R. were found to be incorrect. Such a proposal appears to have been endorsed by the Dy. Superintendent of Police, Circle Jalore on 31.07.2013. 3 DB Habeas Corpus

Petition No.10024/2013 We have posed a question to the IO as regards the allegations pertaining to the offence under Section 380 IPC where the allegation of the petitioner had been of his daughter having taken alongwith her certain valuables too. In response to such queries, the suggestion on the part of the IO is that in view of the statement of the daughter of the petitioner, it was found that she had not taken any such material with her. Such a suggestion or inference stands contradicted by some of the utterances of the daughter of the petitioner herself, who has indicated that she had not taken much of the articles with her but, according to her, she had been carrying with her minimum of the things like ear-rings etc. and has not taken any other thing with her. We are not commenting on the correctness or otherwise of the assertion of any person, be it the petitioner or his daughter, but we are clearly of the view that looking to the nature of allegations made, the negative Final Report in this matter could not have been drawn simply with reference to the statement said to have been made by the daughter of the petitioner under Section 161 Cr.P.C. Upon our expressing serious reservations on the manner of conducting the investigation, the IO submits that he shall now carry out further investigation in the matter in thorough detail so as to reach to the bottom of the facts. So far this petition for a writ of habeas corpus is concerned, looking to what has been observed hereinabove; and looking to the age of the daughter of the petitioner and her clear assertions made before us, she cannot be said to be in any illegal detention and, therefore, she deserves to be set free and at liberty. However, we would hasten to observe that this liberty relates only to this petition 4 DB Habeas Corpus Petition No.10024/2013 for writ of habeas corpus and else, further investigation in the concerned F.I.R. is definitely requisite. For what has been noticed and discussed above, and in the interest of justice, while disapproving the Final Report proposed on 31.07.2013 in F.I.R. No.89/2013, Police Station Bagara, District Jalore, the IO is directed to carry out further investigation in the matter. Looking to the peculiar facts and circumstances of the case, in our opinion, it would be serving the cause of justice if the IO for the purpose of further investigation, takes the daughter of the petitioner as also the respondent No.4 with him and, thereafter, takes appropriate orders in their regard from the concerned Magistrate. Therefore, in the peculiar circumstances of the case, it is directed that the IO alongwith the constable present shall, without any

other proceeding as at present, ensure production of the daughter of the petitioner as also the respondent No.4 before the concerned Magistrate, i.e., ACJM No.2, Jalore at the earliest, preferably today itself. The Magistrate concerned or the link-Magistrate, as the case may be, shall examine the case diary with reference to this order and shall issue further directions as deemed fit and necessary in the facts and circumstances of the case. The original medical report and the statement under Section 164 Cr.P.C. may be given to the IO while retaining the copies thereof on the record of this petition. The petition stands disposed of accordingly. (NARENDRA KUMAR JAIN-II),J . (DINESH MAHESHWARI),J.

cpgoyal/- 5 DB Habeas Corpus Petition No.10024/2013

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