

A.F.R.

Court No. - 66

Case :- CRIMINAL MISC. WRIT PETITION No. - 9396 of 2024

Petitioner :-

Respondent :- State Of Up And 2 Others

Counsel for Petitioner :- Manoj Kumar Rajbhar, Surendra Mohan Mishra

Counsel for Respondent :- G.A., Ravindra Prakash Srivastava

Hon'ble J.J. Munir, J.

Hon'ble Arun Kumar Singh Deshwal, J.

1. Learned counsel for the petitioners is permitted to implead the S.P. Siddharthnagar, as a party respondent, to this petition, during the course of the day.

2. The first petitioner is an adult woman aged about 21 years. It is alleged that the second petitioner is an adult man. They have married according to their freewill and wish. Learned counsel for the petitioners has pointed out that the first petitioner's Secondary School Certificate issued by the Maharashtra State Board is on record, which shows her date of birth as 25.04.2003. She is, therefore, now aged 21 years. Apparently, she has married the second petitioner on 17.04.2024 according to Muslim rites, regarding which there is a marriage certificate issued by the Telangana State Waqf Board dated 25.04.2024. It has been issued by the Chief Executive Officer of the said Board.

3. Learned counsel for the petitioners points out that not only the Police went after the second petitioner to arrest him in connection with the impugned FIR, but also have taken the first petitioner into unlawful custody and handed her over to her uncle, respondent no.3, one _____, son of _____. The first petitioner was produced before the Magistrate by the

Police and her statement under Section 164 Cr.P.C. recorded. In her statement, the prosecutrix has categorically said that she is 21 years old and passed her Class XII Examination. She has also said that on 08.04.2024, she left home of her own at nine o' clock in the evening and went to a place called *Supa*. There, at her bidding, one _____ as waiting in a white coloured Car and she went along with him of her freewill to Hyderabad. Once in Hyderabad, she had phoned up the second petitioner, _____ and called him over. The two stayed in a hotel on 17.04.2024 and contracted a marriage there. It is stated before the Magistrate also that the first petitioner's uncle, _____ has implicated the second petitioner in a false case and is extending death threats to her.

4. Mr. Ravindra Prakash Srivastava, learned Counsel who appears on behalf of respondent no.3, when confronted with the statement, stated that he does not want to file a counter affidavit.

5. Mr. Shashi Shekhar Tiwari, learned AGA, who has produced the case diary carrying the statement of the prosecutrix under Section 164 Cr.P.C. also states that he had nothing further to add. The case diary shall be retained on record and made part of it.

6. Admit.

7. Heard forthwith.

8. Heard Mr. Akhilesh Kumar Mishra, Advocate holding brief of Mr. Surendra Mohan Mishra, learned counsel for the petitioners, Mr. Ravindra Prakash Srivastava, learned counsel for respondent no.3 and Mr. Shashi Shekhar Tiwari, learned AGA for the State.

9. Upon hearing learned counsel for the parties, we find that this is a case where the petitioners are adults and have married according to Muslim rites on 17.04.2024, regarding which, there is an authoritative certification by the

Telangana State Waqf Board through a certificate dated 25.04.2024. A copy of the same has been annexed at page no.26 of the paper book. The first petitioner's mark-sheet clearly establishes that she is an adult much above 18 years. Even if the petitioners have not married each other, no one can restrain an adult from going anywhere that he/she likes, staying with a person of his/her choice, or solemnizing marriage according to his/her will or wish. This is a right which flows from Article 21 of the Constitution.

10. *Ex facie*, therefore, the impugned FIR and all proceedings taken pursuant thereto are manifestly illegal and *ultra vires*. The first petitioner's uncle (father's brother) has absolutely no right to lodge the impugned FIR or as petitioner no.1 has said, threaten her in any manner. This matter has a slightly serious angle to it, because petitioner no.1 in her statement under Section 164 Cr.P.C., has expressed an apprehension that she would be done to death. Honour killing in such matters is not an unknown phenomenon and it is very important to save a human life from extinction on account of misguided emotions or notions of morality. This issue is quite independent of the issue of matrimony that the parties have entered into. No citizen can kill another for holding a different opinion and it is the foremost duty of the State to preserve human life.

11. This Court is dismayed to find that after the prosecutrix made a statement before the Magistrate on 07.05.2024 fearing for her life at the hands of respondent no.3, the Magistrate has reportedly sent her back home to Even otherwise, an adult cannot be sent into custody of another and forced to stay with him/her.

12. This Court is further constrained to observe that the learned Magistrate before whom the prosecutrix said that she feared for her life because had threatened to do her death was duty bound to get an FIR registered against besides taking adequate measures to secure the safety and life of the first petitioner. The learned Magistrate did

nothing. The statement under Section 164 Cr.P.C. is recorded in the case diary. Therefore, the Superintendent of Police, Siddharth Nagar and the Station House Officer, Police Station-Bansi, District-Siddharth Nagar are equally answerable for not taking action against by registering an appropriate FIR and also safeguarding the life and security of the first petitioner.

13. In the circumstances, therefore, we may notice that in **State of Haryana & Others Vs. Bhajan Lal And Others** reported in **1992 Supp (1) SCC 335**, the seven criteria that were laid down, on foot of which an FIR may be quashed, are mentioned in paragraph no.102 of the report. Paragraph no.102 of the report in **Bhajan Lal (supra)** reads as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do

not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

(emphasis by Court)

14. The third criteria where an FIR may be quashed is "where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose commission of any offence and make out a case against the accused." The third criteria clearly applies in this case, inasmuch as, the first petitioner, during investigation when produced before the Magistrate said in her statement under Section 164 Cr.P.C. that the allegations in the FIR were absolutely without basis.

16. In the circumstances, we **allow** this writ petition and **quash** the impugned FIR giving rise to Case Crime No.82 of 2024, under Section 363 IPC, Police Station-Bansi, District-Siddharth Nagar.

17. In addition, we issue a *mandamus* to the S.P. Siddharthnagar and the Station House Officer, Police Station-Bansi, District-Siddharthnagar to

ensure that the first petitioner goes wherever she likes and stays with whomsoever she wants, without any hinderance from or any other member of her family. It will also be the duty of the S.P. Siddharthnagar and the Station House Officer, Police Station-Bansi, District-Siddharthnagar, to ensure that Mohd. Jaheer or any other member of the first petitioner's family, do not harm her, in any manner, whatsoever.

18. In the event, any harm or injury comes to the first petitioner then the S.P. Siddharthnagar and the Station House Officer, Police Station-Bansi, Siddharthnagar, would be personally answerable to this Court.

19. The Registrar (Compliance) is directed to communicate this order to the Superintendent of Police, Siddharthnagar and the Station House Officer, Police Station-Bansi, Siddharthnagar through the Chief Judicial Magistrate, Siddharthnagar by Monday.

Order Date :- 7.6.2024
S.Chaurasia

(Arun Kumar Singh Deshwal, J.) (J.J. Munir, J.)