

**Court No. - 43**

**Case :-** CRIMINAL MISC. WRIT PETITION No. - 7726 of 2020

**Petitioner :-** Firoz

**Respondent :-** State Of U.P. And 3 Others

**Counsel for Petitioner :-** Rajesh Kumar Srivastava, Jai Prakash Rao

**Counsel for Respondent :-** G.A.

**Hon'ble Pankaj Naqvi, J.**

**Hon'ble Vivek Agarwal, J.**

1. Heard Shri R.K. Srivastava, learned counsel for the petitioner/s and Sri Deepak Mishra, learned A.G.A.

2. We in view of office report dated 05.10.2020 deem service as sufficient on respondent nos.4 and 5.

3. This writ petition has been filed by the petitioners to issue a writ, order or direction in the nature of certiorari quashing the impugned FIR dated 07.03.2020 registered as case crime no.0057 of 2020 under Section 366 IPC, Police Station-Kolhui, District-Maharajganj.

4. Learned counsel for the petitioner/s submits that as per the allegations in the FIR, respondent no.5 is reported to be major as she is studying in B.A., she entered into a matrimonial alliance with petitioner, are living together as a legally wedded couple, prosecution is liable to be quashed as no offences are made out.

5. The learned A.G.A is unable to rebut the above submissions.

6. The essential ingredients of Section 366 IPC are as under:

**(i) Kidnapping or abducting any women,**

**(ii) Such kidnapping or abducting must be,**

**(a) with intent to compel the women or knowing it to be likely that she will be compelled to marry any person against her will,**

**(b) or that she may be forced or seduced to illicit intercourse,**

Second part of the section requires-

(i) Criminal intimidation or abuse of authority or any other method of compulsion,

(a) to induce any women to go from any place,

(b) with intention or knowingly,

(c) to force or to seduce the women to illicit intercourse with another person.

7. The FIR lodged by the respondent no.4, Smt. Mehtabunisha W/o Late Tabrak Ali.

8. The Apex Court while reiterating its earlier settled view in **Shafin Jahan v. Asokan K.M** in **Criminal Appeal No.366/2018**, arising out of **S.L.P (Cr.) No.5777 of 2017**, decided on April 9, 2018, held as under:

"78. The principles which underlie the exercise of the jurisdiction of a court in a habeas corpus petition have been reiterated in several decisions of the Court. In *Gian Devi v Superintendent, Nari Niketan, Delhi*<sup>31</sup>, a three-judge Bench observed that where an individual is over eighteen years of age, no fetters could be placed on her choice on where to reside or about the person with whom she could stay:

"...Whatever may be the date of birth of the petitioner, the fact remains that she is at present more than 18 years of age. As the petitioner is sui juris no fetters can be placed upon her choice of the person with whom she is to stay, nor can any restriction be imposed regarding the place where she should stay. The court or the relatives of the petitioner can also not substitute their opinion or preference for that of the petitioner in such a matter."

79. The ambit of a habeas corpus petition is to trace an individual who is stated to be missing. Once the individual appears before the court and asserts that as a major, she or he is not under illegal confinement, which the court finds to be a free expression of will, that would conclude the exercise of the jurisdiction. In ***Girish v Radhamony*** a two judge Bench of this Court observed thus:

"3...In a habeas corpus petition, all that is required is to find out and produce in court the person who is stated to be missing. Once the person appeared and she stated that she had gone of her own free will, the High Court had no further jurisdiction to pass the impugned order in exercise of its writ jurisdiction under Article 226 of the Constitution."

80. In ***Lata Singh v State of U.P.***, Bench of two judges took judicial notice of the harassment, threat and violence meted out to young women and men who marry outside their caste or faith. The court observed that our society is emerging through a crucial transformational period and the court cannot remain silent upon such matters of grave concern. In the view of the court:

"17...This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut-off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple is not harassed by anyone nor subjected to threats or acts of violence, and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law."

81. Reiterating these principles in *Bhagwan Dass v State (NCT OF DELHI)*, this Court adverted to the social evil of honour killings as being but a reflection of a feudal mindset which is a slur on the nation.

82. In a more recent decision of a three judge Bench in *Soni Gerry v Gerry Douglas*, this Court dealt with a case where the daughter of the appellant and respondent, who was a major had expressed a desire to reside in Kuwait, where she was pursuing her education, with her father. This Court observed thus:

"9...She has, without any hesitation, clearly stated that she intends to go back to Kuwait to pursue her career. In such a situation, we are of the considered opinion that as a major, she is entitled to exercise her choice and freedom and the Court cannot get into the aspect whether she has been forced by the father or not. There may be ample reasons on her behalf to go back to her father in Kuwait, but we are not concerned with her reasons. What she has stated before the Court, that alone matters and that is the heart of the reasoning for this Court, which keeps all controversies at bay.

10. It needs no special emphasis to state that attaining the age of majority in an individual's life has its own significance. She/He is entitled to make her/his choice. The courts cannot, as long as the choice remains, assume the role of *parens patriae*. The daughter is entitled to enjoy her freedom as the law permits and the court should not assume the role of a super guardian being moved by any kind of sentiment of the mother or the egotism of the father. We say so without any reservation."

83. These principles emerge from a succession of judicial decisions. Fundamental to them is the judgment of a Constitution bench of this Court in *Kanu Sanyal v District Magistrate, Darjeeling*.

9. A perusal of the aforesaid judgment of the Apex Court manifests that the Apex Court has consistently respected the liberty of an individual who has attained the age of majority.

10. We are of the view that since respondent no.5 was a major on the date of occurrence, on the allegations made in the FIR, she had voluntarily solemnized a marriage with petitioner, no offence under Section 366 I.P.C is made out.

11. The writ petition succeeds and is **allowed**. The FIR dated 07.03.2020 as well as all consequential proceedings are hereby quashed.

**Order Date :- 6.10.2020**

Ashutosh