

**Equivalent Citation:** 2015(3)ADJ350

**IN THE HIGH COURT OF ALLAHABAD**

Criminal Misc. Application No. 50877 of 2014

Decided On: 23.01.2015

**Gajraj Singh Vs. State of U.P.**

**JUDGMENT**

**Ramesh Sinha, J.**

1. Heard Sri Ajay Vashistha, learned counsel for the applicant and Sri I.B. Yadav, learned AGA for the State. The present application under Section 482 Cr.P.C. has been filed for quashing of the impugned order dated 26.5.2014 passed by Special Judge/Additional Sessions Judge, Court No. 1, Kasganj, in S.T. No. 31 of 2014 (State v. Ajeet and others), under Sections 363, 366 IPC and 3/4 Protection of Children from Sexual Offence Act, 2012, P.S. Sahawar, District Kasganj.

2. The fact as emerges out from the record is that the First Information Report lodged by applicant who is father of the victim girl on 23.2.2014 which was registered as Case Crime No. 52 of 2014 under Sections 363, 366 IPC, P.S. Sahawar, District Kasganj with an allegation that on 23.2.2014 her minor daughter whose date of birth is 18.8.1996, was enticed away by one Ajit son of Rajvir Singh alongwith Rajveer and Virendra son of Deen Dayal. On 20.5.2014 daughter of the applicant was recovered from the possession of co-accused Ajit and charge-sheet has been submitted in the case against Ajit only under Section 366 and 363 and 3/4 **POCSO** Act. The applicant thereafter moved an application before the Special Judge/Additional Sessions Judge Court No. 1, Kasganj to release his minor daughter and simultaneously as he is her natural guardian being father and on 20.5.2014 girl be given in his custody. The accused Ajit also moved an application on 24.5.2014 for the custody of the victim on the ground that he was her husband as both of them have married on 3.3.2014. The accused Ajit as well as the victim girl filed a writ petition being Civil Misc. Writ Petition No. 1473 of 2014 which was disposed of by this Court on 10.3.2014 with a direction that restraining any person from interfering in their matrimonial life as she is major. The Court rejected the application of the applicant as well as the accused Ajit and come to the conclusion that the girl was minor who was sent to Nari Niketan and further order that when she attain majority, the victim girl should be released. Hence the present petition has been filed by the applicant for quashing of the impugned order passed by the Court below.

3. It has been submitted by learned counsel for the applicant that the applicant is father of the victim girl and she is minor as per the high school certificate her date of birth is 18.8.1996 and he being a natural guardian the custody of the victim girl should be given to him.

4. Learned AGA has tried to justify the order passed by the trial Court rejecting the application of the applicant as well as accused has opposed the prayer for quashing of the order and stated that said order has been passed by the Court below in accordance with law.

5. Considering the submissions advanced by learned counsel for the parties and perused the report, the claim of the applicant that her daughter was a minor girl as per the high school certificate her date of birth is 18.8.1996 and at the time of incident she was 17 year six months and 5 days. He further submits that as per the medical report the girl has also found to be less than 18 years on the date of incident but she, as per her statement recorded under Section 164 Cr.P.C. stated her age is 21 years and further stated that she had voluntarily gone with the applicant and on her own sweet will marriage with accused Ajit and the said fact was also informed by her parent that she would marry with Ajit Singh but her parents were against the said marriage. In her statement she also stated that Ajit had not enticed her away and she has voluntarily accompanied with Ajit. The Court below while deciding the custody of the victim on the application filed by the applicant as well as Ajit Singh had also tried to know wish of the victim who has stated that she wants to go with her husband Ajit Singh but finding her to be minor, it found proper for sending her Nari Niketan till she attained majority. It is well-settled law that a minor cannot be confined in Nari Niketan against her wishes. In this regard, the Judgement of this Court in the case of Smt. Parvati Devi v. State of U.P. and another, 1992 All CrL C 32, in which it has been observed by the Apex Court that the confinement of a victim in Nari Niketan against her wishes, cannot be authorised under any provisions of the Code. There is no such legal provision wherein the Magistrate has been authorized to issue directions that a minor female child shall, against her wishes, be kept in Nari Niketan.

6. In the case of Mrs. Kalyani Chaudhory v. State of U.P. and others, 1978 Cri.L.J. 103, a Division Bench of this Court held that no person can be kept in protective home unless she is required to be kept there either in pursuance of the Suppression of Immoral Traffic in Women and Girls Act or under some other law permitting her detention in such a Home.

7. In the case in hand, the question of the applicant being a minor is irrelevant as even a minor cannot be kept in protective home against her will. The applicant may hardly be said that she is not a women or girl which come within a preview of Suppression of Immoral Traffic in Women and Girls Act. Thus, it is clear cut case of illegal confinement of minor against her wishes violating fundamental right. Hence, the impugned order dated 26.5.2014 passed by the Special Judge/ Additional Sessions Judge, Court No. 1, Kasganj is hereby quashed and it is directed the Superintendent of Nari Niketan, Mathura to release the victim Dolly daughter of Gajraj Sing be set at liberty to go in according to her own wish. The present application stands disposed of.