

DE JURE NEXUS LAW JOURNAL

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2nd Year, BA LL.B. (Hons.)**IN THE SUPREME COURT OF INDIA****Criminal Appeal No. 366 of 2018**

(2018) 16 SCC 368

(BEFORE DIPAK MISRA, C.J. AND A.M. KHANWILKAR AND DR D.Y.
CHANDRACHUD, JJ.)**IN THE MATTER OF:**

SHAFIN JAHAN

.....APPELLANT

VERSUS

ASOKA K.M. AND OTHERS

.....RESPONDENTS

DECIDED ON APRIL 9, 2018

1. INTRODUCTION

India is one of the largest democracies in the world which is backed up by the most detailed Constitution. Our Constitution lays down various duties and functions of the Central and State Governments and also guarantees every citizen some basic fundamental rights that no entity or institution can take away. Liberty to make choices is one of the most fundamental rights our country has nourished and no matter which religion or caste we are from, the State cannot interfere and exploit such freedom. But things went differently in this case when a girl decided to marry a person of a different religion and a stand off between the couple and the girls' parents engraved a historic judgement given by the Supreme Court.

2. FACTS OF THE CASE

- a) Akhila alias Hadiya, a 24-year girl, was pursuing Bachelor of Homeopathic Medicine and Surgery from Shivaraj Homeopathic Medical College, Salem in Tamil Nadu.

- b) On 6th January 2016, Hadiya had not returned home and had run away somewhere. Her father Asokan, who found that not only her daughter was missing but also changed her religion, filed a complaint before SP Malapuram District, but there was no progress made by the police in the investigation of the matter. Asoka then filed a writ petition of habeas corpus in the High Court of Kerala.
- c) During the course of the proceedings, Hadiya had appeared before the court and pleaded that she has converted to Islam by her own choice and does not want to return to her parents. The Court permitted her to stay at Sathyasarani Education Charitable Trust in Malappuram, Kerala.
- d) After hearing all the parties, the Court, on 25th January 2016, had held that Hadiya was not under any illegal confinement and was staying in the institution on her own wish and will. The petition was disposed effectively.
- e) Almost seven months later, Asoka, Hadiya's father, filed a second writ petition alleging that his daughter had been subjected to forced conversion and was likely to be transported out of the country.
- f) Hadiya defended herself by stating that she had no passport and the allegations that she would likely to go Syria was incorrect.
- g) However, on 26th January 2016, Hadiya had informed the court that she had entered into marriage with Shafin Jahan, who was employed in the Gulf and was willing to take Hadiya out of India.
- h) The High Court, after hearing all the parties, believed that Hadiya was a female in her twenties, which is a vulnerable age. It opined that a girl aged 24 years is weak and vulnerable and capable of being exploited in many ways. As per Indian tradition, the custody of an unmarried daughter is with the parents, until she is properly married. Therefore, the court invoked the parens patriae jurisdiction and believed it was the duty of the court to ensure that a person under such a vulnerable state is not exposed to further danger.
- i) Therefore, considering the situation, the Court passed the following orders: -
- i. Hadiya should be transported to a hostel at Ernakulam with a direction that she is not provided the facility of possessing or using a mobile phone.
 - ii. An investigation was ordered into the education, family, background, antecedents of Shahin Jahan.
 - iii. The marriage between Hadiya and Shafin was declared null and void.

- j) Aggrieved by the decision of the High Court, Shafin approached the Hon'ble Supreme Court challenging the said orders.

3. ISSUES BEFORE THE COURT

- a) Whether the decision of the High Court had abused the Habeas Corpus jurisdiction and unlawfully restraining Hadiya?
- b) Can the High Court invoke the doctrine of Parens Patriae Jurisdiction in this case?
- c) Whether the decision of the High Court to annul the marriage of Hadiya and Shafin valid?
- d) Whether an investigation should be carried out against the education, family, background, antecedents of Shahin Jahan?

4. JUDGEMENT

a) THE HIGH COURT HAS ABUSED THE WRIT OF HABEAS CORPUS

- i. The Supreme Court was appalled by the decision of the High Court in this matter and believed that the High Court has been erroneously guided by some kind of social phenomenon.
- ii. Habeas Corpus is meant to obtain production of an individual and to provide an expeditious and effective remedy against illegal detention, for such detention affects the liberty and freedom of the person who is in confinement.
- iii. The pivotal purpose of Habeas Corpus is to see that no one shall be deprived of his/her liberty without sanction of law and therefore it becomes the duty of the state to see that such right is not suppressed in any manner whatsoever.
- iv. The Court relied on *Kanu Sanyal v DM, Darjeeling*,¹ in which the constitutional bench opined that Habeas Corpus deals with the machinery of justice and not a substantive law. The object of the writ is to secure the release of a person who is illegally restrained of his liberty.
- v. The Court also relied on the *Ummu Sabeena case*,² in which the court rules that the principle of habeas corpus has been incorporated where the judges owe a duty to safeguard the liberty not only of the citizens but also of all persons within the territory of India.

¹ Kanu Sanyal v DM, Darjeeling, (1973) 2 SCC 674

² Ummu Sabeena case (2011) 10 SCC 781

- vi. The Court cited the case of *Girish v Radhamony*,³ in which the court observed that in a habeas corpus petition, all that is required is to find out and produce 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.
- vii. In the present case, the writ of Habeas Corpus was absolutely unnecessary. If there was any criminal aspect in the case, it was the duty of the law enforcement authorities to do the needful but as long as no individual has been booked under law, there was no need to suppress Hadiya's liberty to reside wherever she wants to be.

b) THE HIGH COURT'S DECISION TO INVOKE PARENS PATRIAE JURISDICTION WAS INVALID

- i. Parens patriae in Latin means "parent of the nation". In law, it refers to the power of the State to intervene against an abusive or negligent parent, legal guardian or informal caretaker, and to act as the parent of any child or individual who is in need of protection.
- ii. Where a person is mentally ill and is produced before the court in a writ of habeas corpus, the court may invoke the aforesaid doctrine. On certain other occasions, when a girl who is not a major has eloped with a person and she is produced at the behest of habeas corpus filed by her parents and she expresses fear of life in the custody of her parents, the court may exercise the jurisdiction to send her to an appropriate home meant to give shelter to women where her interest can be best taken care of till she becomes a major.
- iii. The Court relied on *Soni Gerry v Geery Douglas*,⁴ the court held that there needs no special emphasis to state that attaining the age of majority in an individual's life as 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.
- iv. The court also relied on the Supreme Court judgement of the United States of America, in *Heller v Die*,⁵ where it was said that the state has a legitimate interest

³ (2009) 16 SCC 260

⁴ *Soni Gerry v Geery Douglas* (2018) 2 SCC 197

⁵ 1993 SCC OnLine US SC 97

under its parens patriae powers in providing care to citizens who are unable to care for themselves.

- v. The court also cited a judgement by the Supreme Court of Canada in *E. v Eve*,⁶ where the court held that the Parens Patriae jurisdiction is exercised by the courts to protect those who cannot care for themselves. It must at all times be exercised with great caution, a caution that must increase with the seriousness of the matter.
- vi. However, the courts cannot invoke the doctrine in each and every case. In the present case there is nothing to suggest that Hadiya suffers from any kind of mental incapacity that makes her vulnerable. She was absolutely categorical in her submissions and unequivocal in the expression of her choice.

c) THE HIGH COURT'S DECISION TO ANNUL THE MARRIAGE WAS UNCONSTITUTIONAL

- i. The exercise of jurisdiction to declare the marriage null and void, while entertaining the petition for habeas corpus, was an excessive judicial power exercised by the High Court.
- ii. Muslim Law recognises the right of adults to marry by their own free will. The conditions of a valid Muslim marriage are: (i) Both the individuals must profess Islam; (ii) Both should be the age of puberty; (iii) There has to be an offer and acceptance and two witnesses must be present; (iv) Dower and Mehar; and (v) Absence of a prohibited degree of relationship.
- iii. Article 21 of the Constitution gives the right to marry a person of one's choice. This right cannot be taken away except through a law which is substantively and procedurally fair, just and reasonable. Article 16 of the Universal Declaration of Human Rights highlights the fundamental importance of marriage as an incident of human liberty.
- iv. Non-acceptance of her choice would simply mean creating discomfort to the constitutional right by a constitutional court which is meant to be the protector of fundamental rights. The duty of the court is to uphold the right and not to abridge the sphere of the right unless there is a valid authority of law.
- v. The actions of Asoka of not allowing his daughter to make her own choice in adhering to faith and acting as an impediment in her marriage reflects the idea of

⁶ 1986 SCC OnLine Can SC 58

patriarchal autocracy and self-obsession that a female is a chattel.

- vi. The High Court, on the other hand, has completely erred by unnecessarily considering the validity of the marriage in a Habeas Corpus writ petition and annulling the marriage between Hadiya and Shafin.

d) INVESTIGATION CAN BE DONE BY THE NATIONAL INVESTIGATION AGENCY

- i. The Supreme Court agreed that the investigation should be conducted by the National Investigation Agency in respect of any matter of criminality.
- ii. However, the Court reiterated that the agency should not encroach upon the marital status between Shafin and Hadiya.

5. COMMENTS

The fundamental value that our country has is the freedom to live without any hassle or harassment and without any discrimination on the basis of religion, race, caste, sex or place of birth. This value was not suddenly dropped from heaven but was earned with decades of the workings of our freedom fighters who had sacrificed their blood and life for the freedom of this country. It is still egregious to contemplate the fact that our society has learned very little from the earned freedom enshrined in our Constitution and is still stuck within the bounds of a patriarchal society. What's more appalling is that the Kerala High Court, which is supposed to be the protector and the defender of the Constitution, also followed the same path of a flawed patriarchal belief by refusing to entertain Hadiya's choice of spouse and then restraining her in a bubble, that this society very much cherishes and doesn't want to get out from. Hon'ble Supreme Court of India was very much right in pointing the High Court's flawed and incoherent approach of combining religion with a person's choice to marry. The State's responsibility is to uphold the rule of law and not interpret the rule as it wishes. Even if Hadiya marries a person who has a suspicious background, in no way the State could interfere in their marriage and decide what is good or bad for her life. She is an adult, who is of sound mind, and has fully consented to commit herself in the marriage with Shafin. Therefore, the Supreme Court's assertions made in this case have become of the most historic judgements in the Indian Judiciary by resonating and echoing the liberty and freedom of every citizen in this country.

6. CONCLUSION

Respecting each other's culture and background is an inherent feature of our country and should never be severed for any political benefit. Therefore, it is essential to treat every individual, irrespective of his/her background and culture, with equal respect in the eyes of law. That is the inherent value that this country stands for and should always be sustained in order to cherish equality and equity before law.



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