

SHAFIN JAHAN v. K.M. ASHOKAN

CRIMINAL APPEAL NO. 366 OF 2016

ARISING OF S.L.P (CrL.) NO. 5777 OF 2017

-JAY GHAJBIYE

Court: Supreme Court of India

Bench: Dipak Mishra, A.M. Khanwilkar

Date of delivery: 8th March, 2018

Relevant sections: Art 226 of Constitution of India

FACTS OF THE CASE: -

Ms. Akhila alias Hadiya, the only child of Shri Ashokan K.M. and Smt. Ponnamma, aged around 26 years graduated from Shivraj Homeopathic Medical College, Salem, Tamil Nadu, with a degree in Homeopathic Medicine, “BHMS (Bachelor of Homeopathic Medicine and Surgery)”.

When she was in the college, she initially stayed in the college hostel and then began living in a rented apartment close to her college along with 5 other students including Jaseena and Faseena, one of the Aboobacker’s daughters. They used to access each other’s houses during their college vacations. On 6 December 2015 Hadiya arrived at her house after being informed about her paternal Grandfather’s demise, and at that point, Ashokan’s family and relatives found certain shifts in her actions as she was hesitant to engage in the rituals conducted concerning her grandfather’s funeral.

Later she with Jaseena and Faseena went to Salem for her internship. Ashokan got a telephonic call from one of Hadiya’s mates on 6 January 2016, saying that Hadiya was at college wearing a “Purdah”. Ashokan was further told that Hadiya was influenced to reform her belief by another. Ashokan fell ill after

getting the information. Smt. Ponnamma, Ashokan's wife, called Hadiya and told her about her father's condition. Around 8 p.m. she left with Jaseena to Salem on 6 Jan 2016, but Hadiya did not reach her father's house. Later Ashokan went to investigate Hadiya and from one Ms. Archana, he discovered that Hadiya was staying at the Aboobacker's house.

Ashokan then approached Aboobacker to meet Hadiya. Aboobacker assured Ashokan to get Hadiya into Ms. Archana's home, an acquaintance of Hadiya, but it never occurred and Ashokan was later informed that Hadiya had fled from Aboobacker's residence. Ashokan lodged a report to S.P., district of Malapuram. As the police could not make progress in solving the event, he lodged a "writ petition of Habeas Corpus" before the Division Bench of the Kerala High Court. In this case for entry on 14 January 2016, the division bench ordered the government pleader to seek guidance on the acts taken to Ashokan's complain. Hadiya subsequently appeared via a counsel on 19 January 2016 as the matter was subject to further scrutiny and lodged an appeal for impleadment. The proposal was approved and Hadiya was applied for as a respondent. An affidavit was lodged on her behalf on 26 November 2016 detailing, among other items, the evidence and conditions in which she fled her house. The foregoing affidavit claimed that she had conveyed the actual situation to her parents and the Director-General of Police via recorded document. Besides, she and Zainaba, president of the "Popular Front of India (PFI) women's wing National Women's Front (NWF)", submitted a Writ Petition requesting safety from police violence.

Hadiya has accepted Islam and married a Muslim person Shafin Jahan who is an influential leader of "PFI" associated "Social Democratic Party of India (SDPI)". Her family claimed she was indoctrinated and her marriage was coerced but Hadiya insisted that she did so on her free will.

ISSUES RAISED: -

1. Whether Mr. Ashokan, the petitioner had a justification to file a writ of "Habeas Corpus"?
2. Whether the high court of Kerala had the competence to rule on issues that were not the determining factor in the immediate case?

3. Whether a boy or a girl older than 21 and 18 needs to seek prior consent from their parents before marriage is concluded?
4. If the High Court may exercise habeas corpus according to Article 226?
5. Was NIA investigation required?

ANALYSIS: -

- 1) The High Court's judgment contradicts Article 21 of the Constitution of India, which provides the "freedom of marriage" to all adults as well as the other privilege to confess and follow any religion of one's choice and because it revoked the marriage of two people of a sane mind.
- 2) Also, the courts can exercise their "Parens Patrie jurisdiction" under particular cases. The current situation wasn't the one where it could be applied.
- 3) The writ of habeas corpus would be permitted where there is an arbitrary arrest of some individual against his/her will and the same individual should be brought before the judge. In the current context, Hadiya who was claimed to be violently remanded had come before the trial as and when the court requested.
- 4) She was not held against her consent. In contrast, the decision of the court to hold her obligatory stay with her parents was a breach of her freedom and was a case of arbitrary incarceration.
- 5) The present case was one of the extreme cases of love jihad and therefore secrecy and protection should be preserved in the camera proceedings.
- 6) The appellant attempted to accompany Hadiya to Syria. He indoctrinated her when she encountered him on an online forum

which was called Nikah and was at the very time kept away from her family.

- 7) She is frail and insecure, and the choice to marry without the permission of her parents is not appropriate.
- 8) Through practicing “the jurisdiction of Parens Patriae”, the court shall require Akhila to live with her family as they are her faithful and her only well-wishers.
- 9) Marriage may, therefore, be considered null and void since it is rendered through undue force.
- 10) Habeus Corpus is an order given by the Supreme Court according to “Article 32 of the Constitution of India” requiring the presence of an official to display the facts collected or obtained and those people incarcerated or held in custody by it.
- 11) Under section 226, the same control is also vested in the high courts. While it is not the proof of the aforementioned situations, it is the abstention of an individual from doing anything detrimental to the rule of law in reality.
- 12) Unlike other writs, the writ of “Habeus Corpus Ad Subjiciendum” is a privilege, i.e. an exceptional remedy authorized shown in cases where ordinary legal remedies are utterly irrelevant or insufficient. This is a writ of privilege and “ex debito justitiate” is issued.
- 13) The statutory form of Habeus Corpus shall only be issued by common law and by legislation on appropriate grounds for the question. The application should not be rejected solely as an appropriate solution will challenge the legitimacy of the incarceration.

- 14) He also stated that “any person is entitled to institute proceedings to obtain a writ of Habeus Corpus to liberate another from illegal imprisonment and any person who is legally entitled to the custody of another may apply for the writ to regain custody.”
- 15) In this regard Mr. Ashokan submitted the second writ petition before the Kerala High Court and lodged the Habeus Corpus writ to incarcerate his daughter Hadiya, to stop her from departing to Syria, reportedly, under “love jihad”. The marriage between Hadiya and her husband Shafin Jahan was astonishing for all in the courtroom when she discussed it during the trial.
- 16) This was the reason for her father’s worry, as it was a justification to suspect that Hadiya was unlawfully detained and pressured to flee the country. The SC stated that the High Court had the authority to propose a ruling “declaring the marriage null and void” by the authority vested on it by Article 226 to avoid her from leaving the country.
- 17) In dictating terms, the court upheld its “parens patriae jurisdiction” over what should be done by a major party. The Supreme Court in the provisional order by “D. Y. Chandrachud J.” has shared its disappointment with the conduct of the high court bench, where it abused its judicial authority by utilizing the intrinsic forces.
- 18) The High Court had no basis for annulling the marriage in the Habeus Corpus case. Justice D. Y. Chandrachud claimed that the authority of the court over the matter terminates until an individual in custody for whom a petition was lodged is brought before the Court of its age- majority and his ability to do so reflects his

independent will, which is safeguarded by the fundamental rights provided for in the Constitution.

19) The High Court will also secure these freedoms. It was also unjustified in its conduct to revoke the marriage by breaking the authority in this situation. The high court has reflected and voiced its opinion on the situation of family law.

20) While leaving the marriage null, the High Court of Kerala stated that marriage is an essential human choice and therefore should be made along with family.

CONCLUSION: -

The Supreme Court set away from the ruling of the High Court of Kerala that had cancelled Hadiya and Shafin Jahan's marriage and thereby reinstated marriage. The Court also pointed out that the NIA's inquiry of every criminal matter would proceed but without any involvement in marriage. A 3-judge bench of "Justice Dipak Mishra, Justice AM Khanwilkar and Justice DY Chandrachud" separated Hadiya from her father's detention and sent her back to college after she voiced her wish to pursue her studies. The existing case was based on the irony that the Indian community usually confronts because of their children's inter-caste or inter-religion marriages. The courts differ in view to allow two adults who would like to marry regardless of their castes or religions or, on the other hand, to give parents the right to determine what is the appropriate part of Indian culture and what is correct for their children. Within the legal outlook, freedoms are more relevant than the social standard principles and must be determined on every occasion. In its final judgment, the Supreme Court of India ruled that marriage between Shafin Jahan and Hadiya was legal and that Hadiya did not require her parents' permission, as she was 26 years old and had achieved a clear majority. In our view, the Supreme Court of India has been reasonable and persuasive in emphasizing that a person does not require the permission or approval of their family to complete the marriage.