

Kolkata High Court (Appellate Side)

Sri Mohan Bairi & Ors vs Dibyendu Chanak on 22 April, 2014

Author: Subrata Talukdar

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT: The Hon'ble Justice Subrata Talukdar

C.R.R No. 1142 of 2013

C.R.A.N. 690 of 2014

Sri Mohan Bairi & Ors.

-vs.-

Dibyendu Chanak

For the Petitioners : Sri MD. . Shabir Ahmed, Ld. Counsel
Sri Bhaskar Hutait, Ld. Advocate

For the Opposite Parties : Sri S.N. De, Ld. Counsel
Sri B.K.Karati, Ld. ADvocate
Sri B.K.Samanta, Ld. Advocate

Heard on : 25.03.2014

Judgement on : 22.04.2014
Subrata Talukdar, J.: Amidst the procession of matters which any
Court is called upon to decide there are some which touch the
conscience of the Court in deeper measure. This is one such matter.

The petitioners before this court are the parents, brother and relatives of a lady Moupia Bairi. The said Moupia Bairi is admittedly a major.

She entered into holy matrimony with the opposite party as per Hindu Rites and Customs. The said marriage was celebrated on 18.07.2012

at village- Kubai under P.S.-Gorbeta. The said marriage took place in presence of relatives of the opposite party.

After the marriage the couple began residing together in a rented house on 20th July, 2012. The couple duly apply for registration of their marriage under the Hindu Marriage Act, 1955.

During their stay together in happy domesticity the present petitioners, being not satisfied with the marriage arrived at the residence and forcibly took away the said Moupia Bairi. Since that date it is alleged, the lady is forcibly confined at her father's house.

The opposite party filed a complaint before the learned Chief Judicial Magistrate, Paschim Mednipur on 02nd August, 2012. On the basis of the said complaint the learned Magistrate was pleased to take cognizance. Before the learned Magistrate the OP narrated the entire events as stated above and complained of forceful confinement of his legally married wife by the present petitioners-accused persons. The opposite party further alleged that when he went to Kotwali P.S to diarise the matter, he was asked to bring the search warrant from the learned Magistrate' Court.

By issuing the order impugned in the present revisional application being CRR No. 1142 of 2013 the learned Magistrate was pleased to allow the prayer of the opposite party and directed the local Kotwali P.S. to execute the search warrant without delay.

Sri Ahmed, learned Counsel appearing for the petitioners has forcefully tried to persuade this Court that the learned Magistrate ought to have first considered whether any valid marriage at all subsisted between the parties. According to him, the marriage was only celebrated and never solemnized by performing the rituals prescribed by the Hindu Marriage Act. In such view of the matter the question of wrongful confinement of the said Moupia Bairi by the present petitioners cannot arise at all. Alleging that the purported marriage has no legal consequence, no cause of action for issuance of a search warrant can lie for production of the said Moupia Bairi.

Per contra Sri De has asserted that the said Moupia Bairi is a major and cannot be confined against her will. He has further asserted that the learned Magistrate committed no illegality in directing the

presence of the said Moupia Bairi to establish the facts since she could have testified to the actual course of events, including the factum of marriage, if at all between the parties.

Heard the rival submissions. Considered the materials on record This Court is of the view that the application under Section 97 of the Code of Criminal Procedure has been preferred by the opposite party on the platform of having entered into a matrimonial relationship with the said Moupia Bairi.

The factum of events surrounding the alleged abduction of Moupia Bairi from home of her husband to the home of her father is not denied by the petitioners. The petitioners base their arguments on a pure legal issue that the marriage was merely celebrated and not solemnized. Even on the platform of such argument the necessity of the production of a person considered to be legally major by the learned Magistrate cannot be denied. The said Moupia Bairi is the best person to give evidence before the learned Magistrate on the nature of her relationship with the opposite party and also on whether she is living in the house of her parents forcibly or of her own free will.

The petitioners display a tendency of taking law into their own hands by seeming to appropriate the wishes of an individual considered legally major unto themselves. Such a course cannot be allowed to be perpetuated.

The petitioners appear also to me under an apprehension that if the said Moupia Bairi is produced before the learned Magistrate in terms of the search warrant issued by him, their unholy game shall stand exposed. The fact that the petitioners are resisting a valid order of the learned Magistrate issued in the back drop of the peculiar facts and circumstances of this case also indicate that the said Moupia Bairi may have been illegally confined against her will by them.

Sri De, learned Advocate for the opposite party has strenuously contended that in the event the said Moupia Bairi is produced before the Court she shall be in a position to state the truth before the learned Magistrate. This Court is inclined to believe such submission. This Court is also inclined to appreciate the anxiety of the opposite party who has, not taken law in his own hands but, is running from pillar to post to get his wife back. Such a course of events can be adopted only by a husband qua his lawfully wedded wife. Accordingly, this Court finds no infirmity and/or illegality in the order impugned dated 31st August, 2012 passed by the learned 1st Judicial Magistrate, 3rd Court, Paschim Medinipur in C.R No. 647 of 2012.

C.R.R. 1142 of 2013 is dismissed.

This Court is also of the opinion that the conduct of the present petitioners qua the opposite party has been to say the least oppressive. The opposite party has been made to run from pillar to post and to knock the doors of the administration and Courts to claim his wife.

In such view of the matter this Court thinks fit to impose costs against the present petitioner which is assessed at Rs.10,000/-.

Urgent certified photocopies of this judgement, if applied for, be given to the learned advocates for the parties upon compliance of all formalities.

(Subrata Talukdar, J.)