

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (CRL.) NO.5763/2009

(From the judgement and order dated 28/07/2009 in CRMWP No. 14800/2009 of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

ASHUTOSH KUMAR & ORS. Petitioner(s)

VERSUS

STATE OF U.P.& ORS. Respondent(s)

(With appln(s) for stay,stay of arrest)

Date: 08/02/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s)

Mr. Rameshwar Prasad Goyal,Adv.
Mr. V.N. Raghupathi, Adv.
Mr. Pradeep Kr. Kaushik, Adv.
Mr. Manoj Kr. Jha, Adv.

For Respondent(s)

Mr. Pramod Swarup, Sr.Adv.
Mr. Kamendra Mishra,Adv.
Mr. Manoj K. Mishra, Adv.
Mr. Rajeev K. Dubey, Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

Appeal is allowed in terms of the signed order.

(Vishal Anand) (Phoolan Wati Arora)
Senior P.A. Court Master

(Signed order is placed on the file)
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2010
(Arising out of S.L.P. (CRL.) NO.5763/2009)

ASHUTOSH KUMAR & ORS. Petitioner(s)

VERSUS

STATE OF U.P.& ORS. Respondent(s)

O R D E R

Leave granted.

This appeal is directed against order dated 28-7-2009 passed by the Division Bench of the Allahabad High Court in a petition filed by the petitioners under Article 226 of the Constitution of India for quashing first information report dated 16.7.2009 registered at Police Station Lisadi Gate, Ghaziabad for offences under Sections 363 and 366 Indian Penal Code. The relevant portions of that read as under:

"From the perusal of the FIR it appears that on the basis of allegation made therein prima facie cognizable offence is made out. There is no ground for interfering in the FIR, therefore, the prayer for quashing the impugned FIR is refused.

However, considering the submissions made by learned counsel for the petitioners that the alleged kidnapped girl Km.Gaurav Vashistha who is a major has performed marriage with petitioner No.1 and she is having in his company as his house wife with her free will and consent.

Taking into account the aforesaid submission, it is directed that petitioners shall produce the alleged kidnapped girl Km.Gaurav in the Court of Chief Judicial Magistrate Ghaziabad within 20 days from today, till then the coercive action shall be taken against the petitioners. In case the aforementioned girl is produced in the court of Chief Judicial Magistrate, she shall be handed over to the respondent no.4 in presence of officer Incharge of Police Station Lisadi Gate District Ghaziabad. After handing over her custody to her parents, her statement shall be recorded after fifteen days thereafter. Thereafter she shall be medically examined by the C.M.O. concerned to determine her age, then she shall be interrogated by the IO and her statement shall be recorded under Section 161 Cr.P.C. If thereafter, the I.O. moves an application before Learned Magistrate concerned to record her statement under Section 164 Cr.P.C. her statement shall be recorded under Section 164 Cr.P.C. If she is found major and does not support the FIR version, the petitioner shall not be arrested till submission of the police report under Section 173(2) Cr.P.C. but the petitioners shall cooperate with the investigation. However, the issue of custody of alleged kidnapped girl shall be decided by the court concerned independently."

We have heard learned counsel for the parties and perused the record. At the outset, we consider it apposite to mention that petitioner No.3, Smt. Gaurav Vashistha for whose alleged kidnapping, the first information report was lodged by Narendra Son of Ram Avtar Sharma is present in the Court. She was identified by learned counsel for the petitioners. The Identity Card of petitioner No.3 issued by the Election Commission of India, which has been produced before us shows that as on 1.1.2007, her age was 19 years. This means that as on the date of lodging of first information report, the age of Gaurav Vashistha was almost 21 years. In reply to the Court's query, petitioner No.3 stated that she was not kidnapped by anyone and that she had voluntarily gone with petitioner No.1.

In view of the above, it must be held that the allegation contained in the first information report lodged by Shri Narendra Kumar, was totally devoid of truth and the High Court should have, instead of giving unusual directions enumerated hereinabove quashed the proceedings emanating from the first information report.

Shri Pramod Swarup, learned senior counsel appearing for the State of Uttar Pradesh submitted that even though petitioner No.3 had attained majority before 1.1.2007, she ought not to have left the residence without the consent of parents. This submission of the learned counsel does not require serious consideration. Once it is found that petitioner No.3 was major, she was free to make choice of the person with whom she wants to live and the police authorities and the court cannot impose any restriction on her freedom of movement.

With the above observations, the appeal is allowed. The impugned order of the High Court is set aside and FIR No.1135 of 2009 registered at Police Station Lisadi Gate, Ghaziabad is quashed.

.....J
(G.S. SINGHVI)

.....J
(ASOK KUMAR GANGULY)

NEW DELHI,
FEBRUARY 8, 2010.