

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 2933 of 2023

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BHAGWAN RAJABHAI CHAUDHARI
Versus
STATE OF GUJARAT

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Appearance:

M A HUSSENI(10096) for the Applicant(s) No. 1
for the Respondent(s) No. 2,3,4,5

MR JK SHAH, ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK

Date : 06/03/2023

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

1. This petition is filed by the petitioner under Article 226 of the Constitution of India, wherein, he has prayed that the respondent Police Authority be directed to produce the corpus i.e. respondent No.4 before this Court and custody of respondent No.4 be handed over to the petitioner.

2. Heard learned advocate Mr.M.A. Husseni for the petitioner and learned APP Mr.J.K. Shah for respondent – State.

3. Learned advocate for the petitioner has referred the averments made in the memo of petition and submitted that the respondent No.4 got married with respondent No.5, however, thereafter, she left her matrimonial house and she

was residing with the present petitioner who is friend of the corpus i.e. respondent No.4. The petitioner and the respondent No.4 have entered into an agreement of live-in-relationship. Learned advocate for the petitioner has referred the said document, copy of which is placed on record at page-9 of the compilation.

3.1 Learned advocate thereafter submitted that the private respondents have thereafter taken custody of the respondent No.4 corpus illegally, and at present, she is in illegal custody of respondent No.5 i.e. her husband, and therefore, the respondent Police Authority be directed to handover the custody of the corpus to the petitioner.

3.2 Learned advocate has, at this stage, relied upon the order dated 30/3/2021 passed by the Co-ordinate Bench in Special Criminal Application No.8565 of 2020, copy of which is placed on record at page-12 of the compilation. Learned advocate, therefore, urged that this petition be allowed and appropriate directions be issued.

4. On the other hand, learned APP has opposed this petition and contended that the present petitioner has no locus to file the present petition, and if the respondent No.4 is in custody of the respondent No.5 i.e. her husband, it cannot be said that she is in illegal custody of respondent No.5. Learned APP further submitted that the order dated 30/03/2021, upon which reliance is placed by the learned advocate for the petitioner, could not be applicable to the facts of the present case. Learned APP, therefore, urged that this petition be dismissed.

5. We have considered the submissions canvassed by the learned advocate appearing for the parties. We have also perused the material placed on record. It would emerge that the respondent No.4 corpus got married with the respondent No.5. It is alleged that the marriage of the respondent No.4 took place against her wish and therefore, she left her house and she was voluntarily staying with the petitioner and live-in-relationship agreement was executed between the petitioner and the respondent No.4. It is not in dispute that till today, the marriage of the petitioner is not solemnized with the respondent No.4. At the same time, divorce has not taken place between respondent No.4 and 5. We are, therefore, of the view that custody of respondent No.4 with respondent No.5 cannot be termed as illegal custody as alleged by the petitioner and the petitioner has no locus to file the present petition on the basis of the so-called live-in-relationship agreement.

6. At this stage, it is pertinent to note that in the order dated 30/03/2021 passed in Special Criminal Application No.8565 of 2020, upon which reliance is placed by the learned advocate for the petitioner, the Co-ordinate Bench has observed in paragraph 8 as under :

"8. Leaving it open for the appropriate party to take recourse to Section 498 of the IPC in the instant case and without entering into the larger issue of live-in-relationship in this matter, the petition is being disposed of as withdrawn."

7. Thus, from the aforesaid order it reveals that the Co-

ordinate Bench has not entered into the issue with regard to live-in-relationship and permitted the concerned petitioner to withdraw the petition.

8. In the aforesaid facts and circumstances of the present case, we are not inclined to entertain the present petition. Accordingly, this petition is dismissed with cost of Rs.5,000/-. The petitioner shall deposit Rs.5,000/- (Rupees Five Thousand Only) with the Gujarat State Legal Services Authority within a period of six weeks from today.

(VIPUL M. PANCHOLI, J)

(HEMANT M. PRACHCHHAK, J)

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