

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION (WP) NO. 134 OF 2019.

(Smt. Rajubai Shambabu Chatravat, Raigad Vs. State of Maharashtra & Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri T.G. Bansod, Advocate for the petitioner.
Shri S.P. Deshpande, APP for the respondent No.1.
Shri Barun Kumar, Advocate h/f Shri N.B. Rathod,
Advocate for the respondent No.4.

CORAM : Z.A. HAQ &
PUSHPA V. GANEDIWALA, JJ.
OCTOBER 01, 2019.

Heard Shri T.G. Bansod, learned Advocate for the petitioner, Shri S.P. Deshpande, learned Additional Public Prosecutor for the respondent No.1/State and Shri Barun Kumar, Advocate h/f Shri N.B. Rathod, Advocate for the respondent No.4.

The respondent No.4 is a registered organization working for eradication of Child Trafficking. The respondent No.4 has filed Criminal Public Interest Litigation No. 4/2013 (Freedom Firm Vs. Child Welfare Committee & Ors.) which is admitted and is pending for hearing before this Court. In this Public Interest Litigation, the respondent No.4 has raised the issue of security of lives of victims of forcible flesh trade.

In this petition, the petitioner has prayed for writ of *Habeas Corpus* directing the respondent No.1 – State to produce the detenu (Ku. “X”, aged about 20 years) who is detained by the Child Welfare

Committee and is kept in children home. The petitioner has prayed that the respondents be directed to release Ku."X" and handover her custody to the petitioner. The petitioner has further prayed for compensation of Rs.5,00,000/- (Rs. Five Lakh) to be paid to the petitioner or Ku."X" because of her illegal detention since 28/11/2018.

The petitioner sought the above reliefs on the contention that she is the biological mother of Ku."X".

Pursuant to the notice issued by this Court by the order dated 15/02/2019, Ku."X" was produced before this Court on 18/02/2019. The matter was adjourned for 21/02/2019. On 21/02/2019, Ku."X" was produced before the Court. However, the petitioner was not present. Ku."X" made a statement before the Judges in Chamber that the petitioner is not her biological mother. The statement made by Ku."X" came to be recorded and it transpired that the petitioner should be given an opportunity to counter the statement made by Ku."X", and therefore an order was passed directing issuance of bailable warrant against the petitioner to secure her presence before this Court.

On the next date, i.e. on 25/02/2019, again Ku."X" was asked to make statement in presence of the petitioner and Ku."X" reiterated that the petitioner is not her biological mother. The petitioner insisted that she is the biological mother of

Ku."X" and produced certificates dated 07/02/2019 and 10/02/2019 issued by the Secretary and Sarpanch, Gram Panchayat, Baresiya, Taluqa Narsighgad, District Raigad (Madhya Pradesh), to support her claim that she is the biological mother of Ku."X". Proof of residence in the form of Aadhar cards and PAN cards were also produced.

Ku."X" was taken in custody by the respondent No.1 from the residence of Rekha and Babita. The facts on record show that Crime No. 1280/2018 is registered with Police Station, Wani, District Yavatmal against Rekha and Babita for the offences punishable under Sections 363, 366-A, 370(4) and 370-A(1) of the Indian Penal Code and Sections 3 and 4 of the Immoral Traffic (Prevention) Act.

On 25/02/2019, Ku."X" had stated that she does not want to go with the petitioner. This Court, while passing order dated 25/02/2019 suggested that the Investigating Agency should also investigate to find out the truthfulness of the statement made by Ku."X" that the petitioner is not her biological mother.

Looking to the nature of controversy, the Investigating Agency opted to conduct DNA test. The report of DNA test produced by the Investigating Agency shows that the petitioner is not the biological mother of Ku."X".

On 17/09/2019, when this petition was

heard, the learned Additional Public Prosecutor had pointed out that the documents produced by the petitioner i.e. Aadhar cards and PAN cards to substantiate her claim that she is the biological mother of Ku."X" are also fabricated.

Noticing the facts on record, we *prima-facie* find that the petitioner has filed a totally false petition before this Court seeking custody of a girl with an intention of forcing her in flesh trade. An order was passed on 17/09/2019 putting the petitioner on notice that we intend to take the matter seriously and pass appropriate orders against the petitioner.

On request made by the learned Advocate for the petitioner, the learned Additional Public Prosecutor was directed to supply the copies of the documents required by the petitioner, to her Advocate. The matter was adjourned to enable the petitioner to file appropriate affidavit to counter the submissions made by the Investigating Agency.

An affidavit filed by the petitioner on 30/09/2019 is placed on record. The petitioner seeks permission to withdraw this petition with liberty to file appropriate proceedings according to law.

Though we granted an opportunity to the petitioner to substantiate her claim that she is the biological mother of the petitioner and though the petitioner had full knowledge that according to the Investigating Agency, the documents produced by the

petitioner i.e. Aadhar cards and PAN cards are forged, nothing has been brought on record by the petitioner to counter the claim of the Investigating Agency. We find that the petitioner has approached this Court with completely false case with an ill intention of seeking custody of a teenage girl to throw her in flesh trade. To say the least, the petitioner has attempted to abuse the process of this Court and the petitioner has shown the audacity of claiming compensation of Rs.5 Lakh, on the basis of false contentions.

In view of the above, the petition is dismissed, and considering the facts of the case, we direct the petitioner to deposit Rs.3,00,000/- (Rs.Three Lakh) with the Registry of this Court till 15/10/2019. This amount of Rs.3,00,000/- is towards costs. We propose to pass appropriate orders regarding disbursement of the amount of costs after it is deposited with the Registry of this Court. The petitioner is put to notice that if the amount of costs is not deposited till 15/10/2019, we will be constrained to issue non-bailable warrant against her to secure her presence before this Court and also to issue directions to the respondent No.1 – State to recover amount of costs as arrears of Land Revenue.

While considering the petition, we have noticed that false certificates were issued by the Secretary and Sarpanch, Gram Panchayat, Baresiya, Taluqa Narsighgad, District Raigad (Madhya

Pradesh).

The Police Station Officer, Wani, District Yavatmal is directed to investigate in the matter and file report on record of this petition till 15/10/2019. The Police Station Officer, Wani, District Yavatmal is further directed to examine the registration of Crime/offence against the persons who are responsible for fabrication of Aadhar cards and PAN cards produced by the petitioner on record of this petition. We propose to pass appropriate orders for prosecution of the persons responsible for fabrication of documents and for production of fabricated documents on record of this petition. The Police Station Officer, Wani shall submit report on these aspects also till 15/10/2019.

List the matter for further consideration on these aspects on 15/10/2019.

CRIMINAL APPLICATION (APPW) NO. 246 OF 2019.

In view of the disposal of the Writ Petition, this application praying for grant of permission to withdraw the petition does not survive. It is disposed accordingly.

JUDGE

JUDGE

Sumit