

(1984) 04 GUJ CK 0025

Gujarat High Court

Case No: None

Chamar Vashram Chhaganbhai

APPELLANT

Vs

Parmar Suresh Ramji and Others

RESPONDENT

Date of Decision: April 16, 1984

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 462, 462

Citation: (1985) 1 GLR 47

Hon'ble Judges: A.S. Qureshi, J

Bench: Single Bench

Judgement

A.S. Qureshi, J.

The petitioner herein is the father of respondent No. 2 Deval alias Devuben, a minor of 16 years. Mr. B.M. Gupta, the learned Counsel for the petitioner challenges the impugned judgment and order dated 14-3-84 passed by the Chief Judicial Magistrate, Mehsana, awarding custody of the minor Devuben to her husband Parmar Sureshbhai Ramjibhai, respondent No. 1 herein. It has been urged on behalf of the petitioner that although Devuben is 16 years old, she is yet a minor being below 18 and hence the petitioner-father is entitled to her custody and, therefore, the impugned order of the learned Magistrate, Mehsana is illegal and deserves to be set aside. This submission of Mr. Gupta is not tenable and must be rejected because, although Devuben is a minor, she is the wife of respondent No. 1 who is entitled to the custody of his wife who has attained the age of 18 years although she has not attained majority within the meaning of Indian Majority Act. The husband of a minor wife is entitled to the custody of his wife in preference to the father. In this case, the minor Devuben was produced before the learned Chief Judicial Magistrate, Mehsana under the search warrant issued by the court and when the girl was asked whether she wanted to go with her father or with her husband, the girl had expressed her desire to go with her husband i.e. the present respondent No. 1 and had refused to go with the petitioner. Hence the impugned order passed by the

Chief Judicial Magistrate is justified and must be upheld.

2. Mr. Gupta has also urged that the Mehsana Court has no jurisdiction to pass the impugned order as the alleged kidnapping by the father of the girl had taken place at Gomtipur in Ahmedabad, and, therefore, the Metropolitan Magistrate Court, Ahmedabad would have jurisdiction and not the Mehsana Court. In this case, the matrimonial home of respondent Nos. 1 & 2 is at Mehsana. Although the alleged kidnapping by the father of the minor girl has taken place in Ahmedabad, it cannot be said that Mehsana Court has no territorial jurisdiction in this case at all. Mr. A.Y. Pathan, the learned Counsel for the respondents Nos. 1 & 2 has argued that even assuming for the sake of argument that Mehsana Court has no territorial jurisdiction in passing the impugned order he urges that at best it is an irregularity and, therefore, the impugned order cannot be set aside on the ground of the trial court not having territorial jurisdiction. He relies on Section 462 of the Criminal Procedure Code 1973 for this proposition. Mr. Pathan's argument is correct and it must be upheld. Hence the challenge to the impugned-order on the ground of territorial jurisdiction must be rejected.

3. Mr. Gupta has further argued that the alleged marriage between respondent No. 1 and respondent No. 2 is illegal, void and inoperative in law because, according to him respondent No. 2 Devuben had not yet attained the age of 18 years and, therefore, the alleged marriage was in violation of the law prescribing the limit of the age of 18 year for a girl. This contention of Mr. Gupta is also not tenable because, he has not been able to show that the violation of the provision regarding the age limit necessarily results in the nullity of marriage. Any such contravention may be punishable and, therefore, the parties concerned may incur the liability to punishment but he has not been able to show any provision of law which declares such a marriage to be illegal or void.

4. Mr. Gupta has also urged that respondent No. 1 had made an application for search warrant before the Metropolitan Magistrate, Ahmedabad which was rejected by that court. According to him, it is not open to the respondent to make another application for search warrant before the Magistrate Court. According to him, the application for search warrant was rejected by the Metropolitan Magistrate, Ahmedabad on merits and hence the issue was decided by the competent court and hence it was not open to respondent No. 1 to make another application on the same ground before the Chief Judicial Magistrate, Mehsana. This contention of Mr. Gupta must also be rejected as there is no bar to making application in another court solely on the ground that the similar application has been rejected by one court. There is no principle equivalent to the principle of res judicata in the civil matters applicable to the criminal matters. There can be a plea of Autrefois Acquit and Autrefois Convict meaning thereby that once a person has been acquitted or has been convicted he cannot be tried again on the same charge. That plea is not applicable to this case. Hence it was open to the respondent No. 1 to file an

application before the learned Magistrate at Mehsana even after his application was rejected on merits by the learned Metropolitan Magistrate, Ahmedabad. Thus the challenge to the impugned judgment and order of the Chief Judicial Magistrate, Mehsana fails on all the four counts. Hence the petition is rejected. Rule discharged.