

SPECIAL CRIMINAL APPLICATION NO. 1339 OF 1995.

Coram: K.J.Vaidya & M.H.Kadri, JJ.

(25/09/95)

ORAL ORDER.

Rule. Mr.S.R.Divetia, Ld.APP for Respondents No. 1 and 2, and Mr.B.N.Doctor, ld.Advocate for Respondent No.3 waive notice of Rule.

Maheshkumar Vitthalbhai Gondalia, claiming girl Mittal to be his lawfully married wife, by this habeas corpus petition under Article 226 of the Constitution of India has moved this court, inter alia praying for a direction to Arvindbhai Nagindas Thakkar, Respondent No.3 (father of girl Mittal) to produce girl Mittal before the court, alleging that she has been illegally kep..

this matter cam up for hearing before this court on 21.9.1995, in Chamber, we had recorded the statement of Mittal, and thereafter we had passed the following order:-

" From the statement of Ms.Mittal Arvindbhai recorded today in presence of the parties, it prima facie appears that she is married to the petitioner, but at the same time, she is found to be firm enough not to return to the house of the petitioner as she has condemned and disapproved the conduct of the petitioner who, according to her, has gone to the extent of publishing their photograph in the daily newspaper 'Sandesh' on the very day on which 'Besna' news of her cousin-brother was published. According to her, the said 'Besna' was arranged at the place of her father. According to her, this was done only with the intention to lower down the esteem of her family in her Luhana community.

However, since Mittal is coming from the custody of her uncle, by way of abundant caution, we would like to send her at some neutral place where she can coolly think over her fate totally disabusing her mind from the influences that might

have been exerted upon her by her relatives. Sending to Nari Vikas Gruh was strongly resented to by Mittal. But we are sorry to recognise her say at this stage as we are duty bound to first disabuse her mind before we accept her say as a final say and act upon the same.

In this view of the matter, we request the Superintendent, Nari Vikas Gruh, Paldi, Ahmedabad, to kindly accommodate Mittal upto 25.9.1995. The Superintendent is further requested to see that nobody is allowed to have any direct or indirect influence upon Mittal either personally or even on telephone. Neither from the side of the parents of Mittal nor from the side of the petitioner-Mukeshkumar Vithalbhai shall be permitted to talk even on telephone and see Mittal during the aforesaid stay. In case, if it is reported that these directions of ours are not complied with, then that breach will be subjected to the contempt of the court.

Mr.K.N.Vaghela, PSI from Naranpura Police Station, who is very much present before this court..

Nari Vikas Gruh and till the custody of Mittal is handed over to the Superintendent, Nari Vikas Gruh, Ms.Jyotsnaben Kamleshbhai Popat and Ms.Manjulaben will accompany Mittal with PSI Waghela. PSI Waghela is further directed to produce Mittal from Nari Vikas Gruh before this court on 25.9.1995 at 11.00 AM. Direct service permitted to the learned APP. "

2. As per our previous order, Mittal has been produced before us by PSI Waghela from Nari Vikas Gruh. Today once again, the previous statement recorded by this court has been read over to Mittal, and she has once again affirmed her desire to return to her parents' house and not to the house of the petitioner. We have repeatedly put questions to her in order to test the firmness of her decision. But it appears that she is quite firm. She has appeared to us, to be free from any influence and therefore, we do not find any hesitation in accepting her desire to return to the house of her parents.

3. Under the circumstances, Mittal is permitted to go to her parents and/or wherever her parents ultimately

intends to keep her. It will be open to Mittal to go to the house of Maheshkumar if ultimately she so desires in future. Eight photographs produced by the learned Advocate for the petitioner today in the court, be kept on record.

4. In the above view of the matter, the petition stands disposed of. Rule discharged.

(K. J. Vaidya, J.)

Dt.25.9.1995. (M. H. Kadri, J.)