

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**WP(CRL)No.70 of 2023**

**Partha Sarathi Das** .... **Petitioner**

*Mr. Pravash Chandra Jena,  
Advocate*

*-versus-*

**State of Odisha & others** .... **Opp. Parties**

*Mr. Arupananda Das  
Addl. Government Advocate*

*Mr. Chittaranjan Swain,  
Advocate for Mr. Aswini Kumar  
Mohanty, Notary Public, Simulia,  
Balasore*

**CORAM:  
JUSTICE S.K. SAHOO  
JUSTICE CHITTARANJAN DASH**

**ORDER  
10.10.2023**

**Order No.**

08. This matter is taken up through Hybrid arrangement (video conferencing/physical mode).

This writ petition in the nature of habeas corpus has been filed by Partha Sarathi Das for a direction to cause production of his wife (opposite party no.6) before this Court and to give her in the zima of the petitioner.

In the writ petition, averment has been taken that the petitioner and the opposite party no.6 being major executed their marriage and sworn affidavit

before the Notary Public on 19.04.2023 by declaring that they solemnized their marriage on the same day and since then, they are treating each other as husband and wife. It was further averred that on 09.05.2023 at about 8.40 a.m., the opposite parties nos.7 and 8, namely, Jalendra Rana and Ganapati Rana respectively by making false promise before the petitioner, took away the opposite party no.6 to their custody and illegally confined her. It is further stated in the writ petition that both the petitioner and the opposite party no.6 belong to same gram panchayat and they were prosecuting their studies in the same school and they were in a romantic relationship. The petitioner acquired qualification of +2 Diploma Mechanical at Govt. I.T.I., Balasore and did his apprenticeship training under Suzuki Motors Pvt. Ltd. and the opposite party no.6 also acquired educational qualification of +2 Science at C.I.S.T., Berhampur, completed +3 and then appeared for B.Ed. It is further stated that the date of birth of opposite party no.6 is 05.06.1997 and the date of the birth of the petitioner is 19.04.1997 and in support of such averment, copy of High School Certificate examination and Aadhar Card have been annexed to the writ petition. It is further stated that the opposite parties nos.7 & 8 opposed the relationship between the petitioner and the opposite party no.6, for which the

petitioner and the opposite party no.6 after attaining the permissible age of marriage, collected e-stamp on 19.04.2023, solemnized their marriage by executing an affidavit of declaration of marriage before the Notary Public. The declaration of marriage dated 19.04.2023 has also been annexed to the writ petition as Annexure-2 series. It is further stated that after solemnization of marriage between the petitioner and the opposite party no.6 before the Notary Public, they were leading their happy conjugal life as husband and wife and neither the opposite party no.7 nor the opposite party no.8, who were related to the opposite party no.6, have made any complaint in any manner against the conjugal life. It is further stated that when the petitioner and the opposite party no.6 were staying in Darsi, in the state of Andhra Pradesh, on 09.05.2023 at about 8.40 a.m., the parents, brother and maternal uncle of the opposite party no.6 came there and conveyed the petitioner and the opposite party no.6 that they accept their relationship and ready to solemnize the marriage as per the prevalent social custom and tradition and requested the petitioner to allow the opposite party no.6 to go with them. After a brief discussion, the petitioner allowed the opposite party no.6 to accompany her family members and waited for an early response regarding communication of marriage date. It is further stated

that after the opposite party no.6 remained with opposite parties nos.7 & 8, they completely snapped connection between the petitioner and the opposite party no.6. The opposite party no.6 was frequently sending messages to the petitioner to take her away from the custody of her family members and to give information to the local police regarding illegal confinement. It is further stated that the petitioner intimated the police including the Superintendent of Police, Balasore and Superintendent of Police, Kendrapara requesting them to rescue his wife (opposite party no.6) and to give her in his zima but since his efforts did not culminate in fruition, the petitioner was constrained to approach this Court filing this writ petition praying for the production of his wife.

When the matter was taken up on 26.06.2023 for the first time, the learned counsel for the State was asked to obtain report from the opposite party no.4 as to whether the opposite party no.6 has been living voluntarily with the opposite parties nos.7 & 8 or she has been confined by them illegally.

When the matter was taken up again last month, i.e. on 14.09.2023, a direction was issued to the Investigating Officer to interrogate the opposite party no.6 as to whether she has been wrongfully confined in the house of her parents or she is

voluntarily staying there and whether any kind of marriage has in fact taken place between her and the petitioner on 19.04.2023 in the presence of their friends, relations and well-wishers and whether any documentary proof like photographs or video recordings are available in support of their marriage. It was brought to the notice of this Court that a marriage declaration has been prepared in which both the parties have signed and it was sworn before Mr. Aswini Kumar Mohanty, Notary Public, Simulia, Balasore on 19.04.2023. Taking judicial notice of the same, this Court relied upon various decisions of this Court as well as of the Hon'ble Supreme Court and also the notification of the Law Department dated 18.03.2009 in which instruction has been given to all the notaries of the State to refrain from issuing marriage certificate, which is apparently not a function of the notaries under section 8(1) of the Notaries Act, 1952. In the said order, we had also directed the Inspector in-charge of Balasore Town P.S. to intimate Mr. Aswini Kumar Mohanty, Notary Public, Simulia, Balasore to appear in person on 26.09.2023 to apprise this Court as to on what basis he allowed the execution of marriage declaration document before him and under what authority he has attested such document.

On the next date, i.e. 26.09.2023, Mr. Aswini

Kumar Mohanty, Notary Public, Simulia, Balasore appeared before this Court and filed an affidavit wherein it was indicated that due to ignorance about the position of law as settled by various pronouncements of the Hon'ble Supreme Court and this Court, he had executed the declaration of marriage document in favour of the executants. The Notary Public was asked to file relevant documents regarding his appointment as Notary and extensions granted to him for continuing as such from time to time and also the enrolment certificate and to file another affidavit explaining under what circumstances, he notarized the marriage declaration certificate and what documents he had verified to come to the conclusion that the marriage between the petitioner and the opposite party no.6 had already in fact solemnized on 19.04.2023 in presence of their friends, relatives and well-wishers, as has been mentioned in the marriage declaration certificate.

On 05.10.2023, when the matter was taken up, an affidavit was filed by the Notary Public in which paragraph nos.9 and 10 read as follows:

"9. That, before the execution of Declaration of marriage, the petitioner and O.P. No.6 had disclosed before me that "they have married to each other on 19.04.2023 at Parbati Temple, Markona in presence of their

friends, relatives and well wishers” and two witnesses who were present there and supported the version of petitioner and Opp. Party No.6 and signed on documents of Declaration of marriage being identified by their Advocate.

10. That, at the time of execution of document the Opp. Party No.6 had come with petitioner by wearing Vermilion on her forehead and wearing bangles on her both hands and Mangala Sutra on her neck like Hindu married wife.”

Learned counsel for the State sought for some time on that day so that interrogation of the victim can be done to ascertain the correctness of the averments made in paragraph nos.9 & 10 of the affidavit filed by the Notary Public, Simulia, Balasore and it was further directed that if any photograph or video recording of the marriage and any other document relating to marriage between the petitioner and the opposite party no.6 would be available, the same shall be produced on the next date and further direction was issued to the investigating officer to visit Parbati Temple, Markona and to ask the temple authority whether any marriage has in fact taken place between the petitioner and the victim on the said day or not and he was asked to verify the

register of marriages maintained by such temple, if any, to ascertain veracity of the claim of such marriage.

When the matter was taken up on 09.10.2023, learned counsel for the State produced the written instruction along with the statement of the victim recorded by the Inspector in-charge of Baidyanathpur police station, Ganjam and the learned Addl. Govt. Advocate produced the letter dated 05.10.2023 received from the Inspector in-charge of Simulia police station along with the letter of the temple authority i.e. the President of 'Shri Shri Nilakantheshwara Mandir' (locally known as Parbati Temple, Markona) in which it is stated that no marriage was held between the petitioner and the opposite party no.6 in the temple on the said date. The statement of the opposite party no.6 was also produced before this Court in which she has stated that her marriage was solemnized before Notary Public, Simulia, Balasore on 19.04.2023. On a bare reading of the letter of the President of 'Shri Shri Nilakantheshwara Mandir', it indicates that the claim of marriage between the petitioner and the opposite party no.6 on 19.04.2023 at Parbati Temple, Markona in presence of their friends, relatives and well-wishers is nothing but a false statement.

The case was posted today and Mr. Aswini



Kumar Mohanty, Notary Public, Simulia, Balasore has filed another affidavit wherein he admitted to have notarized the declaration of marriage, executed between the appellant and the opposite party no.6 on 19.04.2023, which he fairly admits to be legally untenable. Further, he tendered unconditional apology before this Court and has undertaken not to commit similar type of mistakes in the future.

When a query was made to Mr. Aswini Kumar Mohanty, Notary Public, Simulia, Balasore as to whether he has undergone any training programme organized by the State Government to apprise about the duties and functions of Notaries in accordance with Notaries Act, 1952 and Notaries Rules, 1956, he answered in negative. There are a number of decisions of the Hon'ble Apex Court, this Court as well as other High Court from which it is palpably discernible that most of the notaries are not aware of their duties and functional limits.

We find the issue to be a grave one as actions of Notaries can affect rights and lives of common people who do not have fair understanding of law. Issues like the present one reminds this Court of the loopholes that the incumbent system possesses and inaction on the part of the Government to cure these shortcomings can cause severe prejudice to the rights

of innumerable citizens.

Therefore, we direct the State Government to arrange training programme for the notaries of the State on a regular basis, either physical or through virtual mode and also issue guidelines to apprise them of their functions and duties as has been laid down under section 8 of the Notaries Act, 1952 and what to do and what not to do.

It has also come to the notice of this Court that sometimes deponents do not appear before Notaries to swear affidavits and when documents and typed affidavits are produced before Notary Public, either by the advocates and by the advocate's clerk, some of the notaries attest the same without insisting for personal appearance of deponents and without verifying any document including proof of identity of the deponents which is definitely not in consonance with law. Not only the notaries are required to maintain the register in terms of the aforesaid Notaries Act and Rules but also they are expected to maintain on which date, an affidavit or any document was notarized before them and the signatures of the party swearing the affidavits are also required to be taken with date which would be the proof that the person concerned in fact appeared before the Notary Public on a particular day to swear the affidavit.

We found that in the Notaries Rules, 1956, there is a procedure under Sub-Rule (5) of Rule 11 which indicates that every notary shall permit the District Judge or such officer as the appropriate Government from time to time appoint on this behalf to inspect his register at such times, not often than twice a year, as the District Judge or officer appointed by the State Government will have power to lodge a report to the appropriate government for taking action against a notary. This procedure should be followed strictly to see that the Notaries carry out their functions in accordance with the Act and Rules.

Learned counsel for the State has produced the written instruction dated 06.10.2023 from the Inspector in-charge of Baidyanathpur police station, Ganjam from which it reveals that the opposite party no.6 is voluntarily staying with her parents and she denied any confinement made to her although she stated that she has signed the marriage declaration before the Notary Public at Simulia. The written statement of the opposite party no.6 also reveals that she is residing happily with her parents and there is no compulsion on her.

In view of such report furnished by the Inspector in-charge of Baidyanathpur police station, Ganjam and the written statement of the opposite party no.6, we find that there is no illegal confinement or

wrongful detention of the opposite party no.6.

The learned counsel for the State is directed to communicate the order to Principal Secretary, Law Department, Government of Odisha to do the needful as per the observations made in this order.

The unconditional apology tendered by Mr. Aswini Kumar Mohanty, Notary Public, Simulia, Balasore in the shape of affidavit is accepted. His personal appearance is dispensed with.

Accordingly, the WP(CRL) is disposed of.



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