

Court No. - 82

Case :- CRIMINAL REVISION No. - 617 of 2024

Revisionist :- Ram Bahadur Singh

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Dan Bahadur, Nand Lal Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Jyotsna Sharma, J.

1. Heard Sri Nand Lal Yadav, learned counsel for the revisionist and Sri L.D. Rajbhar, learned A.G.A. for the State and perused the record.
2. By means of this criminal revision, the revisionist Ram Bahadur Singh has challenged an order passed by the C.W.C. dated 09.02.2023 by which victim girl, a juvenile has been ordered to be kept in a 'woman protection home' and further an order passed by the appellate court dated 08.01.2024, whereby the appeal moved by the instant revisionist under Section 101 of J. J. Act, 2015 was dismissed at the stage of admission.
3. The relevant facts are that an F.I.R. came to be lodged against unknown person as regard missing of 15 year old daughter of the first informant under Section 363 I.P.C. The girl was recovered and was produced before the C.W.C. The C.W.C. enquired into the matter and found that her family members refused to appear before the C.W.C. for her custody and, therefore, with an unanimous opinion, she was directed to be kept in a Women Protection Home at Prayagraj. Ram Bahadur Singh filed an appeal challenging the aforesaid order under Section 101 of the J.J. Act, 2015.
4. The main submissions of the revisionist are:- First that he is father-in-law of the detenu and that because her husband (i.e. his son) has been charge-sheeted and is facing trial in the instant case, therefore, she may be released from protection home into his custody; In the given circumstances he is better entitled to claim her custody and that her welfare can only be looked after by him; and that her own parents never came forward to take her into their custody; and that the girl herself wanted to remain in her in-law's family. It is further submitted that she did not give any evidence against her husband and that she does not face any threats from him and that CWC ignored all the facts and circumstances of the matter and passed an order of sending her to a protection home in an arbitrary manner. It is contended in addition that the appeal filed by her father-in-law Ram Bahadur Singh has been dismissed without taking into account the relevant facts and circumstances and that the appellate court passed the order in a mechanical manner.

5. Before any legal or factual issue is considered in this matter, it is important to notice that the instant revisionist- alleged father-in-law of the detenu, admittedly never moved any application before the C.W.C, for obtaining her custody. Obviously this question arises that when he did not move any application to obtain her custody, how can he be treated as an aggrieved person and therefore, whether any appeal could have been filed by him challenging the impugned order passed by the C.W.C.? At this stage I prefer to leave aside such issues and deal with certain other issues of greater importance arising in this case.

6. The J.J. Act, 2015 is a comprehensive act dealing with two types of juveniles first those who are treated as “**child in conflict with law**”, secondly, those who are treated as “**child in need of care and protection**”.

Certain things are noticeable *viz.*:-

- Separate chapters deal with two types of children. The Chapter VI of the J.J. Act, 2015 has provisions which specifically apply to latter type i.e. “child in need of care and protection”.
- When a child shall be treated as a ‘child in need of care and protection’ is provided in section 2 (14) of the Act which broadly provides that any child who has parents or guardian and such parents and guardian are found to be unfit to take care for and protect the safety and well being of a child or where a child does not have parents and no one is willing to take care of him/her, or where a child has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts, may also be treated as child in care of need and protection, besides children falling in several other categories.
- The Child Welfare Committees have been constituted for children in need of care and protection under the Act.
- Chapter VI of the J.J. Act, 2015 provides for procedure beginning from production of such child before such a committee and also provides for procedure to hold inquiry under section 36 of the J.J. Act, 2015 and the orders which may be passed with regard to such a child under section 37 of the J.J. Act, 2015.
- Section 37 of the Act importantly provides that the committee, on being satisfied on the basis of inquiry held by it, declare that a child is in need of care and protection.
- The committee has power to place the child in a protection home of the nature as provided in section 37 of the J.J. Act, 2015 and it may also restore the child to parents or guardians or family with or without supervision of Child Welfare Officer. Further the Committee has power to restore the child in need of care and protection to his parents, guardian or fit person as the case may be, after determining **suitability** of the parents or guardian or fit person and give them suitable directions as provided in section 40 of the Act.

- Another very important provision is under section 104 of the J.J. Act, 2015. Section 104 of the J.J. Act is as below:

Section 104- Power of the Committee or the Board to amend its own orders.

“(1) Without prejudice to the provisions for appeal and revision contained in this Act, the Committee or the Board may, on an application received in this behalf, amend any orders passed by itself, as to the institution to which a child is to be sent or as to the person under whose care or supervision a child is to be placed under this Act:

Provided that during the course of hearing for amending any such orders, there shall be at least two members of the Board of which one shall be the Principal Magistrate and at least three members of the Committee and all persons concerned, or their authorised representatives, whose views shall be heard by the Committee or the Board, as the case may be, before the said orders are amended.

(2) Clerical mistakes in orders passed by the Committee or the Board or errors arising therein from any accidental slip or omission may, at any time, be corrected by the Committee or the Board, as the case may be, either on its own motion or on an application received in this behalf.”

7. This is quite significant to note that this provision gives very wide and ample powers to the committee to amend its own order, wherever required, for any good reason which, in my opinion, may include change in circumstances. Section 104 of the J.J. Act, 2015 prescribes a procedure before an order already passed can be amended. It says that “all persons concerned” or their authorised representatives shall be heard by the committee before such an order is amended.

8. A bare look on the relevant provisions of the J.J. Act, 2015, gives an impression that any detention in a protection home, of a child in need of care and protection is purely temporary in nature and rightly so. This fact should not be relegated to the background that the J.J. Act, 2015 has been enacted keeping in mind the general principles, as have been enumerated in Chapter II of the Act itself. The general principles include the ***principles of best interest, principle of family responsibility, principles of safety, principle of institutionalization, principle of repatriation and restoration.*** All the aforesaid principles are guiding factors for the Board as well as for the C.W.C. while implementing the provisions of this Act. These principles may act as a beacon light while considering and deciding upon the matter of lodging a child, particularly a child in need of care and protection, in a juvenile home or when releasing her/him in care or custody of any suitable person or a family member. In my opinion the committee is expected to take a reasoned decision, after due deliberations as regard where it would be best suited to lodge a “child in need of care and protection” in the facts and circumstances of a case and that where his best interest shall be served and therefore, which institution or which person/family member shall be in better position to take care of his well being. The C.W.C.

may also review or revise its own order where circumstances prompt for such an action or where any new development takes place, compelling it to take a different stand/view. Such powers have been vested in C.W.C., notwithstanding the powers of appellate court or the revisional court. I hasten to add that this is not to say that appellate court or the revisional court can not exercise its powers wherever it can and ought to.

9. There are several significant issues involved and mixed up in this matter which need to be disentangled for future guidance of all concerned.

- First, the alleged father-in-law—the instant revisionist never moved any application before the C.W.C. either before passing of the impugned order dated 09.02.2023 or after the same, hence, the C.W.C. obviously could not decide the matter in the light of his submissions. In my opinion there is no bar for him to apply to C.W.C., even if he had no opportunity to move such an application, before impugned order was passed. Still, in case, such an application is now moved, the same can be decided in the light of provisions of Section 104 of the J.J. Act, 2015.
- Secondly, I am constrained to notice that the impugned order has been passed by the C.W.C. in a most superficial, cursory and cavalier manner. No proper inquiry has been made as is enjoined upon the C.W.C. by law. In my opinion the C.W.C. is enjoined by law to conduct proper enquiry as provided in section 36 and then pass an order under section 37 of the J.J. Act, 2015. It may also be noted that no social investigation report appears to have been submitted before the Committee for passing a final order as is required by section 36 (2) of the J.J. Act, 2015.
- In a number of cases, coming before this Court this is being noted that C.W.C. is passing superficial orders without conducting proper inquiry and disposing of the matters with nonchalance. The custody or detention of victim in a protection home are not trivial matters. The very first requirement is to declare him/her as a child in need of care and protection and second is to conduct a proper enquiry as regard his/her lodgement or care and custody keeping in mind the need and suitability of juvenile home/person to whom he/she is entrusted.
- Next important question which cannot be ignored is as regard the jurisdiction of the appellate court as provided under section 101 of J.J. Act, 2015. In this case the appeal has been dismissed at the stage of admission by passing a cryptic order as below:

“ किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम 2015 की धारा 101 के अन्तर्गत पोषण, देखरेख एवं प्रवर्तकता संबंधी निविश्रयों के सिवाय अपील जिला मजिस्ट्रेट को होने का प्राविधान किया गया है। इस संदर्भ में नियम 27 के अन्तर्गत बाल कल्याण समिति के आदेश विनिश्रय के विरुद्ध अपील जिला मजिस्ट्रेट के समक्ष होने का प्राविधान किया गया है।

बाल कल्याण समिति प्रयागराज द्वारा मामला सख्या- 1979/2022/23 के संदर्भ में अपील सुने जाने का क्षेत्राधिकार जिला मजिस्ट्रेट को होने के संदर्भ में मुन्सरिम आख्या प्रस्तुत की गयी है।

उपरोक्त तथ्यों के आधार पर आवेदक की ओर से प्रस्तुत प्रकरण को अंगीकरण के स्तर पर निस्तारित किया जाता है।”

10. During my working, I have come across a number of such orders where appeals have been dismissed referring to **Section 27** of J.J. Act 2015. A similar question arose before this Court in **Smt. Soni Saxena @ Neetu Saxena vs. State of U.P. and 4 other, Criminal Revision No.6033 of 2023**. The Court observed in paras 4 and 5 as below:-

"4. The appellate court seems to have passed the order in the light of the provisions of section 27(10) of the J.J. Act, 2015. Section 27 deals with the Constitution of the Child Welfare Committee, the qualifications of a person as regard eligibility of the person to be appointed as a member of a Committee, disqualifications, the tenure of the members, the procedure for inquiry as regard termination of the members etc. Section 27(10) of the J.J. Act, 2015 empowers the District Magistrate to entertain any grievance arising out of functioning of a Committee. This section further empowers the affected child or any one connected with the child, as the case may be, to file a complaint before the District Magistrate for the purpose that he may take suitable action as regard the complaints or the grievances which an affected person may have against the Committee. These provisions definitely do not deal with legal challenge to the orders passed by the Committee. An aggrieved person can challenge the order passed by the Child Welfare Committee under section 101 of the Juvenile Justice Act, 2015.

Section- 101 of the Juvenile Justice Act, 2015 is as below:-

"(1) Subject to the provisions of this Act, any person aggrieved by an order made by the Committee or the Board under this Act may, within thirty days from the date of such order, prefer an appeal to the "Children's Court", except for decisions by the Committee related to Foster Care and Sponsorship After Care for which the appeal shall lie with the District Magistrate."

11. Faced with a similar case, this Court in **Girish Kumar vs. State of U.P. and 3 Others, 2022:AHC:206879 decided on 25.11.2022**, with reference to provisions of section 101 of the J.J. Act, 2015, observed in Para no. 6 as below:-

"6. It is quite clear from this provision of law that appeal shall lie to the District Magistrate with respect to decisions by the Child Welfare Committee relating to foster care and sponsorship after care only. The appeal in respect of other orders passed by the Child Welfare Committee shall lie to the 'Children's Court' within 30 days from the date of order. Before analysing this provision, it will be appropriate to peruse the order passed by the Child Welfare Committee to decide upon whether this order falls in the category where the appeal may lie to Children's Court or in the category where appeal shall lie to District Magistrate."

12. In the same case this court further observed in Para nos. 10 and 11 as below:-

"10. I went through the material on record in the light of submissions before this Court. As per scheme of the Juvenile Justice Act, the Child Welfare Committee, irrespective of any other law, has power to deal exclusively with all proceedings relating to 'children in need of care and protection' under Section-29 of the Juvenile Justice Act, 2015. The functions and responsibilities of Committee include taking cognizance of and receiving the child produced before it, conducting inquiry on all issues relating to safety and well being of a child as well as ensuring care, protection, appropriate rehabilitation and most importantly restoration of 'children in need of care and protection' (Section-30 of the Juvenile Justice Act, 2015). Section-37 of the Juvenile Justice Act, 2015 empowers the Committee, after being satisfied through an inquiry, consideration of social investigation report submitted by Child Welfare Officer and taking into account the child's wishes, in case the child is sufficiently matured, to take a view and pass one or more of following order, namely:-

- (a) declaration that a child is in need of care and protection;*
- (b) restoration of the child to parents or guardian or family with or without supervision of Child Welfare Officer or designated social worker;*
- (c) placement of the child in Children's Home or fit facility or Specialized Adoption Agency for the purpose of adoption for long term or temporary care, keeping in mind the capacity of the institution for housing such children, either after reaching the conclusion that the family of the child cannot be traced or even if traced, restoration of the child to the family is not in the best interest of the child;*
- (d) placement of the child with fit person for long term or temporary care;*
- (e) foster care orders under section 44;*
- (f) sponsorship orders under section 45;*
- (g)*
- (h)*

10. On perusal of the above provisions of Juvenile Justice Act, 2015, it is demonstrated that Child Welfare Committee is given vast powers on the principles of best interest of a child, a thread which goes through the whole of the scheme of the Juvenile Justice Act, 2015. It has been specifically provided by the section-3 of the Juvenile Justice Act, 2015 that Central Government, State Governments, the Board and other agencies, as the case may be, while implementing the provisions of the Act, shall be guided by the fundamental principles which include principles of best interest, principle of family responsibilities, the principle of safety, the principles of repatriation and restoration and several others.

11. The provisions of law as aforesaid are being reproduced here with the twin object; firstly, that when an order is passed of the7

nature as is under challenge before this Court, the appeal shall be entertainable by the Children's Court and not by the District Magistrate; the District Magistrate is empowered to hear appeals only against the decisions of the Committee relating to foster care and sponsorship after care. The order in question does not fall in this category. The appellate court was thus wrong in holding that appeal did not lie before it. Therefore, the impugned order is liable to be set-aside; secondly, it may be noted that when a child in need of care and protection is lodged in any shelter home, it is a measure of temporary nature; the Child Welfare Committee is fully empowered to take a decision where it is found no more necessary to detain her. It may be noted that legally a child in need of care and protection may be detained for a further period even if he/she has attained majority if it is found that it will not be in his/her best interest to release him/her immediately."

13. The learned appellate court instead of deciding the matter on merits, declined to exercise its powers on patently wrong assumptions. It is difficult to understand how such a view has been taken by the appellate court that it had no jurisdiction to hear the challenge to an order of this nature passed by the Child Welfare Committee, in appeal. As is quite obvious, an appeal shall lie to children court against all the orders passed by the Child Welfare Committee except where order has been passed relating to foster care or sponsorship foster care.

14. In view of the legal provisions as mentioned above, the revisionist is granted opportunity to move an application before the C.W.C. In case, such an application is moved, the C.W.C. shall decide the same in accordance with law, preferably within a month of moving such an application. It is made very clear that this Court has not touched upon merit of the claim of the applicant/revisionist in any manner. The C.W.C. shall decide the matter uninfluenced by observations, if any, made on facts, by this Court as regard his claim.

15. As the revisionist has been given opportunity to move a fresh application before the C.W.C. hence, there is no need to set aside the earlier order passed by the C.W.C., however, as far as order passed by the appellate court is concerned, it is patently against law, hence, it is set aside.

16. Accordingly, this revision is finally *disposed of*.

17. The copy of this order be transmitted to CWC concerned.

18. Let a copy of this order be circulated for the benefit of District Judiciary and also to C.W.C. for necessary guidance.

Order date- 15.02.2024

Sumit Kumar