

Court No. - 88

Case :- CRIMINAL REVISION No. - 1714 of 2022

Revisionist :- X(Minor) And Another
Opposite Party :- State Of U.P. And 2 Others
Counsel for Revisionist :- Jai Prakash Singh
Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh,J.

In view of the provisions of Section 228-A of Indian Penal Code and the mandate of Hon'ble Supreme Court in the case of **Ravi Shankar alias Baba Vishwakarma Vs. State of Madhya Pradesh**, (2019)9 SCC 689 the victim herein after referred to as 'X'.

Heard learned counsel for the revisionist and Shri S.K. Pal, learned Government Advocate assisted by Shri Anirudh Sharma, learned Additional Government Advocate representing the State.

Being aggrieved and dissatisfied by the order dated 24.1.2022 passed by the Child Welfare Committee, Kasganj whereby the victim 'x' was directed to be kept in Rajkiya Bal Grih (Balika), Swaroop Nagar, Kanpur, the second revisionist, who is the mother of the victim has approached this Court by filing this criminal revision for setting aside the aforesaid order and also for handing over the custody of 'X' to her.

The facts that formed the bedrock of this revision are that on 27.11.2021, second revisionist, who is the mother of 'X' lodged the FIR under Sections 363 and 366 IPC in respect of missing of her daughter. During investigation,

victim was recovered on 16.1.2022 from Patiyali Railway Station, Kasganj and she was produced before the Child Welfare Committee, Kasganj where her statement was recorded on 22.1.2022 in which she has expressed her desire to go with her mother and also refused for her medical examination, but the Child Welfare Committee, Kasganj vide impugned order dated 24.1.2022 instead of giving the custody of the victim 'X' to her mother, has sent her to Rajkiya Bal Grih (Balika), Swaroop Nagar, Kanpur.

Second revisionist has filed an application before the Child Welfare Committee, Kasganj stating therein that she is the mother of the victim. The victim is minor aged 15 years and she is unable to understand her pros and cons and that she may be given in her custody. During her counselling by the Child Welfare Committee, Kasganj, the victim has expressed her desire to go with her mother.

However, the Child welfare Committee, Kasganj vide order dated 24.1.2022 has directed the victim to be kept in Rajkiya Bal Grih (Balika), Swaroop Nagar, Kanpur on the ground that the mother of the victim is living in Delhi to earn her livelihood and the victim is living with her maternal uncle and in the circumstances proper care of the victim can be taken in her house.

Vide order dated 07.7.2022, second revisionist was directed to appear before this Court. Learned Additional Government Advocate was also directed to ensure the presence of revisionist 'X', the victim before this Court.

Pursuant to the order of this Court second revisionist

is present before this Court.

Victim 'X' has also been produced before this Court by Head Constable 75 Vikas Yadav P.N.N 062910040 and Lady Constable 20, Sapna Kumari P.N.N. No. 212911109 of police station Patiyali, Kasganj. Personal affidavit of Shri B.B.G.T Murthy, presently posted as Superintendent of Police, Kasganj has been filed, which is taken on record.

On query by this Court, the victim has expressed her desire to go with her mother. Mother of the victim is also willing to keep the victim with her.

The only question for consideration before this Court is whether a victim can be kept in a protective home against her wishes.

This issue has time and again been considered and settled by this Court in catena of judgements.

In **Kalyani Chowdhary Vs. State of U.P.**, 1978 Cr.L.J. 1003, a Division Bench of this Court has held that no person can be kept in the protective home unless she is required to be kept there either in pursuance of the Suppression of Immoral Traffic and Women and Girls Act, or under some other law permitting her detention in such a home. It is admitted that the case does not fall under this Act, no other law has been referred to. In such cases, the question of minority is irrelevant as even a minor cannot be detained against her will or at the will of her father in a Protective Home.

In **Pushpa Devi alias Rajwanti Vs. State of U.P.** (1995)1 JIC 189, this Court has held that in any event, the

question of age is not very material in the petition of the nature of Habeas Corpus as even a minor has a right to keep her person and even the parents cannot compel the detention of a minor against her will unless there is some other reason for it.

In **Raj Kumari Vs. Superintendent, Women Protection Home, Meerut and another**, 1998 Cr.L.J. 654, a Division Bench of this Court after considering series of judgement held that it is well settled view of this Court that even a minor cannot be detained in Government Protective Home against her wishes.

In **Seema Devi alias Simran Kaur Vs. State of Himachal Pradesh**, 1998 (2) Crimes 168, the Himachal Pradesh has held as under:

"There is no provision of law, which permits a Court to give such a direction even in a case of minors when it is against their will. Even if the petitioner is only a minor aged about 15 years, her wishes should be ascertained before placing her in the custody of any person or institution. In this case, she had categorically stated before the additional chief judicial magistrate that she would not live with her parents and she wanted to live with her husband the 1st accused in the case. The additional chief judicial magistrate should have given credence to her wish and only directed her custody to be with the 1st accused and not with the Nari Niketan."

A Division Bench of this Court after considering the

provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 as well as the law laid down by various Court has referred the following question to Hon'ble the Chief Justice for being decided by the Larger Bench of this Court:

"(1) xxxxxxxxxxxxxxxx

(2) xxxxxxxxxxxxxxxx

(3) Under the Scheme of the Juvenile Justice (Care and Protection of Children) Act, 2015, the welfare and safety of child in need of care and protection is the legal responsibility of the Board/Child Welfare Committee and as such, the proposition that even a minor cannot be sent to Women Protection Home/Nari Niketan/Juvenile Home/Child Care Home against his/her wishes, is legally valid or it requires a modified approach in consonance with the object of the Act ?"

The Larger Bench of this Court in the case of **Km. Rachna and another Vs. State of U.P.**, AIR 2021 All 109 (FB) after considering plethora of judgements of this Court as well as other High Court, has answered the question in the following words:

"Under the J.J. Act, the welfare and safety of child in need of care and protection is the legal responsibility of the Board/Child Welfare Committee and the Magistrate/ Committee must give credence to her wishes. As per Section 37 of the J.J. Act the Committee, on

being satisfied through the inquiry that the child before the Committee is a child in need of care and protection, may, on consideration of Social Investigation Report submitted by Child Welfare Officer and taking into account the child's wishes in case the child is sufficiently mature to take a view, pass one or more of the orders mentioned in Section 37 (1) (a) to (h).

In view of the verbose discussion as well as considering the statements made by the victim and her mother, this Court feels it appropriate in the interest of justice to hand over the custody of the victim to her mother.

Accordingly, impugned order dated 24.1.2022 passed by the Child Welfare Committee, Kasganj is hereby set aside. The revision is allowed.

The victim is given in the custody of her mother (second revisionist) with the condition that whenever personal appearance of the victim is required before the court concerned in case No. 307 of 2021, under Section 363, 366 IPC, police station Patiyali, district Kasganj, she shall produce her in court.

Order Date :- 22.7.2022

Ishrat