

(2010) 07 MAD CK 0391

In the Madras High Court

Case No : M.P. No. 1 of 2011 in H.C.P. No. 55 of 2011 and M.P. No. 1 of 2011 in H.C.P. No. 1033 of 2010

A. Ruby

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 22-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 2, 32, 39, 4, 6

Citation : (2011) 3 CTC 368

Hon'ble Judges : P.R. Shivakumar, J;C. Nagappan, J

Bench : Division Bench

Advocate : M. Palanimuthu, for the Appellant; P. Kumaresan, Public Prosecutor, for the Respondent

Judgement

C. Nagappan, J.—The mother of minor Deepa, namely Mrs. Jyothi, filed Habeas Corpus Petition in H.C.P. No. 55 of 2011 seeking production of the minor girl before the Court and for handing over the custody of the minor to her. The said minor Deepa was produced before this Court on 08.01.2011 and during enquiry in the Court, she said she was not willing to go with her mother, namely the Petitioner and this Court directed minor Deepa be kept in Government Children's Home, Purasaiwalkam High Road, Kellys, Chennai till she attains majority. Thereafter, her mother Jyothi has filed the present Miscellaneous Petition (M.P. No. 1 of 2011 in H.C.P. No. 55/2011) seeking for restoration of the custody of the minor girl with her.

2. The mother of minor Ishwarya, namely Mrs. A. Ruby filed Habeas Corpus Petition in H.C.P. No. 1033 of 2010 seeking production of minor Ishwarya in the Court and for handing over the custody of minor Ishwarya to her. Minor Ishwarya was produced before this Court on 22.7.2010 and during enquiry minor Ishwarya said she was not willing to go with her mother, namely the Petitioner. Consequently, this Court directed minor Ishwarya to be kept in Government Children's Home, Purasaiwalkam High Road, Kellys, Chennai till she attains

majority. Thereafter, her mother Ruby has filed the present Miscellaneous Petition (M.P. No. 1 of 2011 in H.C.P. No. 1033/2010) seeking visitation rights during the minor's stay at the said home.

3. We heard the learned Counsel appearing for the Petitioners in both the Miscellaneous Petitions and Mr. P. Kumaresan, learned Public Prosecutor representing the state.

4. Time and again we have come across orders passed by the learned Magistrates directly sending the juvenile in conflict with law to Observation Homes. We have also noticed a number of orders of the learned Magistrates directing the victims, who happened to be minors to be kept in the Observation Homes or Children's Homes.

5. In the Habeas Corpus Petitions also where the production of a minor is sought for and on being produced, in the event of the minor not willing to go with the parents/lawful guardians, this Court sends the minor to Children's Homes. The Petitions now filed seek for restoration as well as visitation rights of the minors who have been ordered to be kept in Homes.

6. In the light of the above, we considered it appropriate to highlight the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Rules thereunder and for that purpose we heard the learned Public Prosecutor at length. The Director of Social Defence, Chennai has filed a report dated 5.4.2011.

7. Being a special enactment, the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 shall have overriding effect with other laws except to the extent expressively saved under the said Act. It contemplates a special procedure for dealing with children whether the child in question is a juvenile in conflict with law or a child in need of care and protection.

8. The following procedure is contemplated under the Act with regard to juvenile in conflict with law, who is alleged to have committed offence and has not completed 18th year of age, as on the date of commission of the offence. Section 6 of the Act gives exclusive power to the Juvenile Justice Board, to deal with all proceedings relating to juveniles in conflict with law. The Juvenile Justice Board comprises of a Metropolitan Magistrate or Judicial Magistrate of the First class and two social workers, of whom one shall be woman. Section 4 contemplates constitution of one or more Juvenile Justice Board for every District. According to the Public Prosecutor, each one of the Districts of Tamil Nadu has a Juvenile Justice Board and at present no district has more than one Board. It is needless to say that as on today, there is only one Magistrate in each District who is empowered, as a member of the Board, to exercise the powers of the Board. Section 7 stipulates that when any Magistrate who is not empowered to exercise the power of a Board is of the opinion that a person brought before him is a Juvenile or the child, he shall record such opinion and without delay forward the juvenile or child to the Competent Authority having jurisdiction over the

proceeding. The Competent Authority prescribed in Section 7, in relation to a juvenile is the Juvenile Justice Board, which shall hold the enquiry. In view of the above, no Judicial Magistrate other than the member of the Board shall send the juvenile or child directly to Observation Homes or Special Homes contemplated u/s 8 and Section 9 of the Act. As stated earlier, it is the duty of such Magistrates, who are not empowered to exercise the powers of the Board under the Act, to send the juvenile immediately to the Juvenile Justice Board.

9. The victim of crime who happens to be a child, who has not completed 18th year of age, when produced or appears before any Magistrate, an enquiry has to be conducted by the Magistrate and if it expresses willingness to join the parents or the guardian and the parents/lawful guardian are willing to take the child, the custody has to be given to them. In the event of the child expressing apprehension about the parents/lawful guardian and refuse to go with them, the child becomes a child in need of care and protection contemplated u/s 2(d) of the Act. In such an event, the Judicial Magistrate shall immediately forward the child to the Child Welfare Committee through any one of the persons mentioned in Section 32 of the Act. The same shall apply in a case in which the parents/lawful guardian are disinclined to take the child with them or none of them is available to take the child. Thereafter, it is for the Child Welfare Committee to deal with the child in accordance with the provisions of the Act.

10. It is needless to say that in the Habeas Corpus jurisdiction, this Court exercises its power under Article 226 of Constitution of India and depending on the facts and circumstances of the case, this Court issues necessary directions in the nature of Writs including direction to keep the child in Children's Homes. It is also open to this Court to send a child to the Child Welfare Committee, in case, during enquiry it is found to be a child in need of care and protection.

11. So far as the present Petitions are concerned, in view of the above discussions, suffice to observe that it is open to the Petitioners to approach the Child Welfare Committee, Chennai for seeking restoration as contemplated u/s 39 of the Act, which will also include visitation right and the Petitions are disposed of accordingly.