
(2007) 07 CAL CK 0053
In the Calcutta High Court
Case No : C.R.R. No. 2197 of 2007

Jasoda Singh

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 23-07-2007

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 164
Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 2J, 39, 54
Penal Code, 1860 (IPC) — Section 120B, 372, 373

Citation : (2008) 1 CHN 678

Hon'ble Judges : S.P. Talukdar, J

Bench : Single Bench

Advocate : Y.J. Dastoor and Devipriya Mitra, for the Appellant; Alok Roy Chowdhury and S.S. Roy, for the Respondent

Judgement

S.P. Talukdar, J.—The petitioner, Jasoda Singh, by filing an application under Article 227 of the Constitution prayed for setting aside of the order dated 17.8.2006 passed by the learned Single Member of the Child Welfare Committee, Salt Lake, Kolkata, in CWC Case No. 106/s/06. The said order was passed in response to an application dated 4th May, 2006 filed by the present petitioner u/s 39 of the Juvenile Justice (Care and Protection Children) Act, 2000 for restoration of the alleged child victim, Honey Singh alias Simi Malhotra alias Dipika.

2. The petitioner also sought for a direction for restoration of the said child to the petitioner's custody as well as for other reliefs in accordance with law.

3. The backdrop of the present controversy may briefly be summed up as follows:

Honey Singh alias Simi Malhotra was a mentally as well physically challenged young girl. Her parents, Shankar Singh and his wife, were unable to take due care of her. They requested the petitioner, Jasoda Singh and her husband—who are closely related to take charge. The petitioner and her husband thus

functioned as foster parents.

After about a year, the petitioner was informed that the said Shankar Singh had committed suicide and his wife disappeared. There was no trace of them for more than seven years.

Honey Singh was operated at Rameswara Nursing Home and thus, could recover from her physical problems. The husband of the petitioner spent about Rs. 1 lakh for such treatment. But her mental condition remained the same. The doctors, however, assured that mental condition would also gradually improve. A private tutor was engaged for the said Honey Singh. She was also very close to Kanchan Singh, the daughter of the present petitioner and also the mother of a child boy and had been living with the petitioners family.

On 4th April, 2006, the opposite party Nos. 2 and 3 allegedly rescued Honey Singh and four other female children from room No. 207 of VIP International Hotel, 51. Free School Street Kolkata, where they had allegedly been brought for prostitution. It was alleged that those girls were also meant for being sold and sent out.

On 5.4.2006, the said opposite party Nos. 2 and 3 produced Honey Singh and the four other female children before the learned Court of Chief Metropolitan Magistrate, Calcutta in connection with Section KI(DD) Case No. 100 dated 4.4.2006 u/s 372/373/120B of the Indian Penal Code. The opposite party Nos. 2 and 3 were directed to produce them before the Child Welfare Committee (hereinafter referred to as "CWC"), Salt Lake, Kolkata. In pursuance of the said order dated 5.4.2006, O.P. No. 3 produced Honey Singh before the CWC, Salt Lake, Kolkata, as Simi Molhotra alias Dipika, a 14 year old child victim girl in the said criminal case on 6th April, 2006. On 4.5.2006, the petitioner filed an application u/s 39 of the Juvenile Justice (Care and Protection of Children) Act, 2000 before the CWC. Salt Lake, Kolkata for restoration of foster daughter Honey Singh the said alleged child victim girl. But the CWC neither issued any notice to the opposite party No. 3 nor fixed any date for hearing.

The petitioner had been fostering Honey Singh all along and having the actual charge or control over her. She also filed an application before the CWC for permission to meet for foster daughter in the Lilaah Home. By order dated 8.5.2006, the CWC after recording that the petitioner had reared the said child girl, refused to allow her to have such meeting. Being aggrieved by such order, the petitioner moved this Court. This Court by order dated 16.6.2006 allowed the same.

4. Section 54 of the Juvenile Justice (Care and Protection of Children) Act, 2000 casts a duty on the CWC to make an enquiry and dispose of the application by following the procedure laid down in the Criminal Procedure Code, 1973 for trial in summons cases. But the CWC neither allowed the petitioner to appear through an Advocate nor issued any notice to the opposite party No. 3 herein for hearing of the said application.

5. The petitioner being the foster parent of the said alleged victim girl, has a right to have her custody and the concerned authority is under legal obligation to restore the said child to a family environment.

6. The petitioner appeared before the CWC on several occasions and requested for such restoration but to no avail. The said CWC, thus, appears to be unconcerned about its obligation and possibly unaware of the prime objective of the CWC i.e. to restore a child immediately to his/her parents or adopted parents or foster parents.

7. There had been identical occasions for the Hon'ble Court to pass orders for restoration of the alleged child victims as they are not accused persons but, at best, are witnesses in connection with a couple of earlier revisional applications, there had been direction by this Court to allow the petitioner to be represented by learned Advocate. This, however, did not bring about any substantial change in complexion in the functioning of the Welfare Committee.

8. Be that as it may, the Chairperson of the CWC by the impugned order dated 17.8.2006 refused to restore the child. Honey Singh, to the custody of the petitioner. The petition filed before the CWC was, thus, rejected.

9. After taking into consideration all the grievances ventilated in the application by the petitioner, it can be said that the same essentially relate to alleged refusal to hold enquiry as provided u/s 54 of the Juvenile Justice (Care and Protection of Children) Act, 2000 as well as failure to consider the prayer for restoration as provided under the said Act.

10. It is found that the Chairperson of the Child Welfare Committee while rejecting the prayer for restoration of the child to the custody of the petitioner as reflected from the impugned order dated 17.8.2006 took into consideration various aspects of the matter.

11. It cannot be denied that certain relevant portions of the said order are required to be reproduced here for better appreciation of the grievances ventilated in the present application.

12. The CWC summed up the backdrop of the case as follows:

A brief history of the case is as follows - Dipika Prem Shankar, a victim girl, aged about 12 years, was produced before this Committee on 20.4.2006 as per order of the learned CMM, Calcutta. This relates to Section KI/DD Case No. 100 dated 4.4.2006 u/s 372/373/120B of IPC wherein it appears that Kanchan Singh (daughter of the petitioner) among others is the accused person.

Dipika was examined by the Committee on 20.4.2006. She stated that her father was Prem Shankar and they live in Krishnanagar, old Delhi. She had gone to her school friend Puja's house. Whereupon she was sold to one Amar Singh (father of Kanchan and husband of Jasoda Singh) and she was brought to Calcutta. She was taken to a hotel by Kanchan whereupon she was rescued by police

13. It was observed that "in terms of order dated 13.6.2006 of the Hon"ble High Court, Dipika was produced before me on 22.6 2006. She clearly stated that she did not wish to see Jasoda Singh. However, Jasoda Singh was allowed to meet Dipika for one hour on 23.6.2006. However, it is learnt that Dipika met Jasoda Singh on 23.6.2006 and refused to meet her again"

14. It, thus, appears from the observations made in the impugned order passed by the CWC that Honey Singh refused to recognize the present petitioner, Josada Singh, nor her claim that Honey Singh was her foster child, could derive any support from the materials before the CWC. Such materials, of course, include a report submitted by Sanlaap, reportedly an NGO.

15. It further appears that Dipika was examined by the Chairperson on 10.8.2006. She categorically refused to go to Jasoda Singh indicating that she was picked up in Delhi by Amar Singh brought to Sonagachi and since then, she was staying with Jasoda Singh's by family. Sue stated that Jasoda Singh is not her mother and she does not want to go to her.

16. In order to appreciate the very delicate issues raised in the present application, it may also be necessary to reproduce certain further observations made by the CWC which are as follows:

In her petition before the Committee, Jasoda Singh has said that (a) about 8 years ago Shankar Singh and his wife had come to Calcutta with their daughter. Honey Singh and handed Honey Singh over to her for care and protection. Since then Jasoda Singh and her husband had been taking care of Honey Singh as foster parents, (b) that the criminal case started by Police is connected (c) that u/s 39 of J. J. Act restoration of a child his/ her guardian is the prime objective and u/s 2 J of the Act guardian means his/her natural guardian or any other person having the actual charge or control over the child. As Honey Singh was under the care of petitioner, she should be to the petitioner, (d) that in similar cases the Committee has restored Puja Mukherjee and Anoor Khatun on 27.2.2006 and Reema Singh and Puja Singh on 6.3.2006.

As regards the first point made the statement of Dipika alias Honey Singh shows clearly that her father is Prem Shankar and mother is Asha Shankar and that they live in Krishnanagar, old Delhi. Her statement u/s 164 of Cr. PC before the learned Metropolitan Magistrate, 16th Court. Calcutta also shows that her father is Prem Shankar and they live in Delhi

17. The CWC quite rightly did not deal with the second point which related to filing of the criminal case. The said CWC thereafter proceeded with interpreting Section 39(iii) which relates to restoration of child in need of care and protection to his/her parents, guardian or a fit person or institution. CWC also dealt with the definition of guardian as provided u/s 2(j) of the said Act.

18. Upon consideration of all relevant facts and materials, the CWC concluded as follows:

I have considered the matter in details the petitioner is not a guardian as defined in J.J. Act. A criminal case is pending where the petitioner's daughter is one of the accused Dipika herself has categorically refused to go to the petitioner. In the circumstances, I am of the considered view that in the best interests of safety and protection of victim girl Dipika. She cannot be handed over to the petitioner, hence the petition stands rejected.

19. Perused the case dairy, which was produced before the Court at the time of hearing. The case diary indicates that there laid been substantial progress in investigation. Statements of certain witnesses as well as alleged victims were recorded.

20. Having regard to the nature of the controversy raised in the present case, this Court does not consider it necessary to be swayed with such result of investigation so far made. In fact, the instant application under Article 227 of the Constitution, which does not seem to have much bearing on the pending criminal case, deserves to be dealt with in accordance with the relevant provisions of law under the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as "the Act").

21. Section 2(j) defines guardian as follows:

(j) "guardian" in relation to a child, means his natural guardian or any other person having the actual charge or control over the child and recognized by the competent authority as a guardian in course of proceedings before that authority.

22. Sub-section (d) of Section 2 defines "child in need of care and protection" in the following manner:

(i) who is found without any home or settled place or abode and without any ostensible means of subsistence;

(ii) who resides with a person (whether a guardian of the child or not) and such person

(a) has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out; or

(b) has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person;

(iii) who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after;

(iv) who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child;

(v) who does not have parent and no one is willing to take care of or whose parents have abandoned him or who is missing and run away child and whose

parents cannot be found after reasonable inquiry;

(vi) who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts;

(vii) who is found vulnerable and is likely to be inducted into drug abuse or trafficking;

(vii) who is being or is likely to be abused for unconscionable gains;

(ix) who is victim of any armed conflict, civil commotion or natural calamity;

23. In the present case, it had been claimed that the child. Honey Singh, was mentally as well as physically challenged person. The petitioner, of course, claimed that the said child was duly taken care of and for this the petitioner claimed to have spent huge amount of money.

24. This by itself, of course, does not change the legal complexion even assuming such claim is to be true.

25. No doubt, Section 39 of the said Act relates to restoration and the same is set out follows:

(1) Restoration of and protection to a child shall be the prime objective of any children's home or the shelter home.

(2) The children's home or a shelter home, as the case may be, shall take such steps as are considered necessary for the restoration of and protection to a child deprived of his family environment temporarily or permanently where such child is under the care and protection of a children's home or a shelter home, as the case may be.

(3) The Committee shall have the powers to restore any child in need of care and protection to his parent, guardian, fit person or fit institution, as the case may be, and give them suitable directions.

26. It thus, cannot be denied that restoration of and protection to a child is the prime objective of any children's home or the shelter home. It has also been clearly laid down that a child deprived of his family environment temporarily or permanently requires to be taken care of in the children's home or a shelter home and such protection shelter must provide such children with proper care and protection. Law empowers the Committee to restore any child in need of care and protection to his parent, guardian, fit person or fit institution, as the case may be, and give them suitable directions.

27. It was seriously alleged in the application that the Chairperson of the CWC practically acted in a manner, which goes a long way to reflect her lack of awareness regarding her statutory duties and responsibilities under the said Act.

28. Mr. Y.J. Dastoor, as learned Counsel for the petitioner, expressed wonder as to how could the CWC remain indifferent to such passionate cry of the petitioner

for getting back her child particularly when such a child had been duly taken care of by her for years.

29. It was further contended by Mr. Dastoor that the impugned order passed by the CWC reflects bias on the part of the said authority and having regard to the fact that certain other children were earlier restored to the respective parents/guardians, the CWC in the present case unduly treated the child in an unfair and arbitrary manner.

30. On the other hand, the learned Counsel for the O.P/State referring to the result of investigation made in connection with the case, which is now pending before the learned Court of Metropolitan Magistrate, Calcutta, submitted that the basis of the claim made by the petitioner is wrong and it would have been unjust on the part of the CWC to restore the child to the custody of the petitioner without paying due regard to the facts and circumstances of the present case and the peculiarity of the situation.

31. While dealing with an application under Article 227 of the Constitution, it is neither desirable nor permissible to reappreciate the evidence on record. This does not mean to suggest that this Court is helpless even in a situation where it is found that the order under challenge was passed without considering the materials before the learned Court or on the basis of materials which were not before the Court. This Court also is called upon to be alert and active when it finds that the impugned order suffers from any jurisdictional error.

32. Having regard to the facts and circumstances of the present case, the peculiarities of the situation and the inherent hollowness in the claim of the petitioner, as reflected, from the impugned order as well as the materials in the case diary, it cannot be said by any stretch of imagination that the order impugned suffers from any jurisdictional error. In fact, it does not call for any manner of interference and question of restoration of the Honey Singh to the custody of the present petitioner, in such circumstances, cannot arise. This Court cannot also be unmindful to the fact that the said Honey Singh has been consistent in her reluctance even to have interaction with the present petitioner, not to speak of going to her custody.

33. After all, it is never the object of the Juvenile Justice (Care and Protection of Children) Act, 2000 to throw a child to an ocean of uncertainty.

34. Thus, the order impugned does not call for any interference. This, however, does not take away the right of the present petitioner to renew her prayer, if there is any change in circumstances permitting her to do so.

35. It may also be mentioned that any observation made hereinbefore will certainly not bind any proceeding/case, present or future, which will proceed in accordance with law without being influenced by any observation made hereinbefore.

36. This disposes of C.R.R. No. 2197 of 2007.

37. Send a copy of this order to the Child Welfare Committee (CWC) for information and necessary action. The case diary be returned to the Investigating Authority through the learned Counsel for the State.

38. Criminal department is directed to supply xerox certified copy of this order, if applied for, to the learned Counsel for both parties as expeditiously as possible.

Later:

39. Immediately after passing of the said judgment, a supplementary [affidavit is filed on behalf of the petitioner, Jasoda Singh, wherein it is claimed that the said alleged victim, Honey Singh has attained majority. The supplementary affidavit filed be kept with the record. Necessary action in accordance with law may be taken. Criminal department is directed to supply xerox certified copy of this order to the learned Counsel for the parties as expeditiously as possible.