
(2001) 11 KL CK 0014

In the High Court Of Kerala

Case No : D.P. (Habeas Corpus) No. 29263 of 2001

Parvathy

APPELLANT

Vs

Corporation Relief Center

RESPONDENT

Date of Decision : 02-11-2001

Acts Referred:

Juvenile Justice Act, 1986 — Section 2(b), 29, 29(5), 34

Citation : (2001) 2 KLJ 835

Hon'ble Judges : V.P. Mohan Kumar, J;K.K. Denesan, J

Bench : Division Bench

Advocate : Joyan P. Antony, for the Appellant; K.P. Balasubramanian, N.N. Sugunapalan and Sreelatha Parameswaran (Govt. Pleader), for the Respondent

Judgement

Mohankumar, J.—A lady by name Santhi was arrested by the police on the alleged charge of theft. The police also found along with her a minor boy aged between four and six years. When the accused Santhi was produced before the Judicial First Class Magistrate's Court-II, Ernakulam the learned Magistrate remanded the accused to police custody and as none came forward to claim custody of the child, directed to be sent to the Home for Destitutes, Palluruthy, Ernakulam maintained by the first respondent to look after aged and infirm. Petitioner herein claims to be the grand mother of the child and she has approached this court seeking for a direction to the first respondent to produce the child before this court and set him at liberty. We issued notice to the respondents. Advocate Sri. N.N. Sugunapalam appeared on behalf of the first respondent. The Government Pleader appeared for the 2nd respondent. It is alleged by the petitioner that she belongs to a nomadic tribe in South India and that she earns her livelihood by selling honey, ayurvedic medicinal roots and leaves etc. in public. She travels all over to carry on her avocation. According to her, her elder daughter died at the time of child birth and the child born to her is the child in question and is taken care of by the petitioner. We requested the Government Pleader Smt. Sreelatha to visit the first respondent and report the condition prevailing. She visited the place and reported. After hearing her, we felt

that the place where the child is lodged at present does not have a congenial atmosphere. Hence we directed to ascertain the availability of any facility in an orphanage who can take care of the child. She reported that there is an orphanage called Sai Nikethan, Monastery Road, run under the auspices of Sri. Ramakrishna Mission. We are informed that Mr. Justice K.P. Radhakrishna Menon (Retd.) is associated with the Ashramom movement. Hence we directed that the child be admitted to an orphanage run by an N.G.O. Sai Nikethan, Monastery Road, near Chavara Cultural Centre, Ernakulam South. The child was accordingly admitted. The said institution got themselves impleaded as 3rd respondent.

2. The learned Government Pleader submitted that on the basis of information furnished by the petitioner about their whereabouts an investigation was made at the address furnished by the petitioner. It turned out to be that they were incorrect. The Government Pleader further submitted that the address furnished by the petitioner does not exist. It is submitted by the Government Pleader that when questioned the petitioner had stated that she is residing at a place called Railway Puramboke colony, Palakkad Railway Station. The police authorities investigated and after investigation it was discovered that there is no such place at Palakkad. According to us even from the very averments in the original petition we do not think that the petitioner can claim any permanent address as she describes herself as a nomad. In the circumstances, we do not think that it is proper to leave the child to the custody of the petitioner at this stage as we are not convinced, prima facie, she may be able to take care of the child in the best interest. We also entertain a doubt about the story of the bereavement of her daughter etc.

3. There is yet another aspect to be noticed in this context. Counsel appearing for the third respondent Sai Nikethan submitted that the child has responded well to the questions put to him by them. It is disclosed that he can understand English. He is able to write all the twenty six English alphabets. He can count the numbers from 1 to 100 with felicity. He is familiar with Malayalam and he speaks in Tamil as well as Malayalam. It is not stated in the writ petition that the child was studying in any school and such a situation may not arise at all, as even according to the petitioner they are wandering tribe with no fixed abode. In fact the child had disclosed a telephone number. On verification it was found to be at a place near Madurai. But, an investigation did not yield any result.

4. We were informed that the child bore an incision mark suggesting having undergone an operation. We notice that it is not disclosed anywhere in the writ petition that the child had any serious disease and he underwent any operation. Nor the petitioner is able to enlighten this court in this behalf. The report of the Government Pleader stated that the body of the child carried a vertical incision scar from the middle of chest to upper part of abdomen. Just right to this scar, below the ribs, there is yet another burn scar, it is reported. We directed that the child be subjected to medical examination by a medical board. This was done as well. The medical board after examination has reported that though there is

chance of a surgical operation having been done it does not have any indication of removal of any vital internal organs from the body of the child.

5. Taking into account the facts and circumstances of the case, the child being a minor and his guardianship having not been established satisfactorily, we are not entertaining the claim of the petitioner at this stage to set the child at liberty and let him be in the custody of the petitioner. We find that the child is properly looked after by the third respondent and in the interest of the child it is only appropriate that we leave the child in the custody of the third respondent. We therefore close this writ petition. The child shall remain in the custody of the third respondent. We make it clear that the petitioner will not have any right to interfere with the peaceful life and residence of the child. Police authorities shall take steps to see that the petitioner does not interfere and cause any obstruction. However, we leave open the liberty of the petitioner to approach the appropriate court to establish the guardianship over of the child and thereafter claim custody of the child.

6. Before parting with the case, we would advert one of the contentions of the petitioner. It was indicated that the learned Magistrate ought not to have handed over the custody of the child to the first respondent without any enquiry.

7. Though, this course cannot be faulted, we wish to draw the attention of the learned Magistrate on one aspect. It was not a proper exercise of power by him in such a situation. According to us the Juvenile Justice (Care and Protection of Children) Act, 2000 has been enacted by the Parliament arming the court to issue appropriate direction in such cases. This Act which replaces Juvenile Justice Act, 1986 as amended came into force with effect from 1-4-2001. The preamble of the Act provides this:

An Act to consolidate and amend the law relating to Juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment.

8. These legislations and its precursor were enacted by the State for the betterment of the citizen. The preamble of the earlier enactment that is, the Juvenile Justice Act, 1986 stated:

An Act to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to, and disposition of delinquent juveniles.

We should notice that the preamble of the present Act has brought a wider ambit for the enactment unlike the 1986 enactment. While the 1986 enactment contemplated to deal with "neglected or delinquent juveniles" the present Act takes in its sweep the "care and protection.....of children". The shift in the

object is to achieve certainly certain larger end. The 1986 enactment defined "neglected juvenile" and a "juvenile" whereas the present enactment is with respect to a "child in need of care and protection". The ambit of the definition in the Act is very wide and we may advert to two clauses for the purpose of this case. They are the following:-

Section 2(b) cl.(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 have abandoned him or who is missing and run away child and whose parents cannot be found after reasonable inquiry.

9. The notion of a delinquent child is introduced by employing the expression "juvenile in conflict with law". The courts may keep these differences in mind while dealing with the subject.

10. Chapter II of the Act deals with a "Juvenile in conflict with law" whereas Chap. III deals with "a child in need of care and protection". We are in the present case concerned with the latter category of children.

11. As per the enactment of 2001, the original authority to exercise power under the Act is the competent authority and in relation to children in need of care and protection is the Child Welfare Committee to be constituted under Sec. 29 of the Act. It is not brought to our notice that in exercise of the power the Government has constituted a Child Welfare Committee to exercise the functions conferred and to discharge the duties cast on the committee under the statute. The statute as it is, remains as an exercise by the Parliament achieving no purpose. The question then would be it being a welfare legislation can the court put life into the enactment by judicial interpretation?

12. In such a situation, we are of the view that the court can adopt the doctrine of purposive interpretation of statute and crease out the inadequacy of a situation where the executive has failed to provide machinery to implement the legislation. In this behalf, we may examine the relevant statute. Sub-section (5) of Sec. 29, while constituting the Child Welfare Committee stated as under:

Section 29(5). The committee shall function as a bench of Magistrate and shall have the powers conferred by the Code of Criminal Procedure, 1973 on a Metropolitan Magistrate or as the case may be a Judicial Magistrate of the first class.

It means by introduction of a statutory fiction the Committee thus constituted is declared to function as a bench of Magistrates and shall exercise all the powers of a Metropolitan Magistrate or a Judicial Magistrate of the First Class. In other words, by fiction, the Committee functioned as a Magisterial court. If so, we do not find any error if we apply the doctrine of purposive interpretation and hold that the powers vested in a Child Welfare Committee to be constituted under

Sec. 29 of the Juvenile Justice (Care and Protection of Children) Act, 2001 can be exercised by Metropolitan Magistrate or a Magistrate of First Class until a child welfare committee is constituted. In doing so, one can legitimately be justified as not violating the rule.

A judge must not alter the material of which it is woven, but he can and should iron out the creases.

13. The intention of the Parliament in enacting the new law is discernible from the preamble. If so, it should be the endeavour of the courts to give life to that law lest it be a lifeless and still-born legislation forgotten soon after its enactment and slumbering in the statute books with no aim to achieve. If the intention of the statute is to achieve a purpose we see no error on employing the doctrine of purposive interpretation breathing life into the same. Here we would quote the following words of Lord Denning M.R. in his book "the Discipline of Law" and leave the aspect at that:

Thus in *Nimmo v. Alexander* Lord Wilberforce said:

If I thought that Parliament's intention could not be carried out, or even would be less effectively implemented, unless one particular (even though unnatural) construction were placed on the words it as used, I would endeavour to adopt that construction.

And in *Kammins v. Zenith Investments Ltd.* Lord Diplock drew a clear distinction between the "literal approach" and the purposive approach to solve the question.

There remained only one further push needed. It was provided by Sir David Renton in the Report of his Committee.

We see no reason why the courts should not respond in the way indicated by Lord Denning. The court should in our view, approach legislation determined, above all, to give effect to the intention of Parliament. We see promising signs that this consideration is uppermost in the minds of the members of the highest tribunal in this country.

The enacting of law is not the, be all and end all, of the legislature, it is duty bound to provide the means and infrastructure to implement the legislation. Or else the legislation becomes an empty exercise undertaken, perhaps, to satisfy a constitutional requirement with no object to achieve. In several cases, there may be instances when minor children or female are produced along with an accused person. They are not accused of commission of any offence and they cannot obviously be remanded to judicial or police custody. There may be difficulty in letting them go as at many a time there may not be any proper person to take care of them. In such a situation, they should not treat these persons as mere chattels and mechanically deal with them. The court before whom they are produced should exercise the powers vested in it under the Juvenile Justice (Care and Protection of Children) Act, 2001. Section 34 of the Act deals with children's home and it also envisages entrusting of the custody to any of the children's

home maintained by the State or in association with any voluntary organisations. We feel, employing the doctrine of purposive interpretation these principles can be employed in case of destitute females as well. They should arrange for their proper custody until such time a permanent solution is worked out. It will be desirable that the presiding officers who may have to deal such cases, prepares a list of such homes, in consultation with the Public Prosecutor who may avail the service of police authorities. A child or female thus admitted being so detained would not be considered as being illegally detained as the same is for the purpose of bringing him or her under the proper guardian or for the purpose of providing better care and education. The court should, if time permits, monitor the child thus admitted. It may not be unlikely that the child or the female in certain cases in this case, might have strayed into the custody. This is what we feel in this particular case from the accomplishments of the child displayed interse in the background of the petitioner. A detailed investigation may be needed in such cases. In the facts and circumstances of the present case we direct the Director General of Police to investigate the circumstances as to how the child in question reached the custody of the petitioner. The media, newspaper and television may publicise the tale of the child so that the legitimate claimant, if there be any, may put to notice and may come forward.