

(2017) 12 RAJ CK 0057
In the Rajasthan High Court
Case No : 183 of 2017

Ramesh Chand S/o Munshi Lal

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 20-12-2017

Acts Referred:

Indian Penal Code, 1860, Section 363 - Punishment for kidnapping
Protection Of Children From Sexual Offences Act, 2012, Section 16, Section 17 - <

Citation : (2017) 12 RAJ CK 0057

Hon'ble Judges : Ajay Rastogi, Kailash Chandra Sharma

Bench : DIVISION BENCH

Advocate : Khushwant Morwal, ?B.N.Sandu, ?Pankaj Sisodia, Rajveer Singh, Mahila Thana, Alwar, Kusum

Final Decision : Disposed

Judgement

1. The present petition has been filed by father of the detenue Arti with the grievance that they are residing in Alwar and his daughter Arti is till a minor and has not attained 18 years of age (age of majority) and she left home on 01.10.2017 to buy some grocery but when she did not return back to home, it revealed to the petitioner that she has been abducted by the respondent No.5 who took away the detenue with him, who as alleged and also reveals from the case diary is married and having two children from the wedlock.

2. Immediately after this fact came to his notice, FIR

No.232/2017 was registered at his instance at Police Station Mahila Thana, Alwar on 01.10.2017 for offence u/Sec.363 IPC and Sec.16 & 17 of POCSO Act implicating respondent No.5 as one of the accused but when no action was taken by the police authority to his satisfaction and the detainee also was not recovered, no option was left with him but to approach this court by filing instant habeas corpus petition.

3. Notices were issued by this court on 25.10.2017 and the respondents were called upon to file their response and also to produce the corpus before the court.

4. The corpus was recovered on 18.12.2017 and produced before the Child Welfare Committee, Alwar but since the matter is pending before this court, on the application being filed, the Investigating Officer took her custody and produced her before the court today.

5. The case diary of the matter, produced before the court, reveals that the detainee is still a minor and according to the School Roll Register, she has been a student of Perfect Public School where her date of birth has been recorded as 02.08.2003 and as per present stage of investigation, she is still a minor, which is always subject for enquiry to be made by the competent authority.

6. We put specific question to the detainee as to with whom she wants to stay, she is not inclined to go with her parent who are present in the court and has shown her inclination to go with the fifth respondent against whom material has come on record during the course of investigation that he is already married and having two children from the wedlock and against whom FIR has been lodged by the petitioner on whose behalf the marriage certificate has been produced to show that he has solemnized marriage with

the detenue on 12.10.2017 and got their marriage registered under the seal and signature of the Marriage Registration Officer, Ghaziabad.

7. In the given facts & circumstances what is being contended is subject to further investigation but from the material on record, the detenue is still a minor and her consent may not be that material at the same time, since she is not inclined to go with her parents, who are her natural guardian, they have first right to take her custody but since she is rigid and has not shown her inclination to go with the parents, keeping all these facts into consideration, a question came up for our consideration as to how the welfare of detenue could be protected in view of the mandate of law under the Juvenile Justice (Care & Protection of Children) Act, 2000.

8. In the present case, the detenue named Arti, as per the prima facie evidence which came on record, is still a child and her welfare is to be decided by the Child Welfare Committee. It is informed to this court that in the State of Rajasthan, the Child Welfare Committee has been constituted at every District Level, as per S.29 of the Act, 2000. Chapter-III of the Act, 2000 provides a complete mechanism from constitution of the Committee and procedure which is to be followed for examining and adjudicating the matter for welfare of the child and S.30 of the Act, 2000 specifically states that a child in need of care & protection may be produced before the Child Welfare Committee for being placed in safe custody or otherwise when the Committee is not in session before an individual member. As per the record of investigation, the detenue Arti appears to be less than 18 years of age and is a child.

9. After hearing counsel for the parties, we find that the instant

habeas corpus petition deserves to be disposed of by passing the following directions:-

- (a) THAT the detenue/child - Arti shall be produced before the Child Welfare Committee, Alwar who is having jurisdiction in the matter;
- (b) THAT the Committee shall determine the age of detenue/child - Arti, as per the provisions of R.12(iii) of the Juvenile Justice (Care & Protection of Children) Rules, 2007;
- (c) THAT after determination of age of the detenue/child - Arti, in case she is found to be a child less than 18 years of age, the Committee shall pass necessary orders regarding her care & protection;
- (d) THAT in case the committee finds that the detenue/ child - Arti is more than 18 years of age on the date of passing of the order, the Committee may set the detenue/child free and she may be at liberty to go and reside according to her own wishes;
- (e) THAT the detenue/child - Arti shall be produced before the Child Welfare Committee, Alwar within a period of six days from today and the Committee may decide the age of the detenue/child after affording opportunity to all the concerned parties including her parents and pass necessary directions within a period of four weeks from the date of production of the detenue/child; and
- (f) THAT it is informed that there is no such Balika Grah in district Alwar and whenever the children are taken into custody, they are lodged in Mother Teresa Home, Kaidalganj Road, Alwar. It is, therefore, directed

that till the detainee/child - Arti is produced before the Committee and directions are passed by the Committee regarding interim arrangements during the period of inquiry, the detainee/child shall continue to remain lodged in the Mother Teresa Home, Kaidalganj Road, Alwar.

Let the detainee/child Arti may be produced before the Child Welfare Committee on or before 25.12.2017 and the parents of the detainee/child namely Arti, who are represented by their respective counsel, may be informed and are at liberty to appear before the Committee who shall ensure their presence and proceed further in terms of the directions, indicated above and the Committee may take its decision independently without being influenced/inhibited by the observations made in accordance with law.

10. With the directions, referred to supra, the instant habeas corpus petition stands disposed of.