

**(2006) 04 KAR CK 0020**

**In the Karnataka High Court**

**Case No : Criminal Revision Petition No. 412 of 2006**

Sri. Poojari Krishnappa and Others

APPELLANT

Vs

The State and Others

RESPONDENT

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**Date of Decision : 20-04-2006**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 397 (2), 482

**Citation :** (2006) CriLJ 3142 : (2007) 6 KarLJ 229 : (2007) 5 RCR(Criminal) 479

**Hon'ble Judges :** A.C. Kabbin, J

**Bench :** Single Bench

**Advocate :** K. Varadarajan, for the Appellant; Satish R. Girji, HCGP for Respondent No. 1 and Kashinath Rao Patil and 3, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

A.C. Kabbin, J.—This revision petition has been preferred by the parents of a minor girl (name not mentioned to avoid identity), who had been allegedly kidnapped on 29.8.05. On the basis of a complaint lodged by her father on 15.9.05, a case was registered against the suspected persons and investigation was taken up. It is stated that she was traced and was produced before the learned JMFC, Hoskote at 9.30 p.m. on 24.9.05 in his home office. The grand parents the victim (respondents 2 and 3) appeared and assuring that they would take care of the victim girl, they took custody of the victim girl.

2. On 7.10.05, the complainant i.e., the father of the victim girl filed an application for giving the custody of the victim girl him. On the ground that the victim girl filed objections to that application and she was not inclined to go with her parents, an order was passed by the learned JMFC on 11.10.05 directing that the victim girl be detained in the custody of WASI of Hoskote Police Station. Later after hearing the parties, an order was passed on 11.11.05 by the learned JMFC rejecting the application of the parents of the girl (revision petitioners). Challenging the said order, the respondents 2 and 3 preferred Crl.R.P. No. 99/05. That was considered by the learned Addl. Sessions Judge, Bangalore Rural

District and he passed an order on 26.11.05 directing that the victim girl be given to the custody of her maternal grand father and maternal grand mother i.e., the respondents 2 and 3 herein. It is that order which has been challenged in this revision petition by the parents of the victim girl.

3. Sri K. Varadarajan, learned Counsel for the revision petitioners advances two points in support of his prayer for setting aside the order of the revisional Court. The first one is that the order passed by the learned JMFC was an interlocutory order and therefore in view of the provisions of Section 397(2) of the Code of Criminal Procedure, the learned Additional Sessions Judge had no jurisdiction to set aside that order. The second point submitted by him is that the father of the victim girl (revision petitioner no. 1) is the proper guardian in the matter and since the victim girl is a minor, the custody of the minor girl ought to have been given to the revision petitioner No. 1.

4. Replying to this, Sri. Kashinath Rao Patil, learned Counsel for the respondents 2 and 3 submits that the original order passed by the learned JMFC was on 24.9.05 giving custody of the victim girl to the grandparents and that order could not have been reviewed by the learned JMFC. It is further submitted by him that according to the police, the victim girl has now been married and therefore the husband is the proper guardian. His contention is that any claim by the revision petitioner for the custody of the victim girl can be placed before the District Court under the Hindu Minority and Guardianship Act.

5. I have carefully considered these points. The learned Counsel for the revision petitioners is right in his submission that the order of the learned Presiding Officer of the Fast Track Court in a revision petition setting aside an interlocutory order of the learned Magistrate is without jurisdiction. If that is taken into consideration, the order of the learned JMFC remanding the victim girl to the custody of WASI has to be restored.

6. The question that has arisen in this petition is not about the custody of any property or vehicle seized in a case to consider whether earlier order could have been reviewed by a Magistrate. Where a minor girl allegedly kidnapped is traced and produced before a Magistrate, she has to be sent to her lawful guardian. If there is any dispute as to who is her lawful guardian or the minor girl is reluctant to go with the lawful guardian, appropriate order for interim custody of the victim girl has to be made by the learned Judicial Magistrate before whom she may be produced. A difficulty may arise in cases where the claim is that such a minor girl had been allegedly kidnapped for the purpose of marrying her without the consent of her lawful guardian and that marriage has, infact, been performed. The paramount consideration in such cases is the welfare of the victim girl. The Magistrate before whom such minor girl is produced, shall take into consideration all facts and circumstances of the case and shall make an order for interim custody keeping in mind the overall welfare of the victim girl.

7. In the present case the original order of the learned Magistrate was to give the

tentative custody of the girl to the grandparents. They were not the lawful guardians, when the parents of the girl were available. Therefore the submission of the learned Counsel for the respondents 2 and 3 that the order could not have been reviewed, cannot be accepted since the victim girl is not a property or vehicle seized in a criminal case and such an order for interim custody can be reviewed as many times as the circumstances require.

8. Keeping this principle in mind, the parties had been asked to be present in my chamber at 5 p.m., yesterday. I had ascertained the wish of the victim girl at that time and the victim girl had expressed her desire to go with her parents i.e., the revision petitioners. They are the lawful guardians. Taking her earlier wish, she had been told to ponder over the matter and express her desire today. When she was asked today in the open Court in the presence of the learned Counsel for the revision petitioners, learned Counsel for the respondents 2 and 3 and the learned HCGP for the respondent No. 1, she expressed her desire to go with her parents, i.e., the revision petitioners. Therefore, I am of the opinion that she shall be given to the interim custody of the revision petitioners by imposing certain conditions.

9. For the above said reasons, the revision petition is allowed and both the orders of the learned JMFC and that of the learned Presiding Officer, Fast Track Court-4, Bangalore Rural District, are set aside. u/s 482 of the Cr. P.C., it is directed that the custody of the victim girl be given to the custody of the revision petitioners on the following conditions:

- (1) They shall take the custody of the victim girl forthwith.
- (2) They shall give an undertaking before the learned JMFC, Hoskote on 26-04-2006 to the effect that they would look after her properly.
- (3) They should produce her before the learned JMFC, Hoskote two months hereafter on the date to be fixed by him to ascertain whether the victim girl is being looked after properly.
- (4) In case, the learned JMFC finds at that time the custody of the victim girl will have to be changed in view of the changed circumstances, despite the order of this Court giving custody to the revision petitioners, he is at liberty to pass fresh orders in accordance with law.