

Court No. - 80

Case :- CRIMINAL REVISION No. - 4835 of 2023

Revisionist :- X

Opposite Party :- State Of U.P. And 3 Others

Counsel for Revisionist :- Babhru Vahan Singh

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Chandra Sharma,J.

Vakalatnama filed today by Sri Sanjay Kumar Singh, Advocate on behalf of opposite party no. 4 is taken on record.

Heard learned counsel for revisionist, learned counsel for the opposite party no. 4 as well as learned A.G.A. for State and perused the record.

The present criminal revision has been preferred by the revisionist through her husband namely, Nitesh Yadav under Section 102 of the Juvenile Justice (Care and Protection) Act-2015 (hereinafter referred to as "J.J. Act, 2015) to allow the present criminal revision and set aside the impugned judgment and order dated 29.04.2023 passed by learned Child Welfare Committee, Gorakhpur as well as order dated 30.8.2023 passed by learned Additional Sessions Judge/Special Judge (POCSO Act), Court No. 1, Gorakhpur in Criminal Appeal No. 135 of 2023 (Chandni Vs. State of U.P. and another) arising out of Case Crime No. 256 of 2021, under Section 363, 366, 376 IPC and Section 5/6 POCSO Act, Police Station Gagaha, District Gorakhpur.

It is submitted by learned counsel for the revisionist that the revisionist is major and was in affair with one Nitesh Yadav and also entered into marriage with him and marriage was got registered before the Registering Authority. She stated her age as 20 years before the learned Magistrate in her statement recorded under Section 164 Cr.P.C. The revisionist expressed her willingness to go and live with her husband but her custody was rejected by learned Child Welfare Committee. The age of the revisionist/victim was determined below 18 years on the basis of educational record where her date of birth was recorded as 2.4.2006. She was not handed over to her husband by Child Welfare Committee. The inmates of the revisionist/victim were not present at the time of deciding her custody as a result she was sent

to Rajkiya Balgrih (Balika), Nidhriya, Ballia till further order. It is further submitted that decision taken by the Child Welfare Committee cannot be said to be inconfirmitly with law because she was major at the time of alleged incident and her date of birth was got registered in the Municipal Corporation on 08.06.2023 in which her date of birth was recorded as 04.04.2002 on the basis of which she was major but this date of birth was not accepted by the learned C.W.C. and her request to be handed over in the custody of her husband was also refused. The order passed by the learned C.W.C. was challenged in appeal before the learned appellate court which was decided by order dated 30.8.2023 and rejected the appeal without going through the record relating to the date of birth of the revisionist/victim which cannot be said to be lawful but both the orders passed by learned C.W. C. as well as learned Appellate Court being illegal are liable to be set aside.

Learned counsel for the opposite party no. 4 as well as learned A.G.A. for the State opposed the prayer as aforesaid and urged that in this case as per academic record, the revisionist/victim was aged below 18 and her date of birth was recorded as 02.04.2006 on the basis of which she cannot be said to be major. Her date of birth was relied by the learned C.W. C. as well as learned Appellate Court while deciding her age as per provisions as contained under Section 94(i) of the Act. She was declared to be juvenile and since her parents were not present there and no any claim on their behalf was made that was the reason, she was decided to be sent to Rajkiya Balgrih (Balika), Nidhriya, Ballia. It is further urged that during the period, she was residing in Rajkiya Balgrih (Balika), Nidhriya, Ballia, the date of birth of the revisionist/victim got registered before the Registrar, birth and death, Nagar Nigam, Gorakhpur showing the date of birth as 04.04.2002 on 8.6.2023 but on which basis her date of birth was got registered by Nitesh Yadav, he may know better but no any such document has been filed to show the basis of date of birth to be 4.4.2002. It is also urged that the name of father of the revisionist has been mentioned as Saksham on birth certificate relied on by the revisionist whereas her father's name is Prabhunath @ Sattan Prajapati. The mother and father are natural guardians of the minor girl not the person who enticed her away and said to have been entered into marriage. In this way, the orders passed by learned Child Welfare Committee as well as learned Appellate Court cannot be said to be illegal and against provisions of law, therefore, this revision being devoid of merit is liable to be dismissed.

On considering the facts and circumstances of the case,

submissions made by both the parties as well as learned A.G.A. for the State and perusal of orders passed by learned C.W.C. as well as learned appellate court and the date of birth as mentioned in the academic record, it appears that she was minor at the time of alleged incident and her parents did not present any claim regarding her custody that was the reason, she, being minor, instead of handed over to the person to whom marriage is said to have been entered, was sent to Rajkiya Balgrih (Balika), Nidhriya, Ballia. In this way, the order passed by the learned Child Welfare Committee cannot be said to be against material on record and provisions of law. Likewise, the order passed by learned Appellate Court can also not be said to be illegal as a result it does not warrant interference by this Court, but this criminal revision being devoid of merit is liable to be dismissed.

Accordingly, this criminal revision is ***dismissed***.

Order Date :- 19.10.2023

A. Singh