

Court No. - 81

Case :- HABEAS CORPUS WRIT PETITION No. - 823 of 2023

Petitioner :- Smt.Ilma (Corpus) And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Pradeep Saxena,Mandeep Chaudhary

Counsel for Respondent :- G.A.

Hon'ble Mrs. Jyotsna Sharma,J.

1. Copy of the release order of the corpus is being filed by learned A.G.A.. The same is taken on record.
2. Heard Sri Pradeep Saxena, learned counsel for the petitioners and Sri Himanshu Kumar, learned A.G.A. for the State and perused the record.
3. Admittedly in this case an F.I.R. has been lodged against petitioner no.2 by respondent no.4 i.e. father of petitioner no.1.
4. Learned A.G.A. submits that after investigation chargesheet under Sections 363 and 366 I.P.C. and 7/8 POCSO Act has been filed against petitioner no.2 on 26.01.2023 and the matter is now seized by the court concerned. It is further submitted that the victim was found minor and she has in her statement recorded under Section 164 Cr.P.C. imputed allegations against petitioner no.2 and that she has been handed over to her parents on the basis of an order passed by Child Welfare Committee.
5. The High Court of Allahabad in judgment passed in ***Habeas Corpus Writ Petition No. 362 of 2020 (Km. Rachna and another vs. State of U.P. and 4 Others)*** delivered on 08.03.2021, has clearly held in para no. 78 that a writ of habeas corpus would not be maintainable, if the detention in custody is pursuant to judicial orders passed by a Judicial Magistrate or a court of competent jurisdiction or by the Child Welfare Committee.

Relevant Question No. 1 was framed, which is as below:-

"Question No.1 : "(1) Whether a writ of habeas corpus is maintainable against the judicial order passed by the Magistrate or by the Child Welfare Committee appointed under Section 27 of the Act, sending the victim to Women Protection Home/Nari Niketan/Juvenile Home/Child Care Home?"

Answering to Question no. 1, the High Court held as below:-

"Answer : If the petitioner corpus is in custody as per judicial orders passed by a Judicial Magistrate or a Court of Competent Jurisdiction or a Child Welfare Committee under the J.J. Act. Consequently, such an order passed by the Magistrate or by the Committee cannot be challenged/assailed or set aside in a writ of habeas corpus."

The court further held that even an illegal or irregular exercise of jurisdiction by the Magistrate or by the C.W.C., cannot give cause of action for a writ of habeas corpus.

6. As the corpus was lodged in a juvenile home under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, hence her detention cannot be treated as illegal from any angle. **The petition is devoid of substance and is hereby dismissed.**

Order Date :- 3.11.2023

Asha