

Court No. - 81

Case :- HABEAS CORPUS WRIT PETITION No. - 840 of 2023

Petitioner :- Smt. Foola Devi And Another

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

Counsel for Petitioner :- Shravan Kumar Mishra

Counsel for Respondent :- G.A.

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Sri Om Prakash Chaubey, advocate holding brief of Sri Shravan Kumar Mishra, learned counsel for the petitioners and learned A.G.A. for the State.
2. This petition has been filed by petitioner no.1, Smt. Foola Devi and petitioner no.2, Majhili Bahu with the contentions that Smt. Foola Devi got married to son of petitioner no.2 Raja Bhaiya but family members of Smt. Foola Devi lodged false F.I.R. on 12.04.2023 as Case Crime No.0119 of 2023, under Section 363 I.P.C. police station Atarra, District Banda.
3. It is submitted on behalf of the petitioners that Smt. Foola Devi and Raja Bhaiya were granted interim protection by High Court and it was directed that the C.J.M. shall record her statement under Section 164 Cr.P.C. It is argued that she being wife of Raja Bhaiya and being major is free to move to a place of her choice and as she has expressed her inclination to live with her husband, therefore, she may be released in favour of her mother-in-law.
4. Counter affidavit has been filed by the State. Perusal thereof reveals that after investigation in case crime no.119 of 2023 a chargesheet under Sections 363, 376 I.P.C. and 3/4 the Protection of Children from Sexual Offences Act has been filed on 22.09.2023. Counter affidavit further reveals that the victim Smt. Foola Devi was produced before the concerned court and her statement under Section 164 Cr.P.C. was recorded. She said that she is major and that she is inclined to live with Raja Bhaiya and that she got married to him out of her own free will. It is further revealed that she was produced before the Child Welfare Committee. On 18.09.2023 an order was passed directing her to be lodged in a protection home, copy of the order dated 18.09.2023 is on record. She was in fact found minor on the basis of academic record.
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.**

7. The petitioner is at liberty to challenge the order of the Child Welfare Committee under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 before the appropriate forum.

Order Date :- 30.10.2023

Asha