

Court No. - 81

Case :- HABEAS CORPUS WRIT PETITION No. - 911 of 2023

Petitioner :- Naziya And Another

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

Counsel for Petitioner :- Mohd. Azam

Counsel for Respondent :- G.A.

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Sri Mohd. Azam, learned counsel for the petitioners and Sri R.K. Verma, learned AGA for the State.

2. The order of the Child Welfare Committee, Amroha is taken on record.

3. This habeas corpus writ petition has been filed with the submission that petitioner nos. 1 and 2 got married as per muslim rites and rituals on 16.08.2023. Thereafter the petitioner no. 1-Naziya W/o petitioner no. 2-Azad went with her parents under their pressure and she is being illegally detained by her father-Intezam Ali (respondent no. 4).

4. Learned AGA submits that in this case, an FIR case crime no. 0418 of 2023 has been lodged on 16.08.2023 i.e. just a day before so called marriage between the petitioners. He further submits that the statement under section 161 Cr.P.C. of the victim-Naziya was recorded. She was found minor on the basis of educational record and was produced before the Child Welfare Committee. The order was passed by the Child Welfare Committee for releasing the corpus in custody of her real mother-Shaukeen W/o Intezam Khan. It is further submitted that charge sheet in this case has been submitted under sections 363, 366, 376 IPC and sections 3/4 of POCSO Act.

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 is in custody of her real mother-Shaukeen, 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 :- 31.10.2023/#Vikram/-