

Court No. - 81

Case :- HABEAS CORPUS WRIT PETITION No. - 984 of 2023

Petitioner :- Smt.Nitu And Another

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Vijay Pratap Singh

Counsel for Respondent :- G.A.

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Sri Vijay Pratap Singh, learned counsel for the petitioners and Mohd. Suhaib Khan, learned AGA for the State.

2. This petition has been filed by the petitioner no. 2-Deepak on behalf of petitioner no. 1-Smt. Nitu, contending that both of them, out of their own free will, solemnized marriage and obtained a registration certificate on 01.08.2023.

3. It is contended by petitioner no. 2 that his wife has been illegally detained by respondent no. 5-Smt. Kamlawati Devi (the mother of the corpus).

4. Learned AGA submits that in this matter, an FIR case crime no. 0491 of 2023 under sections 363 and 366 IPC was lodged on the basis of information given by respondent no. 5 and that during investigation, the corpus was found minor and she was produced before the Child Welfare Committee, District Gautam Budh Nagar. The Child Welfare Committee passed an order dated 16.09.2023 giving her custody to a protection home.

5. During the course of the arguments, it is informed by the petitioner no. 2 that petitioner no. 1 has now been handed over in custody of respondent no. 6 (mother of the corpus).

6. 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.

7. As the matter is seized by the Child Welfare Committee and the corpus is lodged in a protection 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 :- 11.12.2023

#Vikram/-