

Court No. - 81

Case :- HABEAS CORPUS WRIT PETITION No. - 1015 of 2023

Petitioner :- Sugriv Kannaujiya And Another

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

Counsel for Petitioner :- Kalp Nath Rai

Counsel for Respondent :- G.A.

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Sri Kalp Nath Rai, learned counsel for the petitioners and Sri

2. This petition has been filed by petitioner no.1, Sugriv Kannaujiya on behalf of the corpus stating that petitioner no.2 and petitioner no.1 were living in live in relationship. Petitioner no.2 is major and 18 years old, therefore, she was free to live with him as per her own desires and willingness. Father of petitioner no.2 has illegally restrained her from staying with him.

3. Learned A.G.A. submits that the petition is devoid of merit. The petitioner no.1 has not disclosed in which capacity he has filed this petition. It is further contended by learned A.G.A. that in this matter an F.I.R. as Case Crime no.148 of 2022, under Sections 363, 366 and 376 I.P.C. and 3/4 POCSO Act was lodged. The corpus was recovered and her statement was recorded. She was produced before C.W.C.. An entry has been made in this regard. She was found minor and was ordered to be handed over to her father, respondent no.5. It is also brought to my notice that petitioner no.1 has been chargesheeted and is facing trial. Petitioner no.2 has been examined as P.W.3 and she has imputed allegations against petitioner no.1.

4. 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."

5. 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. The petition is devoid of substance and is hereby dismissed.