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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

REVISION APPLICATION NO. 526 OF 2015

Roque Amrante Coutinho

..Applicant.

Vs.

The State of Maharashtra & Anr.

..Respondents

Ms. Gurmit Tandon for Applicant.

Mr. Deepak Thakare, APP for State.

Ms. Savita Jadhav-Respondent No.2 present in person.

CORAM: A.S. GADKARI, J.

DATE : 30th March 2016.

P.C.

1 By the present Revision Application, the applicant, a member of the Non- Government Organization namely 'Justice and Care' has challenged the order dated 5th August 2015 passed by the learned Additional Sessions Judge, Barshi, below Exhibit-16 in Special Case No.15 of 2015 thereby granting the custody of the victim girl namely Miss. Shakuntala Kishor Jadhav to her mother Mrs. Savita Kishor Jadhav.

2 It is the prosecution case that, a raid was conducted by the police on 15.11.2014 at a brothel in the city of Barshi wherein three minor victim girls were found to be indulging in the vocation of prostitution. After rescue of the

victim girl Miss. Shakuntala, she was kept at shelter home. Her mother subsequently filed an application for custody of her daughter Miss. Shakuntala as contemplated under Section 17 of Immoral Traffic (Prevention) Act, 1956 in the Court of Additional Sessions Judge, Barshi at Barshi. The learned Additional Sessions Judge, Barshi was pleased to allow the said application and directed that the custody of the minor Miss.Shakuntala be handed over to her mother.

3 The learned Counsel for the applicant submitted that the order passed by the Additional Sessions Judge below Exhibit 16 is contrary to the guidelines issued by the High Court in the case of Prerna Vs. State of Maharashtra reported in 2003 Bombay Cases Reporter (Cri.) 481. She submitted that the Division Bench of this Court in the said judgment has categorically held that, no Magistrate can exercise jurisdiction over any person under 18 years of age whether that person is a juvenile in conflict with law or a child in need of care and protection. That Division Bench has further held that, when such a person is found to be under 18 years of age, the Magistrate must transfer the case to the Juvenile Justice Board if such person is a juvenile in conflict with law or to the Child Welfare Committee if such a person is a child in need of care and protection. The learned Counsel for the applicant submitted that the Child Welfare Committee has thereafter passed a Deeming Order dated

4.9.2015 wherein it was noted that, after release of the victim girl Miss. Shakuntala Jadhav, she was not found at the address given by her mother at Latur.

The learned APP submitted that by an order dated 5th January 2016 this Court had directed the Police to bring the victim girl to the Court so that directions as regards her custody can be given.

4 The victim girl namely Miss. Shakuntala Jadhav is produced before this Court. Her mother Mrs. Savita Kishor Jadhav is also present. The victim girl was interviewed in the presence of learned Counsel for the applicant and the learned APP. The statements of Miss. Shakuntala and her mother namely Mrs. Savita Jadhav are recorded. Both the statements signed by the victim girl Miss. Shakuntala Jadhav and Mrs. Savita Jadhav are taken on record and kept separately in the custody of the Registry.

5 The victim girl Miss. Shakuntala stated that, after her rescue from the brothel she along with her mother Mrs. Savita Jadhav and her father Kishor Jadhav are now stationed in the City of Vapi, State of Gujarat and she is working at a shop. The record discloses that the order dated 5.8.2015 passed by the Additional Sessions Judge, Barshi is in contradiction with the guidelines issued by the Division Bench of this Court in the case of Perna Vs. State of Maharashtra (supra). The victim girl Miss. Shakuntala Jadhav has attained the

age of understanding and as of today is more than 17 years and six months.

6 After taking into consideration the statement given by the victim girl Miss. Shakuntala Jadhav to this Court, it is not necessary to send her back to the shelter home. The mother of Miss. Shakuntala has undertaken before this Court that she will take full and proper care of her daughter Miss. Shakuntala and will adopt all possible steps to settle her daughter in her life. In view of the said undertaking given by the mother of the victim girl, the custody of the victim girl Miss. Shakuntala Jadhav is hereby handed over to her mother Mrs. Savita Kishor Jadhav.

7 At this stage, Mrs. Savita Jadhav, mother of the victim girl made a grievance that the representatives of the applicant's organization are often visiting their residence and the locality, because of which their image in the society is being lowered down. In view of the same, the Child Welfare Committee and the members of the applicant's organization are hereby directed, not to visit the residential premises of the mother of the victim girl without the prior permission from the Trial Court, seized of the Special Case No.15 of 2015 during the pendency of the said case.

8 The Revision Application is partly allowed in the aforesaid terms.

(A.S. GADKARI,J.)