

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CRIMINAL REVISION CASE No.1397 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, ('the Code', for brevity), by the third party petitioners, who are related to the victim girl, is directed against the order, dated 27.04.2017, of the learned Principal Magistrate of Juvenile Justice Board-cum-II Additional Judicial Magistrate of First Class, Ongole, passed in CrI.M.P.No.6708 of 2017 in Crime No.188 of 2016 of I Town Police Station, Chirala.

2. I have heard the submissions of Ms. Pulipati Radhika, learned counsel for the petitioners, and of the learned Public Prosecutor for the State of Andhra Pradesh representing the first respondent/State. The other respondents 2 to 9 are stated to be not necessary parties. I have perused the material record.

3. The facts of the case, which require a mention as a prelude to this order, in brief, are as follows:-

The victim girl was rescued by the police concerned when she was allegedly indulging in certain illegal activities and is lodged in a Home for her rehabilitation. The police registered a case in Crime No.188 of 2016 against the accused including the accused nos.1 and 2, who are stated to be the step-father and mother respectively of the victim girl, for the offences punishable under Sections 324, 366-A, 370, 370-A, 372, 373 read with 34 of I.P.C., Section 5 read with Sections 6 and 17 of the Prevention of Children from Sexual Offences Act, 2012, Sections 3, 4, 5

and 6 of the Immoral Traffic (Prevention) Act, 1956, Section 23 of the Juvenile Justice Act, 2015, and Sections 3(1)(r), 3(w)(i) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015. While the investigation into the said crime is in progress, the petitioners herein filed before the Court below, the aforementioned miscellaneous petition under Section 97 of the Juvenile Justice (Care and Protection of Children) Act, 2015, seeking custody of the victim girl. Their submissions are as under: 'The victim girl has not committed any offence. The petitioners, being paternal aunt and paternal grandmother, are the best persons to have the custody of the victim girl. If the victim girl is continued in the Home, her reputation will be spoiled and it will be difficult to look for alliances for her marriage in future. They are prepared to abide by any conditions that may be imposed by the Court while granting custody of the victim girl to them.' The petitioners alternatively prayed for grant of visitation rights. The organisers of the Home in which the victim girl was lodged and the prosecution strongly resisted the request of the petitioners. On merits and by the order impugned in this revision, the trial Court dismissed the petition of the petitioners. Therefore, the petitioners are before this Court.

4. At the hearing, the learned counsel for the petitioners, while reiterating the chronology of events, which are already stated supra, would submit that by now, the investigation is completed and the victim girl is in the Home since a long time and that it is in her best interests to grant interim custody to the petitioners herein who are her paternal aunt and paternal grandmother and who are prepared to take best care of her.

She would alternatively contend that if not the main relief, the alternative relief of visitation rights may be granted to the petitioners.

5. Per contra, the learned Public Prosecutor for the State of Andhra Pradesh representing the first respondent/State would submit that the investigation is in progress and that even the examination of the victim girl is not completed and that she is under rehabilitation process and that her interests are being taken good care of by the officers of the home and that interim custody cannot be granted to the petitioners, in the facts and circumstances of the case.

6. I have given detailed and thoughtful consideration to the facts and submissions.

7. The trial Court, while extracting the contentions of the parties, dismissed the petition *inter alia* observing that the Home is taking good care of the victim girl and that there are no grounds to accept the request of the petitioners. However, as rightly pointed out before this Court, the trial Court failed to call for a report either from the organisers of the Home in which the victim girl is lodged and/or from the Probationary Officer having jurisdiction over the area of the residence of the victim girl and her parents. In the considered view of this Court the request of the petitioners cannot be considered till such reports are called for both from the officer concerned of the Home and the Probationary Officer concerned. It is not the case of the petitioners that the victim girl is facing any difficulties in the Home. The trial Court has also not examined at least one of the petitioners to ascertain the truth of their contentions

and to know the economic and social status of the family and the environment and surroundings of the residential locality of their house. The trial Court has also not examined the victim girl to know her views and preferences.

8. In that view of the matter, this Court is of the considered view that there is no material on record to come to a safe conclusion in the matter. Having regard to the facts and circumstances, this Court finds that the revision insofar as the request to grant custody of the victim girl to the petitioners at this stage has no merit and is liable to be rejected. However, this Court is satisfied that it is a fit case to grant visitation rights, subject to certain conditions, to the petitioners, who are admittedly closely related to the victim girl.

9. In the result, this Criminal Revision Case is allowed in part and the impugned order is set aside in part. Accordingly, the petitioners are granted visitation rights as follows subject to the directions and conditions stated infra:-

- (i) The petitioners are permitted to make visits to the Home and meet the victim girl on every third Sunday of the month between 10:00 AM and 12:00 Noon. However, they shall make their visits on the aforestated day only after giving prior notice to the organisers of the Home.
- (ii) The organisers of the Home shall permit the petitioners to meet the victim girl in the Home during such visits, in the presence of a responsible officer or an attendant of the Home.
- (iii) The organisers of the Home are further directed to take necessary precautions with regard to the welfare

of the victim girl during such visits of the petitioners and shall not allow the petitioners to bring any eatables for the consumption of the victim girl during such visits.

Nonetheless, in view of the fact that the afore-stated miscellaneous petition was disposed of by the Court below without calling for the reports from the Organisers of the Home and the Probationary Officer concerned, liberty is reserved to the petitioners to file before the Court below a fresh application for grant of custody of the victim girl, however, after two months from the date of service of a copy of this order. It is needless to state that such application, if any, comes to be filed by the petitioners, the same shall be disposed of by the Court below on its merit and in strict accordance with the procedure established by law, however, after calling for the reports from the concerned and uninfluenced by the observations, if any, made in this order.

Miscellaneous petitions, if any, pending in this Criminal Revision Case, shall stand closed.

M.Seetharama Murti, J

11th July, 2017
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