

29.07.21

Court No.30
rpan /04

W.P.A. No. 9902 of 2020

In re: An application under Article 226 of the Constitution of India;

And

In re: **SK. Azizul Islam**

- Versus -

The State of West Bengal & Ors.

Mr. Balaram Pandit

... for the Petitioner.

Mr. Rana Mukherjee,

Md. Sabir Ahmed

... for the State.

The present *habeas corpus* petition has been preferred *inter alia* praying for issuance of necessary direction upon the respondents to recover the petitioner's granddaughter, namely, Sabina Khatun (in short, Sabina), who is a minor.

Mr. Pandit, learned advocate appearing for the petitioner submits that Sabina went missing on and from 20th July, 2020. A complaint to that effect was lodged on the self-same day before the respondent no.5 alleging *inter alia* that Sabina had been kidnapped by the private respondents. However, the said complaint was not registered as FIR. Aggrieved thereby, the petitioner took appropriate steps in terms of Section 154(3) of the Code of Criminal Procedure (in short, the said Code) and by a letter dated 24th July, 2020, the petitioner sent the complaint dated 20th July, 2020 along with the birth certificate and photograph of Sabina to the respondent no.4 requesting

him to do the needful. However, no steps were taken thereafter by the police authorities and they failed to discharge their statutory obligations. Aggrieved thereby, the petitioner has approached this Court.

Mr. Mukherjee, learned advocate appearing for the State opposes the allegations as levelled against the police authorities and submits that earlier Sabina left her parental house on two occasions. On the basis of the complaints lodged by the petitioner two cases were registered being Mohanpur PS Case No.51/20 dated 18/04/2020 u/s 363/365/34 IPC and Mohanpur PS Case No.62/20 dated 01/06/2020 u/s 363/365/34 IPC. In connection with the latter case, Sabina's statement was recorded under Section 164 of the said Code wherein she had *inter alia* stated that she herself escaped from her parental house. Detailing all the steps taken by the police authorities, a report has been filed before this Court. Let the same be kept on record.

In reply, Mr. Pandit denies the contention of Mr. Mukherjee and reiterates that on the basis of the complaint lodged on 20th July, 2020, no case has been registered and Sabina has yet not been recovered.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

The principal grievance of the petitioner is that Sabina had been kidnapped by the private respondents on 20th July, 2020 and had been illegally detained by them.

The complaint lodged to that effect on 20th July, 2020 had not been considered by the police authorities and no steps have been taken to recover her. Challenging such inaction, the petitioner could have availed the remedies, as provided under the Code.

From the report filed on behalf of the State and the statement of Sabina as recorded under Section 164 of the Code, it appears that Sabina willingly left her residence on earlier two occasions and on both the occasions she was recovered by the police authorities.

A writ in the nature of *habeas corpus* is a prerogative writ by virtue of which the causes and validity of detention of a person is investigated by a summary procedure. This Court in exercise of such jurisdiction, however, cannot usurp ordinary administration of criminal justice.

We are afraid that the exercise of the power of writ in nature of *habeas corpus* would perhaps not be feasible in the fact situation of the present case.

In view thereof, no interference is called for in the present writ petition.

Nothing in this petition shall, however, prevent the petitioner from seeking remedy as provided before the competent forum in accordance with law.

With the above observations and directions the writ petition, being WPA No.9902 of 2020 is disposed of.

There shall, however, be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Subhasis Dasgupta, J.) (Tapabrata Chakraborty, J.)