

21.02.2022

Sl. No. 4

Court No.35

BM

(Via Video Conference)

C.R.R. 1362 of 2011

Kalthu Barman

Vs.

The State of West Bengal

Mr. Pulakesh Bajpai ... for the petitioner

Mr. Prabhas Bhattacharyya
Mr. Pratick Bose ... for the State

Learned advocate for the petitioner and the opposite party/State are present.

The revisional application under Section 397 of the Code of Criminal Procedure assailing the order dated 25.03.2011 passed by learned Chief Judicial Magistrate, Malda in G.R No.411 of 2011 has been listed today for hearing.

The contention of the petitioner is that he is the father of a minor girl aged 16 years who was kidnapped by one Mona Barman, son of Swapan Barman on the date of Saraswati Puja. The petitioner searched for his daughter and later came to know from one Dilara Khatun, friend of his daughter that Mona Barman has taken away the minor girl child from his lawful custody. The petitioner thereafter lodged a complaint before the Police giving rise to Bamangola Police Station case No.14 of 2011 dated 13.2.2011 under Sections 363/366(A)/109 of the Indian Penal Code. The victim girl was recovered and sent to the District Correctional Home, Malda for safe

custody. The petitioner being the father of the victim girl made a prayer before the learned Magistrate on 28.02.2011 for custody of his daughter. The application was considered by the learned Magistrate on 25.03.2011 in presence of the victim and the same was rejected on the ground that the victim girl was not willing to return to her father.

Being aggrieved with the order passed by the learned Magistrate, this revisional application has been filed by the petitioner contending, inter alia that the impugned order is illegal and cannot be sustained under the law. The future of the minor child has thereby been made uncertain and she should have been handed over to the custody of her father.

Learned advocate for the petitioner submitted that several years have passed after filing of this application and he is not aware about the present status of the then child as well as the petitioner. However, it is submitted that the impugned order refusing to hand over a minor girl child to the custody of her guardian may be set aside.

Learned advocate for the State also submitted that according to the provision of law a minor child has no consent of her own under Section 90 of the Indian Penal Code and the learned Magistrate while passing order dated 25.03.2011 should have made his finding on the basis of position of law instead of rejecting the prayer for custody in favour of the father.

Considered the submissions made by the learned advocates for the parties as well as the dispute involved.

I have perused the impugned order whereby learned Chief Judicial Magistrate, Malda observed that the victim girl on being asked in open court was not willing to go with the father. Accordingly, the petitioner's prayer was rejected.

It may be gathered from the certified copy of the orders passed by learned Chief Judicial Magistrate that on several occasions he had rejected the petitioner/father's prayer for custody of the victim girl and sent her back to the District Shelter Home. The age of the victim appears to be 16 years as on 25.02.2011. Therefore, the victim being above 12 years had the capacity to express her consent and refuse to return to the custody of her lawful guardian i.e. her father. The learned Magistrate therefore did not commit any mistakes by refusing the prayer of the petitioner and returning the victim to the shelter Home though she was a minor.

The order therefore, suffers from no patent illegality or impropriety calling for any interference.

Under such circumstances, I am not inclined to interfere with the impugned order. The revisional application is accordingly disposed of. Connected application, if any, is disposed of.

Let a copy of this order be sent to the court of learned Chief Judicial Magistrate, Malda for information.

(Ananda Kumar Mukherjee, J.)