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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 1227 of 2023

Tapan Kumar Saha
Vs.
The State of West Bengal & Ors.

Mr. Goutam Dey,
Mr. Prateep Bera,
Mr. Dipendu Sarkar,
Mr. Kaushal Kumar
... for the petitioner

Mr. Rajarshi Basu,
Mr. S.T. Mina
...for the State

Mr. Subhasish Panchal
...for the respondent no. 8

The child is produced in Court as per direction of the court, issued on the basis of allegations made in the writ petition. I had a personal conversation with the child outside the court room exclusively. It transpires from the conversation that the child had to leave his parents' accommodation since he was being ill-treated by his parents.

However, sitting in this forum, it would not be proper to go into the veracity of such allegation. However, the child is sixteen years old and upon conversation with him, I find that the child is sufficiently capable of expressing his intelligent preference. Since the child has no qualms whatsoever

to stay for the present with his maternal uncle and no conclusive and clinching proof of moral turpitude of the maternal uncle has been established by the parents of the child, it would not be prudent to interfere with the matter at the present juncture.

More importantly, although it is mentioned in the writ petition that the petitioner had approached the concerned Chief Judicial Magistrate and such application for custody was turned down by the said Magistrate on the observations that the recovered victim boy is a child in need of care and protection and question of custody should be decided by the Child Welfare Committee (CWC), the learned Advocate appearing for the petitioner, at no point of time during his submission in the first instance, had mentioned about the said order or the fact of the petitioner moving the Magistrate's Court to this Court. It is only on being pointed out by learned counsel for the State that this Court came to learn about such order, a copy which is annexed to the writ petition at pages 53 and 54 thereof.

Be that as it may, since the petitioner has already moved the Magistrate's Court in terms of Section 27(10) of the Juvenile Justice (Care and Protection of Children) Act, 2015, there is no scope of the writ court interfering with the said order of the Magistrate in writ jurisdiction.

Since the Magistrate's order is amenable to a criminal revision within the contemplation of Section 482 of the Criminal Procedure Code, there is no scope of this Court to entertain the present writ petition.

That apart, although the petitioner has alleged kidnapping against the maternal uncle of the child, it transpires from my conversation with the child that the child was brought up for the first five years with his maternal uncle and the family of the maternal grandparents. That apart, the child also expressed the view that the child would be in safer hands with his maternal uncle than his parents. However, although the rights of the parents of the child as the natural guardians cannot be brushed aside, it is well-settled that the paramount consideration to be taken note of by the Court is the welfare of the child. A child is not the property of her/his parents that the parents would claim custody of the child as a matter of right before any and every court of law.

If the petitioner is aggrieved by the order of the Magistrate, annexed at pages 53 and 54 of the writ petition, the petitioner will be at liberty to approach the appropriate court against such order. The petitioner will also be at liberty to approach the competent court for custody of the child. However, in view of the order of the Chief Judicial Magistrate having been passed upon consideration of the *prima facie* materials

produced before him, I do not find any justification in interfering with the decision of the CWC at this stage.

However, it is made clear that the veracity of the action of the CWC in handing over the child for the time being to the maternal uncle of the child, that is, the private respondent, is not entered into by this Court and it will be open to the petitioner to challenge such aspect of the matter before the competent forum.

Yet, keeping in view the present interest of the child and his clear choice, there is no reason to interfere with the decision of the CWC at present unless a valid challenge is preferred against the Magistrate's order affirming the same.

It is made clear that the allegations and counter-allegations made in the present writ petition have not been gone into by this Court on merits at all and it is noted that both the petitioner and the private respondent controvert the allegations made by them against each other.

Hence, there is no scope of entertaining the writ petition.

Accordingly, W.P.A. No. 1227 of 2023 is dismissed in the light of the above observations without, however, any order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)