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Crl.R.C.No.1193 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2024

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

Crl.R.C.No.1193 of 2024

Mumtaj Sheikh

... Petitioner

Vs.

1.The State

Represented by
The Inspector of Police,
Krishnagiri Taluk Police Station,
Krishnagiri District.

2.Jasna Khan

... Respondents

Prayer : Criminal Revision Case filed under Sections 438 & 442 of Bharatiya Nagarik Suraksha Sanhita, 2023, praying to set aside the order passed in Crl.M.P.No.4799 of 2024 dated 04.07.2024 on the file of the learned Additional Mahila Magistrate Level at Krishnagiri.

For Petitioner : Mr.M.Murugan

For Respondents : Mr.A.Gopinath
Government Advocate (Crl.Side) [R1]



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ORDER

The petitioner, claiming herself to be the sister of the 2nd respondent/victim had filed a petition in Crl.M.P.No.4799 of 2024 before the learned Additional Mahila Magistrate Level at Krishnagiri, seeking custody of the 2nd respondent and the said petition was dismissed by the learned Magistrate vide order dated 04.07.2024. Aggrieved by the same, the petitioner is before this court with the above prayer.

2. The case of the prosecution is that on 02.05.2024, the 1st respondent police, during his search in respect of Crime No.164 of 2024 registered u/s 3(2)(a), 4(1) and 5(1)(a) of Immoral Traffic (Prevention) Act, 1956 (in short "ITP Act") had rescued the 2nd respondent/victim along with 6 others and produced them before the learned Magistrate. Thereafter, the victim was ordered to be kept under interim safe custody at Government Home for Women, Salem as per Section 17(4) of ITP Act.

3. It is the case of the petitioner that the 2nd respondent is her sister, who was aged about 21 years and she had come to Krishnagiri for employment purpose. She is an innocent and she has no involvement over



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the alleged offence. Since the victim is looking after their family, the petitioner has filed a petition in Crl.M.P.No.4799 of 2024 before the learned Additional Mahila Magistrate Level at Krishnagiri, seeking her custody with her, however the trial court, finding bereft of materials to prove her association with the victim, has refused to send the victim with her.

4. Learned counsel for the petitioner has assailed the order of the trial court stating that the trial court ignoring the fact that the petitioner has been residing with the victim for the past 5 years in the address mentioned in the Aadhar Card, has simply detained the victim in the Government Home, which is an arbitrary exercise of power and is against the provisions of law. The petitioner has furnished sufficient materials to show her bona fide that the victim is her sister and the trial court, disbelieving all these material aspects, had dismissed the petition filed by the petitioner, which is illegal, improper and liable to be set aside.

5. Per contra, the learned Government Advocate (Crl.Side)



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appearing for the 1st respondent police submitted that, though the petitioner claims to be the sister of the victim, however, the petitioner has not provided any document before the trial court to establish their relationship. Therefore, he submitted that, handing over the custody of the victim to the petitioner will further deteriorate her condition and there is every possibility of her being involved in the trafficking again. Accordingly, he prays for dismissal of the revision.

6. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for the 1st respondent and perused the materials available on record.

7. It is seen that the victim was rescued during the search operation conducted by the 1st respondent police in respect of Crime No.164 of 2024 registered under the ITP Act. Thereafter, the petitioner filed a petition seeking custody of the victim before the trial court. The trial court, did not adhere to the request of the petitioner and refused to hand over the custody to the petitioner, thereby the victim was kept under the custody of the Government Protection Home under Section 17(4) of



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ITP Act. Section 17(4) of ITP Act is extracted hereunder for the purpose of clarity :-

“17(4) Where the Magistrate is satisfied, after making an inquiry as required under sub-section (2) -

- (a) that the information received is correct;*
- and*
- (b) that he is in need of care and protection,*

he may, subject to the provisions of sub-section (5), make an order that such person be detained for such period, being not less than one year and not more than three years, as may be specified in the order, in a protective home, or in such other custody as he shall, for reasons to be recorded in writing, consider suitable:

Provided that such custody shall not be that of a person or body of persons of a religious persuasion different from that of the person and that those entrusted with the custody of the person including the persons in charge of a protective home, may be required to enter into a bond which may, where necessary and feasible, contain undertakings based on directions relating to the proper care, guardianship, education, training and medical psychiatric treatment of the person as well as supervision by a person appointed by the Court, which will be in force for a period not exceeding three years.”



8. Section 17-A of ITP Act is also extracted hereunder:-

“17-A. Conditions to be observed before placing persons rescued under section 16 to parents or guardian – Notwithstanding anything contained in sub-section (2) of section 17, the Magistrate making an inquiry under section 17 may, before passing an order for handing over any person rescued under section 16 to the parents, guardian or husband, satisfy himself about the capacity or genuineness of the parents, guardian or husband to keep such person by causing an investigation to be made by a recognised welfare institution or organisation.”

9. The reason for refusal to hand over the custody to the petitioner is that there is no strong iota of proof adduced on the side of the petitioner to substantiate that the victim is her sister. Further, the Probationary Officer has filed a report stating that there is no proof available to show that the petitioner is the sister of the victim. Hence, in the absence of any proof to establish the relationship between the petitioner and the victim, the trial court, by considering all the above aspects, had refused to send the victim with the petitioner, which cannot be said to perverse, illegal or arbitrary and thereby, this court is not inclined to interfere with the impugned order passed by the trial court.



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10. Accordingly, the Criminal Revisions Case is dismissed.

However, if any material is available to the petitioner to establish her relationship with the victim, she is at liberty to file appropriate petition before the trial court seeking custody of the victim by producing appropriate documents establishing their relationship.

16.07.2024

Index : Yes / No

Speaking order / Non-speaking order

sp

To

1.The Additional Mahila Magistrate Level at Krishnagiri.

2.The Inspector of Police, Krishnagiri Taluk Police Station, Krishnagiri District.

3.The Public Prosecutor, Madras High Court, Chennai.



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M.DHANDAPANI, J.

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