

Court No. - 82**Case :-** CRIMINAL REVISION No. - 6033 of 2023**Revisionist :-** Smt. Soni Saxena @ Neetu Saxena**Opposite Party :-** State Of U.P. And 4 Others**Counsel for Revisionist :-** Jitendra Singh**Counsel for Opposite Party :-** G.A., Vikesh Kumar Tiwari**Hon'ble Mrs. Jyotsna Sharma,J.**

1. Heard Sri Jitendra Singh, learned counsel for the revisionist, Sri Vikesh Kumar Tiwari, learned counsel for the opposite party no. 2-the first informant and learned AGA for the State.

2. This criminal revision has been filed challenging the order dated 20.07.2023 and 23.08.2023 passed by the Child Welfare Committee, Shahjahanpur in relation to a matter arising out of case crime no. 01 of 2023 under sections 342, 376(3), 506 IPC and section 5(dha)/6 POCSO Act, by which firstly she was put in a government protection home under section 37(c) of the Juvenile Justice (Care and Protection of Children) Act, 2015 by Child Welfare Committee vide order dated 20.07.2023 and further an application moved by her mother for taking her into her custody, was rejected by order passed by the Child Welfare Committee on 23.08.2023. By means of a supplementary affidavit filed by the revisionist an order passed by the appellate court on 31.10.2023 in an appeal preferred against the order dated 23.08.2023 whereby the appeal was dismissed on the ground that the children court had no jurisdiction to hear the same, has also been challenged in this criminal revision.

3. Relevant facts are as below:-

Pradeep Saxena lodged an FIR against Soni Saxena and several others with the allegations that he got married to Soni Saxena about 20 years ago and that she stayed in conjugal relationship with him for 12 years and gave birth to four children. Thereafter she deserted him and started living with one Monu s/o Payarelal @ Ram Kishan along with their four kids. About 20 days ago his younger daughter aged 14 years was sold off to one Saurabh s/o Ramesh Lal with the assistance of co-accused persons. It is alleged in the FIR that Saurabh is aged 35 years and his daughter is merely 14 years. When the first informant tried to contact the co-accused Manorama, she said that his daughter has been sold off and he may have his share in the money. On the basis of this FIR case crime no. 01 of 2023 was lodged on 13.07.2023. The statement of the victim girl under section 161 Cr.P.C and other witnesses were recorded. She was put to medical examination and was found aged about 16 years. The victim was produced before the Special Judge, POCSO Act, and the Court ordered her to be produced before the Child Welfare Committee. Before the Child Welfare Committee, she stated that she wanted to accompany her mother-Soni Saxena and Vinay Saxena. The Child Welfare Committee

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considered the fact that Soni Saxena is named as an accused and Vinay Saxena is not her father, therefore it will not be proper to send her with them and directed to lodge her in a juvenile home. The victim girl sent an application on 24.07.2023 through Superintendent, Women Protection Home, with a prayer that she desired to stay with her mother-Soni Saxena. The Child Welfare Committee considered the application and declined her to be handed over to her mother, giving detailed reasons as mentioned in the impugned order. This order refusing her custody to her mother, was passed on 23.08.2023. She challenged the same by filing a Criminal Appeal No. 73 of 2023 (Smt. Soni Saxena @ Neetu Saxena vs. State of UP and 3 Others). The learned appellate court dismissed the appeal holding that it has no jurisdiction to hear the challenge to the order passed by the Child Welfare Committee. The appellate court expressed an opinion that such orders can only be challenged before the Court of District Magistrate, as provided in section 27(10) of the Juvenile Justice Act, 2015.

4. The appellate court seems to have passed the order in the light of the provisions of section 27(10) of the J.J. Act, 2015. Section 27 deals with the Constitution of the Child Welfare Committee, the qualifications of a person as regard eligibility of the person to be appointed as a member of a Committee, disqualifications, the tenure of the members, the procedure for inquiry as regard termination of the members etc. Section 27(10) of the J.J. Act, 2015 empowers the District Magistrate to entertain any grievance arising out of **functioning of a Committee**. This section further empowers the affected child or any one connected with the child, as the case may be, to file a complaint before the District Magistrate for the purpose that he may take suitable action as regard the complaints or the grievances which an affected person may have against the Committee. These provisions definitely do not deal with legal challenges to the order passed by the Committee. An aggrieved person can challenge the order passed by the Child Welfare Committee under section 101 of the Juvenile Justice Act, 2015.

Section- 101 of the Juvenile Justice Act, 2015 is as below:-

"(1) Subject to the provisions of this Act, any person aggrieved by an order made by the Committee or the Board under this Act may, within thirty days from the date of such order, prefer an appeal to the "Children's Court", except for decisions by the Committee related to Foster Care and Sponsorship After Care for which the appeal shall lie with the District Magistrate."

The Allahabad High Court in **Girish Kumar vs. State of U.P. and 3 Others, 2022:AHC:206879** decided on 25.11.2022 observed in Para no. 6 as below:-

"6. It is quite clear from this provision of law that appeal shall lie to the District Magistrate with respect to decisions by the Child Welfare Committee relating to foster care and sponsorship after care only. The appeal in respect of other orders passed by the Child Welfare Committee shall lie to the 'Children's Court' within 30 days from the date of order. Before analysing this provision, it will be appropriate to peruse the order passed by the Child Welfare Committee to decide upon whether this order falls in the category where the appeal may lie to Children's Court or in the category where appeal shall lie to District Magistrate."

It was further observed in Para nos. 10 and 11 as below:-

"10. I went through the material on record in the light of submissions before this Court. As per scheme of the Juvenile Justice Act, the Child Welfare Committee, irrespective of any

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other law, has power to deal exclusively with all proceedings relating to 'children in need of care and protection' under Section-29 of the Juvenile Justice Act, 2015. The functions and responsibilities of Committee include taking cognizance of and receiving the child produced before it, conducting inquiry on all issues relating to safety and well being of a child as well as ensuring care, protection, appropriate rehabilitation and most importantly restoration of 'children in need of care and protection' (Section-30 of the Juvenile Justice Act, 2015). Section-37 of the Juvenile Justice Act, 2015 empowers the Committee, after being satisfied through an inquiry, consideration of social investigation report submitted by Child Welfare Officer and taking into account the child's wishes, in case the child is sufficiently matured, to take a view and pass one or more of following order, namely:-

- (a) declaration that a child is in need of care and protection;
- (b) restoration of the child to parents or guardian or family with or without supervision of Child Welfare Officer or designated social worker;
- (c) placement of the child in Children's Home or fit facility or Specialized Adoption Agency for the purpose of adoption for long term or temporary care, keeping in mind the capacity of the institution for housing such children, either after reaching the conclusion that the family of the child cannot be traced or even if traced, restoration of the child to the family is not in the best interest of the child;
- (d) placement of the child with fit person for long term or temporary care;
- (e) foster care orders under section 44;
- (f) sponsorship orders under section 45;
- (g)
- (h)

10. On perusal of the above provisions of Juvenile Justice Act, 2015, it is demonstrated that Child Welfare Committee is given vast powers on the principles of best interest of a child, a thread which goes through the whole of the scheme of the Juvenile Justice Act, 2015. It has been specifically provided by the section-3 of the Juvenile Justice Act, 2015 that Central Government, State Governments, the Board and other agencies, as the case may be, while implementing the provisions of the Act, shall be guided by the fundamental principles which include principles of best interest, principle of family responsibilities, the principle of safety, the principles of repatriation and restoration and several others.

11. The provisions of law as aforesaid are being reproduced here with the twin object; firstly, that when an order is passed of the nature as is under challenge before this Court, the appeal shall be entertainable by the Children's Court and not by the District Magistrate; the District Magistrate is empowered to hear appeals only against the decisions of the Committee relating to foster care and sponsorship after care. The order in question does not fall in this category. The appellate court was thus wrong in holding that appeal did not lie before it. Therefore, the impugned order is liable to be set-aside; secondly, it may be noted that when a child in need of care and protection is lodged in any shelter home, it is a measure of temporary nature; the Child Welfare Committee is fully empowered to take a decision where it is found no more necessary to detain her. It may be noted that legally a child in need of care and protection may be detained for a further period even if he/she has attained majority if it is found that it will not be in his/her best interest to release him/her immediately."

5. In the instant case, the Child Welfare Committee refused to release the victim-girl in care and custody of her mother for reasons which have been elaborately dealt with in the impugned order dated 23.08.2023. The learned appellate court instead of deciding the matter on merits, declined to exercise its powers on patently wrong assumptions. It is difficult to understand how such a view has been taken by the appellate court that it had no jurisdiction to hear the challenge to an order of this nature passed by the Child Welfare Committee, in appeal. As is quite obvious, an appeal shall lie to children court against all the orders passed by the Child Welfare Committee except where order has been passed relating to foster care or sponsorship foster care.

6. In view of the above, I find it appropriate to set-aside the order passed by the appellate court and remand the matter for decision afresh, according to law.

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7. Therefore, this revision is finally **disposed of** with a direction to the appellate court to adjudicate the matter of custody of the victim, according to law and the order dated 31.10.2023 passed by the appellate court is hereby **set-aside**. The learned appellate court is expected to decide the appeal expeditiously.

8. Copy of the order be immediately transmitted to the court concerned.

Note:- Copy of the order may be circulated to all the District Courts in the State of U.P.

Order Date :- 31.1.2024

#Vikram/-