2025:AHC:182758

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HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 3622 of 2021

Rishi Pal And Another

.....Revisionist(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Revisionist(s)	:	Sarvajeet Singh
Counsel for Opposite Party(s)	:	G.A.

Court No. - 92

HON'BLE CHAWAN PRAKASH, J.

1. Heard Sri Sarvajeet Singh, learned counsel for the revisionists and learned A.G.A. for the State.

2. The instant revision has been filed for setting aside the impugned order dated 30.11.2021 passed by the Nyaypeeth Bal Kalyan Samiti, Badaun in Case Crime No. 279 of 2021, under Sections 363, 354K(1)(1), 323 I.P.C. and Section 7/8 POCSO Act, Police Station Dataganj, District Badaun.

3. From the facts of the case, that revisionist no.1 filed an application under Section 156(3) Cr.P.C. stating that on 06.04.2021 at about 7:00 p.m., he went to his field, leaving his daughter alone at home, whereupon the named accused persons Tinku, Sonu, Sanju and Sugreev, in collusion, enticed away his daughter along with cash and ornaments. Later, the revisionist found his daughter lying unconscious near the house of accused Sugreev and took her back home. It is evident that on the basis of tehrir given by revisionist no.1, a case was registered arising out of Case Crime No. 279 of 2021 under Sections 363, 366, 376(3) I.P.C. and Section 7/8 POCSO Act against the four accused persons namely, Tinku, Sonu, Sanju and Sugreev.

4. During investigation, the Investigating Officer found that the victim was a minor on the basis of the school certificate and accordingly produced her before the Child Welfare Committee, Badaun. The

Committee, on perusal of the medical examination report, found that the victim was pregnant and that she had entered into marriage with revisionist no. 2. Thereafter, the Child Welfare Committee directed the concerned police to lodge a First Information Report against the persons involved, for violation of the provisions of the Prohibition of Child Marriage Act, 2006.

5. It is submitted on behalf of the learned counsel for the revisionists that the revisionist no.1 lodged the First Information Report upon the direction given by the learned Magistrate on an application under Section 156(3) Cr.P.C. The case was registered against four named accused persons, namely, Tinku, Sonu, Sanju and Sugreev. The daughter of revisionist no.1 was produced by the Investigating Officer before the Child Welfare Committee, Badaun. It is stated that the Investigating Officer submitted before the Committee that the date of birth of the prosecutrix is 01.03.2007 and as per the medical report, she was pregnant and her age was about 17 years. The revisionist no.1 thereafter moved an application seeking custody of his daughter before the Committee. Vide impugned order dated 30.11.2021, the Committee handed over the custody of the child to her father but at the same time directed the concerned police to register a First Information Report against the concerned persons under the provisions of the Prohibition of Child Marriage Act, 2006, as the age of the victim was below 18 years. It is further submitted that the revisionist no.1 got the marriage of his daughter solemnized with revisionist no.2 as per Hindu rites and customs and that the age of his daughter was above 18 years at the time of marriage. It is also contended that the Child Welfare Committee has no jurisdiction to direct the police to register an F.I.R., and therefore, the impugned order is liable to be set aside.

6. Per contra, learned A.G.A. submits that during investigation the Investigating Officer collected the educational certificate of the victim, in which her date of birth mentioned as 01.03.2007 and at the time of incident victim is aged about 14 years 8 months and 28 days, and during medical examination, the victim was found pregnant and aged about 17 years. The Committee, therefore, rightly handed over her custody to her father and directed the police to register a case. Therefore, the Committee

has not committed any illegality in passing the impugned order.

7. From the record, it appears that revisionist no.1 filed an application under Section 156(3) Cr.P.C. stating that on 06.04.2021 at about 7:00 p.m., he went to his field, leaving his daughter alone at home, whereupon the named accused persons Tinku, Sonu, Sanju and Sugreev, in collusion, enticed away his daughter along with Rs.20,000/- cash four bangles and other ornaments. The revisionist No.1 found his daughter lying unconscious near the house of accused Sugreev and took her back home. Subsequently, a case was registered as Case Crime No. 279 of 2021. During investigation, the Investigating Officer collected the victim's educational record from Senior Secondary School, Sapreda Dataganj, District Badaun, in which her date of birth mentioned as 01.03.2007. During medical examination of the victim the victim was found pregnant and her age was also determined as of 17 years. The father (revisionist no.1) sought custody of his daughter before the Child Welfare Committee. The victim during counselling before the Committee stated that her parents had got her married to revisionist no.2 (Rakesh). Considering the age of victim and pregnancy, the Committee handed over her custody to her father. The Committee, upon consideration, found that the said marriage was in violation of the provisions of the Prohibition of Child Marriage Act, 2006, and accordingly directed the S.H.O., Police Station Dataganj, District Badaun to register an F.I.R. under the said Act against the concerned persons.

8. The main question that arises for consideration before this Court is whether the Child Welfare Committee (C.W.C.) is empowered to direct the police to register an F.I.R. or not. For determination of this question, it is necessary to examine the provisions of the Prohibition of Child Marriage Act, 2006 and the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the J.J. Act, 2015).

9. As per the Section 27 of the J.J. Act, 2015, the State Government shall by notification in the Official Gazette constitute for every district, one or more Child Welfare Committees for exercising the powers and to discharge the duties conferred on such Committees in relation to children in need of care and protection under this Act. Sub-section (9) of Section

27 further provides that the Committee shall function as a Bench and shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the First Class.

10. The functions and responsibilities of Committee are prescribed in Section 30 of the J.J. Act, 2015, which are as under:

(i) taking cognizance of and receiving the children produced before it;

(ii) conducting inquiry on all issues relating to and affecting the safety and well-being of the children under this Act;

(iii) directing the Child Welfare Officers or probation officers or District Child Protection Unit or non-governmental organisations to conduct social investigation and submit a report before the Committee;

(iv) conducting inquiry for declaring fit persons for care of children in need of care and protection;

(v) directing placement of a child in foster care;

(vi) ensuring care, protection, appropriate rehabilitation or restoration of children in need of care and protection, based on the child's individual care plan and passing necessary directions to parents or guardians or fit persons or children's homes or fit facility in this regard;

(vii) selecting registered institution for placement of each child requiring institutional support, based on the child's age, gender, disability and needs and keeping in mind the available capacity of the institution;

(viii) conducting at least two inspection visits per month of residential facilities for children in need of care and protection and recommending action for improvement in quality of services to the District Child Protection Unit and the State Government;

(ix) certifying the execution of the surrender deed by the parents and ensuring that they are given time to reconsider their decision as well as making all efforts to keep the family together;

(x) ensuring that all efforts are made for restoration of abandoned or lost children to

their families following due process, as may be prescribed;

(xi) declaration of orphan, abandoned and surrendered child as legally free for adoption after due inquiry;

(xii) taking suo motu cognizance of cases and reaching out to children in need of care and protection, who are not produced before the Committee, provided that such decision is taken by at least three members;

(xiii) taking action for rehabilitation of sexually abused children who are reported as children in need of care and protection to the Committee by Special Juvenile Police Unit or local police, as the case may be, under the Protection of Children from Sexual Offences Act, 2012 (32 of 2012);

(xiv) dealing with cases referred by the Board under sub-section (2) of section 17;

(xv) co-ordinate with the police, labour department and other agencies involved in the care and protection of children with support of the District Child Protection Unit or the State Government;

(xvi) in case of a complaint of abuse of a child in any child care institution, the Committee shall conduct an inquiry and give directions to the police or the District Child Protection Unit or labour department or childline services, as the case may be;

(xvii) accessing appropriate legal services for children;

(xviii) such other functions and responsibilities, as may be prescribed.

11. As per the concept and responsibility of the Committee it is no where stated that the C.W.C. can direct the police for registration of an FIR in any cognizable offence.

12. As per Section 2 of the Prohibition of Child Marriage Act, 2006, the relevant expressions are as under :

(a) "child" means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age;
(b) "child marriage" means a marriage to which either of the contracting parties is a child;
(c) "contracting party", in relation to a marriage, means either of the parties whose

marriage is or is about to be thereby solemnised;

13. As per Section 15 of Prohibition of Child Marriage Act, 2006 the offence committed under this Act is cognizable offence.

14. Under Section 154 of the Code of Criminal Procedure, 1973, every information relating to the commission of a cognizable offence, if given orally to the officer-in-charge of a police station, shall be reduced to writing by him or under his direction.

15. Under Section 156(3) of the Cr.P.C., any Magistrate empowered under Section 190 of the Code may order an investigation as mentioned above. As per this section, if any person submits an application stating that a cognizable offence has been committed and the police have failed to register an FIR then such person may file an application before the learned Magistrate. Upon receiving such an application, the Magistrate empowered under Section 190 Cr.P.C. may direct the concerned police officer to register an F.I.R. This provision specifically vests the power of directing registration of an F.I.R. with the Judicial Magistrate, who is empowered u/s 190 Cr.P.C.

16. Section 27(9) of the J.J. Act, 2015 provides that the Child Welfare Committee (CWC) shall function as a Bench and shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the First Class. It appears that, relying upon the powers contemplated under this sub-section, the Child Welfare Committee directed the police to register a case, considering that the offence alleged in the present matter i.e., the violation of the Prohibition of Child Marriage Act, 2006 is a cognizable and non-bailable offence. In the present case, the Committee (CWC) functions as a Bench and exercises powers equivalent to those of a Judicial Magistrate of the First Class or Metropolitan Magistrate under the Code of Criminal Procedure, 1973. However, these powers are limited to proceedings concerning children in need of care and protection. The powers vested in the Committee are both administrative and judicial in nature and are intended to be exercised solely for the purpose of ensuring the care, protection, rehabilitation, and best interest of the child. The

Committee, therefore, cannot exercise such powers to direct the police to register a First Information Report.

17. On the basis of aforesaid discussions, this Court is of the considered opinion that the Child Welfare Committee (CWC) is only empowered to forward a report to the Juvenile Justice Board or to the concerned police authority regarding any violation of the Prohibition of Child Marriage Act, 2006. However, the Committee has exceeded its jurisdiction by issuing a direction to the police for registration of a First Information Report. Such direction, in the opinion of the Court, is beyond the scope of its powers and is, therefore, contrary to law and as such, the impugned order is liable to be set aside.

18. In view of the discussion made above, the instant revision is hereby **allowed**. The impugned order dated 30.11.2021 passed by the Nyaypeeth Bal Kalyan Samiti, Badaun regarding the direction issued to the Police to lodge FIR is, hereby, set aside.

(Chawan Prakash,J.)

October 9, 2025
Md Faisal

Digitally signed by :-
MOHD FAISAL
High Court of Judicature at Allahabad