

(2011) 09 CAL CK 0018

Calcutta High Court

Case No: C.R.R. No. 3505 of 2010

Sumia Sultana

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Sept. 1, 2011**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 164
- Juvenile Justice (Care and Protection of Children) Act, 2000 - Section 2(d)(iv), 2(k)
- Penal Code, 1860 (IPC) - Section 34, 363, 365, 366A

Citation: (2012) 2 CHN 658**Hon'ble Judges:** Ashim Kumar Roy, J**Bench:** Single Bench**Advocate:** Tapas Ghosh and Ayesha Rashid, for the Appellant; Gausul Alam for the O.P.
No. 2 and Rituparna De for the State, for the Respondent

Judgement

Ashim Kumar Roy, J.

Domkal Police Station Case No. 697 of 2010 under sections 363/365/366A/34 of the Indian Penal Code corresponding to G.R. Case No. 3795/2010 is now pending before the learned Chief Judicial Magistrate, Berhampore, Murshidabad. The said case was started on the basis of a complaint in writing made to the police by the opposite party No. 2 Abdur Rashid Mondal. In the said complaint it was inter alia alleged that the present petitioner aged between 15/16 years and a student of Class - X and happened to be the daughter of the defacto-complainant was earlier kidnapped by the accused Raju Sk. but with the help of the police she was rescued. Thereafter, on and from 12 midnight of October 30, 2010 the said daughter of the defacto-complainant once again found missing and after enquiry de facto-complainant has come to learn this time also the said accused Raju Sk. has kidnapped his minor girl and her taken away from the village for some oblique purposes with the help of others.

Following the registration of the above noted case the police undertook investigation and arrested some of the accused persons and recovered the victim girl, the petitioner herein and she was produced before the learned Chief Judicial Magistrate, Berhampore, Murshidabad by the police with a prayer that she may be kept in safe custody in shelter home. Thereafter her statement was recorded u/s 164 of the Code of Criminal Procedure but her prayer for release on P.R. Bond was rejected by the learned Magistrate, and she was sent to shelter home. Hence this criminal revision.

Heard the learned Counsel appearing on behalf of the petitioner as well as the learned Counsel appearing on behalf of the State and the opposite party No. 2. Perused the Case Diary and other materials on record.

2. It appears from the certificate issued by the Murshidabad District Primary School Board, which is the part of Case Diary that her date of birth is March 5, 1995. Therefore, at the present moment she is aged about 16 years and 5 months. Now, having gone through her statement recorded u/s 164 of the Code of Criminal Procedure, I find she claimed to have married by the accused Raju Sk. according to Mohammedan Law and she left her parents home on her own without being compelled by the accused persons and further appears she is not willing to return to her parents. Thus, having regards to the materials on record I find she is now aged about 16 years and 5 months and not having completed the age of 18 years she is a child within the meaning of section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000. It further appears from the allegations made in the First Information Report by her father and her statement recorded u/s 164 of the Code of Criminal Procedure that she fled away from her parents, on two occasions and now refused to return to them and prays for her release on P.R. Bond. From the aforesaid materials on record it is evident that her parents are unfit and incapacitated to exercise control over her. Therefore, she is a "child in need of care and protection" within the meaning of section 2(d)(iv) of the Juvenile Justice (Care and Protection of Children) Act, 2000. In that view of the matter the question of releasing her at the present moment on her own bond, on the face of the facts she is not inclined to go to the custody of her parents, does not at all arise. I do not find any wrong in the order passed by the learned Court below and the impugned order does not deserve any interference.

This criminal revision has no merit and accordingly stands dismissed.

Now, before parting with this matter since it appears the petitioner is a "child in need of care and protection" the learned Magistrate is directed to forward her to the concerned Child Welfare Committee at once, which is the statutory body empowered to decide the question of her custody.

The Office is directed to communicate this order to the Court below positively by end of this week whereupon the learned Court below shall take necessary steps in

terms of the direction given hereinabove.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.