In Re: Tapas Kumar Ghosh, Metropolitan Magistrate, Calcutta

Criminal Ref. No. 1 and 7 of 1987

Court: Calcutta High Court

Date of Decision: March 31, 1987

Acts Referred:
Constitution of India, 1950 â€" Article 254#Criminal Procedure Code, 1973 (CrPC) â€" Section 395(2)#Guardians and Wards Act, 1890 â€" Section 7

Citation: 92 CWN 184

Hon'ble Judges: Mukul Gopal Mukherjee, J; Manoj Kr. Mukherjee, J

Bench: Division Bench

Advocate: S. Mukherjee, Public Prosecutor for the State, for the Appellant;

Judgement

Monoj Kumar Mukherjee, J.
These two reference have been made by the Metropolitan Magistrate-in-Charge of the Juvenile Court,

Calcutta u/s 395(2) of the Code of Criminal Procedure seeking answer to the question as to whether a District Judge can make an order as to

guardianship of the person of a minor in exercise of his power under the Guardians and Wards Act, 1890 (hereinafter referred to as the "Central

Act") whose case is being dealt with by the Juvenile Court under Chapter IV of the West Bengal Children Act, 1959 (hereinafter referred to as the

State Act"). Facts relating to these references are as under. From time to time "neglected children" are produced before the Juvenile Court

constituted under the State Act by police officers and prayers are made for dealing with them in accordance with Chapter IV of the State Act. On

such production the Juvenile Court enquires into the matter and passes orders for their suitable custody in terms of the provisions of the said

Chapter. In some of those cases the learned District Judge, 24 Parganas has also passed orders regarding custody of the self same children in

exercise of his powers under the Central Act without making any reference to the Juvenile Court and without taking into consideration its earlier

orders and thereby stultified the orders passed by the Juvenile Court. Specific instances of such orders passed by the learned District Judge have

been mentioned in the references.

2. Section 7 of the Central Act empowers the District Judge to appoint guardian in respect of, inter alia, the person of a minor and pending such

appointment, to pass orders for temporary custody) and protection of such minor. Similarly, Chapter IV of the State Act, which is a self contained

Act, entitles the Juvenile Court to pass orders for suitable custody of "neglected child" produced before it. A plain reading of the definition of

minor"" in the Central Act and that of ""neglected child"" in the State Act would make it abundantly clear that the latter can be constructed as a

species of the former. In view of the above provisions of the two Acts the powers of the Courts overlap while dealing with neglected children and

in such a situation we have to take recourse to the provisions of Article 254 of the Constitution of India. Sub-clause (2) thereof provides that

where a law made by a legislature of a State with respect to one of the matters enumerated in the concurrent list contains provisions repugnant to

the provisions of an earlier law made by Parliament or an existing law with respect to that matter then the law so made by the legislature of such

State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State. The repugnancy between

law referred to in the above Article may arise when there is direct conflict between the two, where one cannot be obeyed without disobeying the

other or where both occupy the same field.

3. The State Act was enacted long after the Central Act, which is an existing law, and it received the assent of the President. Therefore, to the

extent the two Acts occupy the same field, the Central Act should yield to the State Act. Considering the facts of the instant cases in the light of the

above Article of the Constitution of India we must, therefore, hold that the District Judge could not have passed and cannot pass orders in respect

of custody and guardianship of neglected children when they were and are being dealt with by the Juvenile Court in accordance with the State Act.

That necessarily means that the orders passed by the Juvenile Court in respect of neglected children should prevail upon the orders passed by the

District Judge. The References are thus answered.

Mukul Gopal Mukherjee, J.

I agree