

:: IN THE COURT OF THE SESSIONS JUDGE, NALBARI ::

Present: Smti S. Bhuyan.
Sessions Judge,
Nalbari.

(Criminal Appeal Case No. 15/11)

Appeal u/s- 52 of the Juvenile Justice (Care & Protection of Children) Act against the order dated 15-02-11 passed by Child Welfare Committee, Nalbari regarding custody of minor girl Miss X (name changed) in connection with Nalbari PS Case No. 555/10.

1) Runumani Begum

W/o- Md. Saifuddin Ahmed

R/o- Vill- Khatabari

Dist. & P.S- Nalbari, Assam.Appellant

-Versus- ...

State of AssamRespondent.

Advocates appeared:-

For the Appellant :- None appeared.

For the Respondent :- Mr. D. Barman, learned PP

Date of judgment :- 08-07-19

JUDGMENT

1. This is an appeal filed u/s- 52 of Juvenile Justice (Care & Protection of Children) Act being highly aggrieved by the order dated 15/02/11 passed by Child Welfare Committee (CWC), Nalbari rejecting the prayer of appellant Runumani Begum in granting custody of child in care of need and protection Miss X (named changed, hereinafter referred as Miss X).

2. The fact leading to this appeal arose from Nalbari PS Case No. 555/10 u/s- 366A/420/307/506/34 IPC. Runumani Begum W/o- Saifuddin Ahmed filed a compliant before the court of learned CJM,

Nalbari against Dhiraj Kalita and Abala Patowary alleging that on 20/10/10 Dhiraj Kalita along with Abdul Rahman took away complainant's 8 years old daughter Miss X taking advantage of absence of husband of complainant with promise that he will look after the girl and give proper education and he also taken complainant's elder daughter Miss Y (name changed, hereinafter referred as Miss Y), aged 11 years, and on next day accused Dhiraj Kaita came to her house and told her that he will bring her elder daughter Miss Y and will take her younger daughter Miss X but accused Dhiraj Kalita did not return her elder daughter Miss Y and took her younger daughter Miss X with him telling her that he will bring her elder daughter Miss Y on the next day. But he did not return Miss Y and when she made complaint against the accused Dhiraj Kalita, accused refused to return her daughters. The then learned CJM, Nalbari forwarded the complaint to O/C, Nalbari PS to investigate the case and to submit report.

3. On receipt of ejehar, O/C Nalbari PS registered Nalbari PS Case No. 555/10 u/s- 366A/307/420/506/34 IPC. During investigation, police arrested accused Dhiraj Kalita and produced him before magistrate on 31/01/11 and on 01/02/11 produced Miss X, younger daughter of the complainant, and Miss Y, elder daughter of complainant, before the court to record their statements u/s- 164 CrPC. Learned CJM, Nalbari endorsed learned SDJM (S), Nalbari to record their statements and accordingly learned SDJM (S), Nalbari recorded statements of victim girls u/s- 164 CrPC and forwarded both the victim girls along with the statements to learned CJM, Nalbari.

4. On the same date on 01/2/11 two petitions have been filed seeking custody of victim girls. One filed by Sarala Choudhury and another filed by complainant Runumani Begum and both the girls refused to go with their mother and therefore on 01/02/11 learned CJM, Nalbari forwarded both the victim girls to the State Home for Women, Jalukbari and rejected the petition submitted by Runumani

Begum and Sarala Choudhury. Thereafter, again Sarala Choudhury filed a petition seeking custody of both the victim girls before the learned CJM, Nalbari and CJM, Nalbari holding that petitioner Sarala Choudhury is not the natural guardian of the victim girls, rejected the prayer of Sarala Choudhury seeking custody of the victim girls Miss X and Miss Y.

5. Thereafter, on 07/02/11 the complainant Runumani Begum, present appellant, filed another zimma petition seeking custody of Miss X and Miss Y before the learned CJM, Nalbari and vide order dated 18/02/11 learned CJM, Nalbari gave direction to the Investigating Officer (I/O) to produce the victim girls before the Child Welfare Committee (CWC) and forwarded zimma petition filed by present appellant before the CWC to be decided by the CWC and thereafter CWC on receipt of the order of learned CJM, Nalbari gave zimma of the one Victim Girl Miss Y to Sarala Choudhury her grandmother and refused to give zimma of the girl in favor of present appellant holding that present appellant converted to Mohammedan religion and on that ground her prayer for zimma was rejected. Hence this appeal.

6. At the time of taking up the case, none appeared to move the appeal. Hence I have taken up the appeal for final disposal. Perused record and impugned order dated 15/02/11 passed by CWC, Nalbari. I find that the order dated 15/02/11 passed by CWC, Nalbari is not a speaking order. Simply holding that petitioner appellant converted to Mohammedan and remarried, hence she is not entitled custody of the girl who is her daughter is against the provisions of law and therefore, the order being not passed in accordance with law and provision of Juvenile Justice (Care & Protection of Children) Act, the same is set aside.

7. Case is remanded back to CWC, Nalbari along with copy of this judgment with a direction for consideration of the petitioner's prayer with a reasoning order, in accordance with provisions of law,

after issuing notice to the appellant Runumani Begum and after hearing appellant / petitioner, victim girl, the child in need of care and protection.

8. Send a copy of judgment to CWC, Nalbari for compliance with the above direction.

9. In the light of the above direction, the appeal is disposed of.

10. Send back GR case record to learned CJM, Nalbari with a copy of this judgment.

11. Judgement delivered under hand and seal of this court on this 8th day of July, 2019 at Nalbari, Dist- Nalbari

(Smti S. Bhuyan)
Sessions Judge, Nalbari

Dictated and corrected by me.

(S. Bhuyan)
Sessions Judge, Nalbari

Typed by:
Jitumani Talukdar
Computer Typist