Public Prosecutor Vs. Geetha

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Court : Chennai

Decided On : Dec-02-1963

Reported in : (1964)1MLJ400

Appellant : Public Prosecutor

Respondent : Geetha

Judgement :
ORDER

P. Kunhamed Kutti, J.

1. The Public Prosecutor has filed this Revision Case against the order in appeal by the Sessions Judge of Chingleput in proceedings under Section 29 of the Madras Children Act (IV of 1920). This section so far as it is relevant for the purpose of this case reads:

In any area to which the State Government shall direct that this section shall apply, any person authorised in this behalf in accordance with rules made by the State Government, may bring before a Court any person apparently under the age of fourteen years (a) who is found wandering and not having any home or settled place of abode or visible means of subsistence, or is found wandering and having no parent or guardian or a parent or guardian who does not exercise proper guardianship ; or (b) is found destitute...

2. On 1st April, 1960, the Deputy Inspector of Schools, Chingleput Range, who is an authorised person under the above section applied to the District Magistrate (Judicial), Chingelput, to certify the detention of the girl Geetha concerned in this case in Sivananda Sisu, Rakshana Mandir, Kattupakkam, as she is a handicapped destitute and an orphan with none to exercise proper guardianship. The District Magistrate sent this application for remarks of the Probation Officer and he reported that he was unable to know whether the girl who was then aged only four was destitute or not and therefore he was not in a position to make any recommendation. On this report, the District Magistrate examined the Deputy Inspector of Schools who stated that he had no personal knowledge that the child was a destitute and that he acted on the information given to him by the Headmistress of Dr. Mangalam, Higher Elementary School. The District Magistrate, therefore, passed an order dismissing the petition of the Deputy Inspector of Schools recommending admission of the girl into Sivananda Sisu Rakshana Mandir as a destitute for the reason that the Deputy Inspector has no personal knowledge about her condition and the Probation Officer could not recommend her detention as a destitute. Against this order one Nagalakshmi Ammal, who then worked as a cook, filed an appeal claiming herself to be interested in the girl as her mother's sister and as a foster mother. In the course of this appeal the learned Sessions Judge of Chingleput examined one S.V. Iyer, the Executive Secretary Sivananda Sisu Rakshna Mandir, Tambaram, as P.W. 2 when it was disclosed that the child has been burnt in a fire, that P.W. 2 had her admitted in the General Hospital, that she has no parent except the maternal aunt Nagalakshmi, that P.W. 1 made this application to the District Magistrate at his instance as at that time he was not an authorised person and that he had assisted Nagalakshmi to file the appeal.

3. On the materials then before him the learned Sessions Judge allowed the appeal negativing the contention urged on behalf of the State that no appeal lay against an order under Section 29 of the Act. The learned Judge held that in view of the testimony of P.W. 2, the girl was a destitute fit to be detained in Sivananda Sisu Rakshana Mandir under Section 29(1)(a) of the Madras Children Act.

4. Sri Faizi Muhammed who has been good enough to appear amicus curiae for the respondent child drew my attention to Section 42 of the Act relating to the appellate and revisional jurisdiction and pointed out that on the language of Section 42, the appeal by Nagalakshmi would appear not to be competent.

5. There is nothing indicated in Section 42 as to who is competent to prefer an appeal. On the face of it, it looks as if any person adversely affected by the order is competent to maintain the appeal. Such person in this case is the child and if Nagalakshmi can represent her as her aunt, I see no reason why an appeal at her instance should be deemed incompetent.

6. The more important question raised in this revision however is whether an appeal at all lies to the Sessions Judge under Section 42 of the Act against the order declining to commit the child under Section 29 of the Act. The relevant provision is as follows:

42 (1). An appeal from an order made by a Court under Sections 26,29, 30, 31 or 33 shall lie...(b) if passed by a District Magistrate to a Court of Sessions...

The contention of the learned Public Prosecutor is that having regard to the provision contained in Section 29 of the Act, no appeal could have been contemplated against a negative order. I am unable to uphold this contention as, in my view when Section 42(1) refers to an appeal from 'an' order made under Section 29, it should be construed as from 'any' order ; that is against an order either committing the minor to a certified school or to suitable custody or declining to so commit. But the learned Public Prosecutor referred me to the Preamble of the Act to urge that the purpose of the Act was to provide inter alia for protection of children or young persons and Section 29 contemplates only a positive order by Court, namely, committing the minor when it is satisfied on enquiry that it is expedient to so deal with the minor and not where it does not so deal in which case he would say, it cannot be said to be an order within the meaning of Section 29 of the Act. According to the Public Prosecutor this is a case where the State alone could be interested, and the analogy of similar provisions in the Civil Procedure Code can provide no guidance as in all such cases, unlike in a criminal case, there are two parties whereas in criminal cases the party interested is

generally the State. He has also drawn my attention to Section 476(b), Criminal Procedure Code, wherein specific provision is made for appeals by the complainant against refusal to make a complaint and by the person against whom a complaint is made. The argument is that where such provision is absent, an appeal would be sustainable only at the instance of the party against whom an order is made and not where no such order is passed. On such reasoning the learned Public Prosecutor would urge that it is only in a case where an order is passed under Section 29 that an appeal is competent and not otherwise as according to him a negative order passed under Section 29 cannot be considered to be an order within the meaning of Section 42 of the Act.

7. I have considered the above argument with care. I am however unable to get over the impression that in providing for the appeal in Section 42 from 'an' order under Section 29 any distinction as to a positive or negative order is possible to be made. The language of the section itself is definite that the appeal from ' an' order under Sections 26, 29, 30, 31, or 33 shall lie and when this definite provision is not circumscribed either by the aforesaid section or by other provisions in the Act, I see no reason why a restricted import should be given to the aforesaid section. In my view therefore an appeal lies against an order declining to act under section. 20 and when the Public Prosecutor concedes that Nagalakshmi could be deemed to be a person aggrieved with the order of the District Magistrate and competent to represent the minor, there is no reason why the appeal filed by her should be considered incompetent. The order passed by the learned Sessions Judge has therefore to be sustained and this petition dismissed.

8. The petition is accordingly dismissed.