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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Judgment Delivered on: 13.04.2023*

+ **W.P.(CRL) 973/2023**

**SHREE KIRTEE**

..... Petitioner

versus

**COMMISSIONER OF POLICE & ANR. .... Respondents**

Advocates who appeared in this case:

For the Petitioner

:Petitioner in person.

For the Respondents

:Mr. Sanjay Lao, Standing Counsel (Criminal) with Ms. Priyam Agarwal, Mr. Abhinav Kr. Arya and Mr. Shivesh Kaushik, Advocates.

Inspector Madhurendra Kumar, PS: Pul Prahladpur.  
R-2 in person.

**CORAM:**

**HON'BLE MR. JUSTICE SIDDHARTH MRIDUL**

**HON'BLE MR. JUSTICE GAURANG KANTH**

**J U D G M E N T**

**SIDDHARTH MRIDUL, J. (OPEN COURT)**

1. The present writ petition under Article 226 of the Constitution of India has been instituted on behalf of Ms. Shree Kirtee (the petitioner herein), the divorced wife of Mr. Naveen Chandra - who are both advocates by profession, seeking a direction to the latter to produce their 9-year-old son Master 'X' before this Court and further restore his custody to the petitioner in terms of the arrangement entered into between them at the time of seeking dissolution of their marriage by a

decree of divorce by mutual consent before the Court of competent jurisdiction.

2. The facts as are necessary for the adjudication of the present writ petition are briefly enumerated as follows:

2.1 Ms. Shree Kirtee and Mr. Naveen Chandra, who are both advocates by profession married each other on 25.12.2009 according to Hindu Rites and Customs at the Kalkaji Mandir, New Delhi.

2.2 Out of the wedlock, one male child Master 'X' was born on 05.05.2014, who has been in the care and custody of the petitioner since birth.

2.3 The couple, owing to their personal differences started living separately from 15.11.2017.

2.4 By way of petition no. HMA No. 298/2020, the couple moved a petition within the provisions of Section 13B(2) of the Hindu Marriage Act, 1955, seeking a decree of divorce by mutual consent as aforesaid. In the proceedings before the Court of competent jurisdiction, it was agreed by and between the parties *inter alia* as follows:

“11. That both the petitioners have therefore decided to dissolve their marriage by mutual consent, and hence, this petition under the following terms and conditions agreed mutually which are as follows:-

i. That the petitioner No.1 has settled all her disputes regarding Estridhan, jewellery, maintenance, (Past Present and Future) and permanent alimony qua the marriage with the petitioner no.2 and nothing remains pending and due.

ii. That the petitioner no.1 has further assured and agreed not to claim any maintenance towards past present and future as well as permanent alimony in respect of herself from petitioner no.2 in future.

iii. That the petitioner no.1 has further assured and undertakes that she will never claim any rights/titles/interest over the immovable or

moveable properties of her in laws or petitioner no.2 in present or future course of time.

iv. That it has been agreed by the petitioner no.2 that the child namely Vedant Shree Chandra@ Joyee shall remain under the custody of petitioner no.1 subject to the condition that he is taken good care of in his upbringing by the petitioner no.1.

v. That it has been mutually agreed that both the parties will collectively pay the school fees of their child.

vi. That it has been further agreed that any information from the school authorities in regard to the child regarding his overall development, academics, sports activities, co-curricular activities, Parents Teacher's Meeting (PTM) will be conveyed to both the petitioner and as such both will be at liberty to participate and extend their support for the better future of their child.

vii. That it has been agreed by the petitioner no.2 that he will extend his best hand forward for the bright future of his child.

viii. That the petitioner no.2 will have the visitation rights to meet and take/accompany his child to his own residence independently and exclusively twice a week to which the petitioner no.1 has agreed.

ix. That the petitioner No.1 has further agreed that during times of extended holidays and festival seasons, the petitioner No.2 will have the liberty of visiting and take/ accompany the child to his place for few days as per the convenience of both the parties.

x. That the petitioner no.1 has agreed and assured that she will encourage the child to talk to petitioner no.2 as on a regular basis over the phone/mobile and through other social media channels.

xi. That the petitioner No.1 is a working lady and her work I job often demands long hours at her work place I assignments and hence she has agreed that she will provide all the details to the petitioner No.2 (i.e. Name, Address, Mobile Number, Email Address, CCTV link access etc) pertaining to the child care facility I creche/ granny, where the kid will be spending his time after school hours and as such the petitioner No.2 will have free access to visit or call via telephonically and other social media apps (whatsapp call, video call, etc.)”

It is an admitted position that in terms of the agreement arrived at between the parties, the permanent custody of their minor son has remained with the petitioner in consonance with the terms arrived at by and between them voluntarily as afore-extracted.

2.5 On 18.03.2023, the petitioner along with her minor son went to the latter's school, Don Bosco School, Alaknanda, New Delhi to attend a Parent-Teacher Meeting, where it has been asseverated by the petitioner that respondent no. 2 was present, much to her surprise.

2.6 It is stated by the petitioner that respondent no. 2 insisted that he was desirous of spending the day with their biological son and the petitioner acceded to the request in good faith.

2.7 It is further asseverated on behalf of the petitioner that respondent no. 2 has since then refused to restore their minor son into her care and custody, contrary to the express terms entered into between them as above-mentioned, by way of the arrangement dated 07.08.2020.

3. Having heard the parties, who are present before this Court in person, there is no manner of doubt that at the time of obtaining a decree of divorce by mutual consent by their own freewill and volition, they entered into a legal and binding arrangement in relation to the custody/visitation of their minor son. It is further evident that the terms and conditions in relation to the custody/visitation of the minor son has been complied with by the parties till 18.03.2023, after which respondent no. 2 took away the minor child on a false pretext of spending the day with him.

4. The solitary submission made on behalf of respondent no. 2 is that the petitioner is unfit to look after the well-being and welfare of the

child, and therefore, he was constrained to take the latter's custody on the stated day from the latter's school, where they had gone to attend the Parent-Teacher Meeting.

5. For the sake of completeness, it is pertinent to record that it is the case of respondent no. 2 that he was entitled to the custody of the child for 10 days from 18.03.2023, in terms of Clause (ix) of the agreement owing to the circumstance that the school was closed for a vacation upon completion of the school year.

6. Be that as it may, from a plain reading of the foregoing, it is axiomatic that respondent no. 2 currently has custody of the parties' minor son, contrary to the express terms entered into between the now divorced couple, as elaborated herein above.

7. In that view of the matter whilst reserving liberty to respondent no. 2 to file an appropriate proceeding seeking custody of the minor son of the parties in accordance with law; the minor son is restored into the care and custody of his biological mother, the petitioner herein.

8. In view of the apprehension expressed on behalf of the petitioner, SHO Police Station: Kalkaji is directed to ensure compliance with the order passed by this Court and further provide the petitioner with his telephone number so as to enable her to contact the former in the event of any difficulty.

9. It is however made clear that the petitioner undertakes to permit respondent no. 2 to comply with her obligations in accordance with the terms and conditions of the settlement agreement dated 07.08.2020 arrived at by and between the parties.

10. No further directions are prayed for.

11. With the above directions, the *habeas corpus* petition is allowed and disposed of.
12. Copy of this order be given *dasti* to the parties.
13. Copy of this order be also uploaded on the website of this Court.

**SIDDHARTH MRIDUL  
(JUDGE)**

**GAURANG KANTH, J  
(JUDGE)**

**APRIL 13, 2023/pa**

[Click here to check corrigendum, if any](#)