

Court No. - 13

Case :- HABEAS CORPUS WRIT PETITION No. - 82 of 2022

Petitioner :- Master Kavish Singh Through His Mother Smt. Poonam Singh And Another

Respondent :- State Of U.P. Thru. Secy. Home Lko. And Others

Counsel for Petitioner :- Bhanu Pratap Singh, Mohammad Irfan Siddiqui, Mohammed Alam Khan, Raj Kumar Pandey, Somank Mishra

Counsel for Respondent :- G.A., Rajesh Kumar Singh, Vijay Vikram Singh

Hon'ble Karunesh Singh Pawar, J.

1. Heard learned counsel for the petitioners, learned A.G.A. for the State and Sri Rajesh Kumar Singh, learned counsel for respondent Nos.4 to 6.

2. A Co-ordinate Bench of this Court while taking note of brief facts of this case has passed the following order on 06.05.2022:-

"Vakalatnama along with counter affidavit filed today by Sri Mohammad Alam, Advocate on behalf of the opposite party nos. 4, 5 and 6 are taken on record.

Office is directed to show the name of Sri Mohammad Alam, Advocate as counsel for the opposite party nos. 4, 5 and 6.

In pursuance of the order dated 13.4.2022, Petitioner - Smt. Poonam Singh as well as opposite party nos. 4, 5 and 6 along with Corpus -Master Kavish Singh and Vihaan Raj Singh are present before the Court and have been identified by Lady Constable- Sangeeta, Police Station-Ghazipur.

This petition has been filed to issue a writ, order or direction in the nature of Habeas Corpus thereby commanding the opposite parties to produce Petitioners (Detenuess) before this Hon'ble High court and may be set at liberty under the care and custody of their mother. Brief facts of this case are that the marriage of the petitioner, Poonam Singh and and opposite party no. 6 was solemnized on 29.11.2011 and from the wedlock two sons namely Vihaan Raj Singh (now aged about 9 years) and Kavish Singh (now aged about 2 years and 5 months) were born. Due to matrimonial discord an

F.I.R. was lodged by the petitioner Poonam Singh against the opposite party no. 6 and his other family members under Sections 498-A, 323, 354, 504, 506 I.P.C. and 3/4 of the Dowry Prohibition Act on 22.11.2021. On 29.12.2021 the petitioner requested the Station House Officer to ensure that both her children and her educational certificate should be returned to her but no action was taken by the police. Station House Officer makes all efforts to compromise between the parties but no compromise arrived at between the petitioner and opposite parties.

Learned counsel for the petitioners submitted that the petitioner-Poonam Singh is mother and natural guardian of the children and, therefore, she prayed for custody of her children for their proper upbringing.

Learned counsel for the opposite party no. 4 to 6 filed counter affidavit and denied all the allegations and submitted that due to trivial issues the petitioner left the matrimonial home and lodged false and frivolous FIR against the opposite parties. The opposite party no. 6 is father of the corpus. The opposite party no, 4 and 5 are grand-father and grand-mother of the corpus. The opposite party, who is father and natural guardian of the corpus, wants to custody of the corpus for proper and good upbringing of his children. He also submitted that regarding the custody of the children matter is pending between the parties under Guardianship and Wards Act before the court below and therefore, the petition of petitioner is devoid of merits and liable to rejected.

On perusal of record it indicates that F.I.R. under Sections 498- A, 323, 354, 504, 506 I.P.C. and 3/4 of the Dowry Prohibition Act was lodged immediately after the alleged incident. The marriage between the petitioner and opposite party no. 6 was solemnized 11 years ago. Out of their wedlock two children/corpus were born. For proper upbringing of the children and for good, love and affection of both i.e. mother and father are very necessary. To cut short the prospective litigation between the parties, this Court is of the view that in such type of matrimonial matter and for welfare of children, there is always chance for mediation between the parties.

On the consent of learned counsel for both the parties, this Court is of the view that to explore the possibility of mediation between the petitioner and opposite party nos. 4 to 6, it is a fit case for reference to the Mediation and Conciliation Centre of this Court.

So in this regard, both the parties i.e. petitioner- Poonam Singh (mother of the corpus) and opposite party no. 6 (father of the corpus) are directed to appear before the Mediation and Conciliation Centre of this Court on 25.5.2022. Both the parties i.e. petitioner- Poonam Singh (mother of the corpus) and opposite party no. 6 (father of the corpus) shall deposit Rs. 2000/- each to the

Mediation and Conciliation Centre of this Court.

It is hereby expected that Mediation and Conciliation Centre of this Court shall make all efforts to complete the mediation between the parties within two months.

List thereafter before the appropriate Bench."

3. Report of the Mediation and Conciliation Centre is on record and according to which the mediation between the parties has failed. It is not disputed between the parties that regarding the custody of the children matter is pending between the parties under Guardianship and Wards Act before the court below.

4. Learned counsel for private respondents has submitted that trial is at the stage of evidence. He further submits that for the same cause, the petitioner is a party in a litigation under Guardianship and Wards Act which is a statutory remedy. He submits that once a statutory alternative remedy is being pursued by the respondent No.6 and the petitioner is a party therein the parallel proceedings for the same relief cannot be allowed to go on.

5. Learned A.G.A. also submits that if according to the statement of the learned counsel for respondent No.6 evidence is being led before the learned trial court those disputed question of facts cannot be adjudicated in the writ jurisdiction.

6. Learned counsel for the petitioners does not deny the fact that trial is at the stage of evidence however, he submits that first habeas corpus petition was filed and thereafter the suit under Guardianship and Wards Act has been filed by the respondent No.6.

7. Peruse the record and coupled with the fact that parallel proceedings cannot be permitted to go on before this Court if already a suit for custody under Guardianship and Wards Act is pending adjudication before the competent court. Law where there is a statutory alternative remedy and that remedy is pursued by one party and the parties are litigating after availing statutory alternative remedy, the writ petition cannot be permitted for the same cause. One opportunity was given to the parties by this Court vide order dated 06.05.2022 to settle the matter through mediation however, the mediation has failed.

8. Apart from the suit under the Guardianship and Wards Act, several other matrimonial cases are pending between the parties

one of them is reflected in the order dated 06.05.2022 therefore, it will not appropriate for this Court to entertain the present writ petition as the same may influence the trial under Guardianship and Wards Act however, considering the fact that detenues are minor children aged about 10 years and 3 and a half years approximately and deponent being the mother of the detenues, this Court feels appropriate that the mother of the children deserves visiting rights to her children which according to the learned counsel for the petitioners have been denied by the respondent No.6 accordingly it is provided that in case the application for visiting rights is given by the deponent of this petition before the competent court in the pending suit No.225/2022 under Section 25 of the Guardianship and Wards Act pending before the court of Additional Principal Judge, ,Court No.4/appropriate court having jurisdiction within fifteen days from today, the same shall be decided within further period of one month after hearing both the parties.

9. The petition is ***disposed of***.

Order Date :- 2.11.2023

Saurabh Yadav/-