

Court No. - 15

Case :- HABEAS CORPUS WRIT PETITION No. - 321 of 2023

Petitioner :- Kallo Thru. Her Husband Hasim

Respondent :- State Of U.P. Thru. Secy. Home U.P. Lko. And 3 Others

Counsel for Petitioner :- Sanjay Kumar Sharma, Neeraj Kumar Mishra

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed, J.

Heard learned counsel for the petitioner and Sri Vivek Gupta, learned A.G.A. for the State as well as perused the record.

The instant writ petition has been filed with a prayer to issue a writ, order or direction in the nature of Habeas Corpus commanding and directing the opposite parties to produce the detinue Kallo before this Hon'ble Court and after setting her at liberty, allow her to go with her husband (petitioner).

Learned counsel for the petitioner submits that the detinue is legally wedded wife of the petitioner and she is a married lady having five children, however, the opposite party no.4 has illegally abducted her and has kept her under an illegal detention. He further submits that the petitioner has approached police authorities but no attention has been paid till date.

In reply to the aforesaid, learned A.G.A. for the State submits that the instant petition is totally frivolous as the same is filed only with intention that in this petition notice may be issued only for the purpose of harassment. He further submits that the victim and the opposite party no.4 have already filed a Criminal Misc. Writ Petition No.7269 of 2023 before the Division Bench of this Court, which was disposed of vide order dated 22.09.2023 and the present petitioner was also party in that case, therefore, if he has any grievance, he may approach the same Court.

After hearing learned counsel for both the parties and after perusal of record, this Court finds that earlier the petitioner has approached this Court by filing Criminal Misc. Writ Petition No.7269 of 2023 wherein the Division Bench of this Court has passed the following order on 22.09.2023, which is being reproduced hereunder :-

"Heard learned counsel for the petitioners, learned A.G.A. for the State/Respondents and Shri Neeraj Kumar Mishra, learned counsel for applicant, who has filed impleadment application on behalf of Hasim, which is kept on record.

This petition has been filed with the following main prayers:-

"(i). Issue a writ, order or direction in the nature of Mandamus commanding and directing the opposite parties not to harass the petitioners in any manner until and unless any criminal case is registered against them.

(ii). issue a writ, order or direction in the nature of Mandamus commanding and directing the opposite parties to look into the matter and to restrain unnecessary harassment of petitioners by the local police station concerned."

Shri Neeraj Kumar Mishra who has filed impleadment application on behalf Hasim who is the legally wedded husband of petitioner No.2. She has shown herself to be the wife of Mubarak Ali in the array of petitioners whereas in the Aadhar Card that has been filed along with the writ petition, she has shown herself to be the wife of Hasim. It has been submitted that the applicant Hasim is the husband of petitioner no.2 and they were married several years ago and have 05 children. Details of whom have been mentioned in paragraph 4 of the affidavit filed in support of the impleadment application. It has also been mentioned in paragraph 5 that the petitioner no.1 is also a married person and he has 04 children details of whom have been given in his affidavit.

It has been submitted that the petitioners are living in adultery and this Court should not grant protection to them.

Admittedly, the applicant Hasim has not lodged any F.I.R. Learned counsel for the applicant orally states that he has filed a habeas corpus writ petition and also an application to the S.H.O. concerned.

This Court finds that both the petitioners are major and Section 497 I.P.C. has been deleted from the I.P.C., therefore, it will be open for the applicant to approach the court concerned for appropriate remedy.

This Court finds that the petitioners are both major and, therefore, there are free to live together. In case they are being threatened by their family members, they may file an application under Section 154 (2) or 154(3) of the Cr.P.C. before the Police Station/Superintendent of Police concerned, or to move an application under Section 156 (3) before the Magistrate concerned and or file a complaint case under Section 200 of the Cr.P.C. before the authorities concerned.

With the above observation, the writ petition stands disposed of."

Thereafter, the petitioner has approached this Court by filing Habeas Corpus Writ Petition No.302 of 2023, wherein this Court has passed the following order on 26.09.2023, which is being reproduced hereunder:-

"Sri Sanjay Kumar Sharma, learned counsel for the petitioner and Sri Vivek Gupta, learned A.G.A.-I for the State are present.

At the very outset, learned counsel for the petitioner submits that he has not annexed some relevant documents alongwith this petition, therefore, he requests that the same may be dismissed as withdrawn at this stage with liberty to file afresh.

Learned A.G.A.-I for the State has no objection.

Accordingly, the instant writ petition is dismissed as withdrawn with liberty to file afresh.

Office is directed to return all the certified copies of the relevant documents to learned counsel for the petitioner after keeping photostat copies thereof on record."

In view of above, it appears that the petitioner has not availed the remedy as directed by the Division Bench of this Court vide order dated 22.09.2023 rather he has filed the instant Habeas Corpus Writ Petition, which is totally misconceived. Even no relevant document has been filed by the petitioner to justify that the petitioner is legally wedded husband of the detenue.

With the aforesaid observation, no relief can be granted by this Court, as such, the instant Habeas Corpus Writ Petition being misconceived is hereby **dismissed**.

Order Date :- 10.10.2023

Saurabh