

Chief Justice's Court

Case :- SPECIAL APPEAL DEFECTIVE No. - 839 of 2023

Appellant :- Master Vashishth Alias Vasu Sharma Thru. His Father Kapil Sharma

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Home, Govt. Of U.P. Civil Sectt. Lko. And Others

Counsel for Appellant :- Shobhit Mohan Shukla, Manoj Kumar Chaurasiya, Nitesh Kumar Mishra, Raj Krishna

Counsel for Respondent :- C.S.C.

Hon'ble Pritinker Diwaker, Chief Justice

Hon'ble Jaspreet Singh, J.

1. Heard Shri Shobhit Mohan Shukla, learned counsel for the appellant and Ms. Meera Tripathi, learned Govt. Advocate for the State respondents.
2. This intracourt appeal has been filed by the appellant assailing the judgment and final order dated 23.08.2023 passed by the learned Single Judge in Writ Petition (Habeas Corpus No.271 of 2023) rejecting the petition on the ground that the detainee who is a child of three years and ten months and in custody of his mother cannot be termed as being in illegal detention.
3. The appeal is accompanied by an application seeking condonation of delay.
4. The Court has considered the ground shown in the affidavit seeking condonation of delay, the same is found sufficient, accordingly the delay shall stand condoned.

On merits

5. Learned counsel for the appellant has primarily drawn the attention of the Court to paragraphs no.6 to 9 of the affidavit in support of the application for interim relief and has submitted that the issue as to whether the detainee is in illegal custody has to be seen in light of the averments made in the writ petition and this aspect has not been considered by the learned Single Judge while passing the impugned order.
6. We have considered the submissions and have also perused the material on record and also the paragraphs no.6 to 9 of the affidavit including the averments made in the writ petition.

7. Apparently, it transpires that there is matrimonial dispute between Kapil Sharma the father of the detinue and the respondent no.6. The detinue admittedly is in the custody of the mother. The allegations primarily are to be effect that the mother of the detinue i.e. respondent no.6 under the influence of the private respondents no.7 and 8 have collected all her belongings cash and jewellery and has gone to Delhi and did not return and are endeavouring to alienate the child from the petitioner father.

8. Be that as it may, the allegations which have been levelled at best may indicate the dispute between the father and mother of the detinue. Nevertheless it does not change the fact that the child of three years and ten months is in the custody of the mother and definitely the same cannot be said to be illegal. In case if the petitioner has any apprehensions regarding the well being and welfare of the child he has ample opportunity to raise his grievance before the appropriate forum.

9. In view of the aforesaid, this Court does not find that there is any error in the order passed by the learned Single Judge to persuade this Court to intervene in the matter. Leaving all issues to be adjudicated before the appropriate forum, in case if the same are raised by the father of the detinue which needless to say shall be considered and decided by the appropriate forum on its own merit. However, the appeal is devoid of merits and is, accordingly, dismissed.

Order Date :- 28.10.2023

ank

(Jaspreet Singh, J) (Pritinker Diwaker, Chief Justice)