

Court No. - 13

Case :- HABEAS CORPUS WRIT PETITION No. - 347 of 2023

Petitioner :- Smt. Shriya Agarwal Thru. Sri Shubham Kumar

Respondent :- State Of U.P. Thru. Prin. Secy. Home, Lucknow, U.P. And 7 Others

Counsel for Petitioner :- Prabhaat Kumar Tripathi

Counsel for Respondent :- G.A.

Hon'ble Karunesh Singh Pawar,J.

Heard learned Counsel for the petitioner, learned counsel for respondent nos. 1 to 5 and learned A.G.A. for the respondent State as well as perused the record.

Notices to respondent nos. 6 to 8 are dispensed with in view of the proposed order.

The present petition has been filed by the detinue through her next friend/husband with the following main relief:-

"Issue a writ, order or direction commanding the Opposite parties to produce the petitioner/detinue before this Hon'ble Court and petitioner/detinue may be permitted to go with her own sweet will/freeWill i.e. the in-laws' house (deponent's house)."

It is contended by learned counsel for the petitioner that both the detinue and the deponent married on 12.12.2021. After the marriage they went to Goa on 19.12.2021.

It is further alleged that in December, 2021 the detenue went to her parents house and continue to stay with her parents till 1.4.2022. On 1.4.2022 the petitioner/detenue went to her in-laws house wherre she styed till 22.7.2022 and on 22.7.2022 she again returned back to her parents' house and thereafter she did not come back to her in-laws house. From the wedlock a baby was born on 7.4.2023 and in spite of that the petitioner/detenue is staying at her parents' house.

It is further contended that after talking to her parents her mind was diverted against her in-laws. The relations between detenue and the deponent became worse and the detenue has also insulted the parents of the deponent from time to time. The detenue became adamant and annoyed not to agree with any of the suggestions/advice as given by the deponent purportedly under the guidance and supervision of her parents. Thus aggrieved by this action of the detenue a suit under Section 9 of the Hindu Marriage Act 1955 bearing Original Suit No. 4184 of 2022 was filed, which is pending. On receipt of the notice in the suit, a legal notice was sent by the detenue/petitioner to the deponent through Shri H.B. Sharma, Advocate, Civil Court, Prayagraj stating therein that if he does not pay the expenses incurred in the marriage and also does not pay the maintenance allowance within a period of 30 days, his client would approach the competent court of law for redressal of her grievance for which the deponent himself will be responsible. The reply of the notice was also given.

It is also alleged that the detenue has threatened the

petitioner and her parents to lodge a false and fabricated case against them under Domestic Violence Act. Several applications, which have been annexed as Annexure-6,7 and 8, regarding the same has been given to the police authority, however nothing has been done.

On due consideration to the submissions advanced as well as perusal of the record it is evident that as per the admitted case of the petitioner that the detinue of her own accord and will has left her in-laws house and deponent/husband and she is not willing to come back that is why suit under Section 9 of the Hindu Marriage Act was filed by the deponent and also legal notice has also been given by the detinue to the deponent, prima facie it appears that it is purely a matrimonial dispute and not the case of illegal detention.

In view of the above, the Habeas Corpus petition fails and accordingly, dismissed. It shall be open for the petitioner to avail alternative remedy provided under law so far as custody of the minor child is concerned.

Order Date :- 1.11.2023

Madhu