

Court No. - 13

Case :- HABEAS CORPUS WRIT PETITION No. - 388 of 2023

Petitioner :- Master Aryan (Minor) Thru His Mother Smt. Arti Singh

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

Counsel for Petitioner :- Ram Singh

Counsel for Respondent :- G.A.

Hon'ble Karunesh Singh Pawar,J.

Heard learned counsel for the petitioner and learned AGA for respondent no. 1 to 3.

Notices to respondent no. 4 are dispensed with in view of the proposed order.

By this petition, the petitioner has prayed for the following relief:-

Issue a writ, order in the nature of habeas corpus directing the opposite parties particularly opposite party No. 4 to produce the detenue/petitioner before this Hon'ble Court and further this Hon'ble Court may kindly be pleased to order for giving the custody of the detenue/petitioner to the deponent who is mother and natural guardian of the corpus, in the interest of justice.

Learned AGA has submitted that the petition has been filed by concealing and suppressing the fact that a compromise was entered on 03.12.2023 between the parties and the deponent of the petition on the basis of that compromise took Rs. 50000/- and a motorcycle in presence of her family members and without any pressure gave the custody of Aryan (detenue) to respondent no. 4. The affidavit signed by the deponent and the said compromise have been produced by the learned AGA.

It has been further submitted by the learned AGA that for the custody of the child, a case in the Court of Bal Kalyan Samiti was filed by the deponent which was dismissed vide order dated 11.08.2022. Against that order, an appeal was filed before the District Magistrate which has been dismissed as not maintainable. He further submits that the deponent has a statutory alternative remedy under Section 101 of Juvenile Justice Act, 2015 in the form of appeal. The writ petition contains disputed questions of facts as such it is not maintainable. Instructions provided by the learned AGA is taken on record.

Per contra, learned counsel for the petitioner has disputed the contention and has submitted that she has not signed any settlement/agreement with the private parties and specific pleadings in this regard has been taken in para 6 of the petition.

He further submits that custody of the detainee with respondent no. 4 is illegal and the deponent being the mother is entitled to the custody of the detainee considering his age.

On due consideration to the submission advanced as well as perusal of the instructions provided by the learned AGA, it appears that the writ petition contains disputed questions of facts. The petitioner has already availed a remedy under the statute by filing a case in the Court of Bal Kalyan Samiti which was dismissed vide order dated 11.08.2022. Against the order dated 11.08.2022, an appeal under Section 101 of Juvenile Justice Act, 2015 lies before the appropriate forum which has not yet been filed by the petitioner, rather the appeal in the wrong forum filed by deponent has been dismissed as not maintainable.

A perusal of record further shows that the petitioner has also filed a case under Section 125 Cr.P.C. before the appropriate Family Court and interim maintenance of Rs. 2000/- has been awarded by the Court in favour of the deponent. In that petition, it has been alleged by the deponent that she has no source of income.

In the case is hand, the detailed inquiry to adjudicate the disputed questions of facts is required. The Supreme Court in the case of **"Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari, (2019) 7 SCC 42"** has held as under:-

19. Habeas corpus proceedings is not to justify or examine the legality of the custody. Habeas corpus proceedings is a medium through which the custody of the child is addressed to the discretion of the Court. Habeas corpus is a prerogative writ which is an extraordinary remedy and the writ is issued where in the circumstances of the particular case, ordinary remedy provided by the law is either not available or is ineffective; otherwise a writ will not be issued. In child custody matters, the power of the High Court in granting the writ is qualified only in cases where the detention of a minor by a person who is not entitled to his legal custody. In view of the pronouncement on the issue in question by the Supreme Court and the High Courts, in our view, in child custody matters, the writ of habeas corpus is maintainable where it is proved that the detention of a minor child by a parent or others was illegal and without any authority of law.

20. In child custody matters, the ordinary remedy lies only under the Hindu Minority and Guardianship Act or the Guardians and Wards Act as the case may be. In cases arising out of the proceedings under the Guardians and Wards Act, the jurisdiction of the court is determined by whether the minor ordinarily resides within the area on which the court exercises such jurisdiction. There are significant differences between the enquiry under the Guardians and Wards Act and the exercise of powers by a writ court which is summary in nature. What is important is the welfare of the child. In the writ court, rights are determined only on the basis of

affidavits. Where the court is of the view that a detailed enquiry is required, the court may decline to exercise the extraordinary jurisdiction and direct the parties to approach the civil court. It is only in exceptional cases, the rights of the parties to the custody of the minor will be determined in exercise of extraordinary jurisdiction on a petition for habeas corpus.

In view of the law laid down by the Supreme Court in the case ***Tejaswini Gaud (supra)*** as well as considering the fact that the petition contains disputed questions of facts which cannot be adjudicated by this Court while exercising habeas corpus jurisdiction and the matter requires thorough inquiry, I am not inclined to entertain the petition.

The petition fails and is accordingly ***dismissed***.

Order Date :- 20.12.2023/R.C.