

Court No. - 13

Case :- HABEAS CORPUS WRIT PETITION No. - 398 of 2023

Petitioner :- Ms. Drishti Thru. Father Atul Kumar And Another

Respondent :- State Of U.P. Thru. Prin. Secy. Home Deptt. Lko. And 7 Others

Counsel for Petitioner :- Vinod Kumar, Shyam Lal, Veer Bahadur, Virendra Kumar

Counsel for Respondent :- G.A.

Hon'ble Karunesh Singh Pawar, J.

Heard learned counsel for the petitioners as well as learned AGA for the State.

Notices to respondent no. 6 to 8 are dispensed with in view of the proposed order.

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

"To issue a writ, order or direction in the nature of Habeas Corpus may be issue directing the opposite Party no. 6 to 8 to produce the petitioners before this Hon'ble Court and he may be pleased to allowed to go with the deponent i.e. father of the petitioners."

Learned counsel for the petitioner submits that detinue no 1 Drishti and detinue no. 2 Srishti are 15 and 14 years old respectively and they have been illegally detained by respondent no. 6 to 8. The deponent is father of the detenues Drishti and Srishti. Late Smt. Minakshi @ Laxmi mother of the detenues and wife of the deponent married to the deponent on 13.05.2006. Both the deponent and late mother of the detenues were living happily. Due to illness, late Meenkshi, mother of the detenues passed away on 12.10.2016. At that time the deponent was unemployed and now he has got a government job as TGT Teacher at Amethi and is capable of maintaining his daughters Drishti and Srishti.

It has been further submitted that the deponent has been spending on the education and the maintenance of his daughters till date. The deponent went to Ambala so as to bring the detenues back, however, the private parties not allowed him to take the detenues.

It has been further submitted that Drishti came to the house of the deponent in the month of July and was admitted to SDP Memorial Inter College, Deegha Kanta, Salon, Raebareli, however, after one month O.P. No. 6 to 8 came and took her away. It is also submitted that in order to blackmail the deponent, they have filed a maintenance suit under Section 20 of Hindu Adoption and Maintenance Act before the Principal Judge, Family Court, Ambala, Haryana. Memo of suit is on

record.

Per contra, learned AGA on the basis of instructions received from Sub Inspector Indresh Kumar, P.S. Munshiganj, District Amethi has submitted that Drishti is residing with her Nani (maternal grand mother) at Village Pure Bariyar Majre Dulapur Kala, P.S. Munshiganj, District Amethi since 2008 on her own accord and free will and she has not been kidnapped or forcefully detained. She further stated that behavior of her father is not good. He has remarried a lady who is from Bela, Pratapgarh and i.e. why she does not want to live with him. Her sister Srishti is residing with her maternal grand father namely Kanhaiyalal at Ambala. Statements/applications given by Drishti and Srishti shows that they do not wish to live with their father because he has remarried and his behaviour towards them was not appropriate. Instructions provided by the learned AGA is taken on record.

A perusal of memo of suit under section 20 of Hindu Adoption and Maintenance Act filed by the detenues at Family Court, Ambala shows that the deponent has neglected the detenues and has not spent anything for their maintenance and when for a period of some time, Drishti went to live with her father, she was subjected to sexual violence at the instance of Akshay @ Babloo brother of the deponent Atul Kumar. The suit under section 20 of Hindu Adoption and Maintenance Act is pending.

In view of the aforesaid, it appears that the detenues do not wish to live with their father and they on their own accord are residing with respondent no. 6 and 7; the allegations of sexual harassment made by them in para 6 of the memo of the aforesaid suit are enough to show that they are not safe with the deponent in his house; both of them are 15 and 14 years old and are major enough to take decision regarding their well being.

Before parting, this Court has noticed that factum of second marriage has been conveniently concealed by the deponent while filing this petition. The contents of the writ petition contain highly disputed questions of facts which cannot be adjudicated in writ jurisdiction.

In view of the above, the writ of habeas corpus fails and is accordingly dismissed.

Order Date :- 15.12.2023
R.C.