

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1331 OF 2015

Gauri Milind Aher,
Age-27 years, Occu:Household,
R/o-At Present-C/o-Vaibhav Vasantrao Mohite,
N-11, G-6/7, Navjeevan Colony,
HUDCO, Aurangabad.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through Police Station Kannad,
Dist-Aurangabad,
- 2) The Police Inspector,
Police Station Loni,
Tq-Rahata, Dist-Ahmednagar,
- 3) Shri Milind Balasaheb Aher,
Age-34 years, Occu:Agriculture & Business,
R/o-Talegaon Road, Near P.V.P. College,
Loni Khurd, Tq-Rahata,
Dist-Ahmednagar.

...RESPONDENTS

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Mr.S.J. Salunke Advocate for Petitioner.
Mr.S.B. Yawalkar, A.P.P. for Respondent
Nos.1 & 2.

...

**CORAM: A.B. CHAUDHARI AND
INDIRA K. JAIN, JJ.**

DATE : 20TH OCTOBER, 2015

ORDER :

1. Heard learned counsel for the Petitioner.

2. Learned counsel for the Petitioner was put on notice that the matter relates to the dispute between husband and wife. Not only that, at earlier point of time the proceedings before the Magistrate under Section 97 of Cr.P.C. were withdrawn upon conciliation between the parties. Learned counsel for the Petitioner was, therefore repeatedly told that the matter relates to matrimonial dispute and the alternative efficacious remedy is available before the District Judge under the Guardian and Wards Act, so also before the Matrimonial/ Family Court. It is not in dispute that the custody of the girl is with the husband of the Petitioner and prima facie the same cannot be called as illegal custody since admittedly Respondent No.3 is father of the girl. The question whether the custody is required to be

given to the wife or husband, are the matters to be adjudicated by the competent Court. Writ of habeas corpus would not lie in this case, since we find that the custody cannot be said to be with the person having no authority in law.

3. Learned counsel for the Petitioner cited some decisions. But then, all the decisions relate to unlawful custody by strangers. Undoubtedly, the writ of habeas corpus cannot be utilized in such cases where the dispute is purely of matrimonial nature.

4. In the result, we make the following order:-

O R D E R

(I) Criminal Writ Petition No.1331 of 2015 is dismissed reserving liberty in favour of the Petitioner to approach the

competent Court, Civil or Criminal, for
obtaining the reliefs.

(II) No order as to costs.

[INDIRA K. JAIN, J.]

asb/OCT15

[A.B. CHAUDHARI, J.]