

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 2550 OF 2015**

Nilesh William Menezes

Petitioner.

Vs

1. Riona Nilesh Menezes and Anr

.. Respondents

Mr. William A. Menezes, Advocate for Petitioner.

Mr. J.M.Jayale, Advocate for respondent no.1.

Mrs. M.H.Mhatre , APP for Respondent no.2-State.

CORAM : RANJIT MORE & R.G.KETKAR,JJ.

DATE : 26th OCTOBER, 2015.

PC:

1. Heard learned counsel and learned A.P.P appearing for the respective parties.

2. The petitioner has filed the petition for the following relief:

“To issue a writ in the nature of Habeas Corpus commanding the respondent for the production of the minor children Reine and Reia in the Court and set them at liberty by granting the custody to father -the petitioner in the welfare of the minor children.”

3. By order dated 15.10.2015, we recorded a statement of the petitioner that the petitioner will deposit an amount of Rs.24,000/- towards arrears of maintenance in this Court within one week and thereafter directed respondent no.1 to produce the children on the next date of hearing.

4. The petitioner, in pursuance of the said direction, has deposited an amount of Rs.24,000/- towards arrears of maintenance in this Court. Today, Respondent no.1 appeared with her minor children in this Court. We have interacted with

respondent no.1.

5. Petitioner and respondent no.1 are husband and wife. It is the contention of respondent no.1 that because of the ill-treatment given by the petitioner, she has left the matrimonial house and now she is staying at Manipal. She is doctor by profession and she is doing practice there. She submits that age of elder daughter-Reina is 6 years and is studying in Ist Std. and the age of younger daughter Reia is 4 years and is studying in Jr.KG. Respondent no.1 has put both the children in Krist School at Manipal. Respondent no.1 also contended that she has already filed the proceedings in Udapi Court under the Protection of Women from Domestic Violence Act, 2005 in which the petitioner-husband is directed to pay maintenance at the rate of Rs.4000/- per month each child. She also stated that the petitioner has neglected to pay the same.

6. Learned counsel for the petitioner relied upon a decision of the Apex Court in the case of Gohar Bagum Vs. Suggi alias Nazma Begum, AIR 1960 SC 93 and submitted that custody of minor children may be given to the petitioner. We are unable to accept the submission. We have perused the Judgment of the Apex Court and particularly paragraphs 2 and 6. The Apex Court, in the light of the peculiar facts, granted custody to the appellant therein who was the mother and respondent was a Aunti (sister of appellant's mother) of minor children. In the present case,

respondent no.1 is natural guardian of children. Though the petitioner is father of the minor children, respondent is the mother. Children are below seven years of age and it is the mother who is the natural guardian of the children. In any case, the petitioner is always at liberty to apply before appropriate court for custody of minor children. Reliance placed by the petitioner on the judgment of the Apex Court in the case of Gohar Begam (supra) has no application to the facts of the present case.

7. Children are produced before this Court and they are in custody of respondent no.1-mother of the Children. We have also interacted with respondent no.1 and prima facie she is taking proper care of children. She has admitted them in the Krist school at Manipal. Hence, Habeas Corpus Petition is worked out. The petitioner is, at liberty to take recourse to the appropriate remedy in accordance with law before appropriate Court.

8. This petition stands disposed of, reserving liberty to the petitioner to adopt appropriate remedy before appropriate court. Respondent no.1 is at liberty to withdraw the amount of Rs.24,000/- deposited by the petitioner in this Court towards arrears of maintenance along with interest accrued thereon on making proper application.

(R.G.KETKAR, J.)

(RANJIT MORE,J.)