

**428 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRWP No. 1069 of 2014.
Decided on : 31.10.2015.**

Sandeep Kaur

Petitioners

Versus

State of Punjab and others

...Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Vijay Lath, Advocate and
Mr. Naveen Sharma, Advocate,
for the petitioner.

Mr. Luvinder Sofat, AAG Punjab.

Mr. M.S. Grewal, Advocate,
for respondent No.3.

Mr. Sunil Chadha, Sr. Advocate with
Mr. Navjot Singh, Advocate,
for respondents No.4 to 8.

JITENDRA CHAUHAN, J.

This petition, under Article 226 of the Constitution of India, is filed for issuance of a writ in the nature of Habeas Corpus, directing the respondents No.1 to 3 to either get them released or to produce the detenues, namely, Karanjit Singh (son) and Sukhmanpreet Kaur (daughter) of the petitioner from the illegal custody of the respondents No.4 to 8.

It is pleaded by the petitioner that the marriage of

the petitioner was performed on 14.11.2004 with Amarjit Singh-respondent No.4 in accordance with Sikh rites (Anand Karaj) at Gurudwara Sahib, Kapurthala. The husband and wife cohabited as such at village Sangowal and out of this wedlock a son, namely, Karanjit Singh was born on 10.8.2005 and a daughter Sukhmanpreet Kaur was born on 20.9.2007. The respondent No.4 is a Portuguese National. At regular intervals, he visits this country for a short time. The petitioner had resided at her matrimonial house along with her children at village Sangowal till 19.7.2010. On 19.7.2010, Charanjit Singh, the brother-in-law - respondent No.5, Kulwant Kaur, the sister in law - respondent No.6, Balvir Kaur, the mother-in-law - respondent No.8, in connivance with Amarjit Singh - respondent No.4 had forcibly administered poison to the petitioner. In this regard, an FIR No. 42 dated 20.7.2010 under Sections 307 and 511 IPC was registered at Police Station Dhilwan, District Kapurthala. Both the children were got admitted in Guru Nanak Prem Karamsar Public School, Nadala. The children are being provided good education by the petitioner. The respondent No.4 has not spent even a single penny on the education of the children since 2008. The petitioner along with the children has been residing with her parents. The names of children have been entered in the ration card of the parents of the petitioner. In the end of January, 2014, the petitioner went to Hongkong to visit her cousin and the children were left at her parental house. The respondent No.4 who was in India in the month of April, 2014, in the absence of the petitioner, threatened to take custody

of minor children forcibly. Thereafter, he managed with the Station House Officer, Police Station NRI, Kapurthala and Inspector Gurvir Singh, Station House Office, NRI, Kapurthala who sent Police officials to the house of the parents of the petitioner to call them along with minor children to the Police Station in the absence of the petitioner. The parents of the petitioner along with minor children went to the Police Station where, Inspector Gurvir Singh, SHO forcibly handed over the custody of the minor children to Amarjit Singh-respondent No.4. The SHO also got a writing prepared from an official of his Police Station and forcibly obtained the signatures of the parents of the petitioner on the said writing. The petitioner, on learning the same, rushed back to India on 9.7.2014 and filed the present writ petition on 11.7.2014. It is further pleaded that in fact, the minor children are the eye witnesses of the occurrence of FIR No.42 dated 20.7.2010 in which the brother, sister-in-law and mother of Amarjit Singh are the accused and now to pressurize and win over the eye witnesses, the minor children have been forcibly taken away by Amarjit Singh.

Upon notice, the respondents appeared and filed separate written statements.

The respondents No.1 and 2 i.e. the State of Punjab filed separate written statement making preliminary submissions that FIR No.42 dated 20.7.2010 under Sections 307 and 511 IPC was registered against Amarjit Singh in Police Station Dhilwan. Amarjit Singh moved a representation which was dealt with by SHO, Police

Station NRI, Kapurthala. The custody of the children was handed over to Amarjit Singh for 15 days in compliance with the compromise dated 25.4.2014 (Annexure R-1/T). On merits, the factual aspect between the parties was denied for want of knowledge.

Gurbir Singh, Inspector Nodal Officer, NRI and Women Wing, Mohali, the respondent No.3 has filed a separate written statement with preliminary submissions that on receipt of complaint moved by respondent No.4, the parties were called to the Police Station and the parties themselves entered into a compromise which was reduced in writing. In accordance with the compromise, Amarjit Singh took custody of his children for a limited period from the maternal grandparents of the children. The compromise was signed by both the sides as well as respectables present representing both the sides. There was no pressure on the parties. The children willingly went with their father. The parents of the petitioner voluntarily handed over the custody in terms of the compromise. On merits, the factual aspect between the parties was denied for want of knowledge.

The contesting respondents No.4 to 8 have filed the written statement taking preliminary objection that the present petition for issuance of a writ in the nature of habeas corpus is not maintainable as the children are not in the illegal custody. The children are rather in the legal custody of their father. On merits, it has been pleaded that the respondent No.4 has been coming to India quite often and at present

also, he is in India. The factum of registration of FIR and that the

children were studying in Guru Nanak Prem Karamsar Public School, Nadala was admitted. However, on inquiry, the version of the complainant was found to be incorrect and the cancellation report was presented in the Court. No incident as alleged in the FIR (Annexure P-6) took place so, there arises no question of the minor children being witnesses thereof. The respondent No.4 kept sending funds from abroad to the petitioner for the studies and maintenance of the children. In fact, the petitioner left the matrimonial home along with both the children on 20.7.2010. The petitioner left the country in January 2014 and came back in July 2014 only after coming to learn that the children have started residing with the respondents No.4 to 8. On coming to know that the petitioner had left for abroad and had left both the children at the mercy of her parents, the respondent No.4 submitted a complaint with the Senior Superintendent of Police, Kapurthala on 27.3.2014. The statement, Annexure R-1 made by the parents of the petitioner shows that the custody of the children was given to the respondent No.4 in an amicable way. The remaining allegations made in the petition were specifically denied.

It is contended that in the absence of the petitioner, the father – respondent No. 4 forcibly took away her children from the custody of her parents. She prays for handing over the custody of the children to her.

On the other hand, learned counsel for respondents

No.4 to 8 states that the respondent No.4 is the father of the children.

The mother (petitioner) of the children went abroad by leaving the children behind all alone. She has no concern with the welfare of the children. The children have been living happily with their father and grandparents for the last more than one and a half years.

I have heard the counsels to the parties and carefully perused the record.

Needless to say, this Court is not to adjudicate upon the rival claims of the parties rather the welfare of the minors is to be seen. The term “welfare of the minors” is to be given a wide meaning. It ought not to be measured in monetary terms only or by physical comfort alone. Rather, many facets, such as, financial, educational, physical, moral and cultural welfare of the children shall be a determining factor.

It is admitted fact that on 25.4.2014 when the petitioner was abroad, the custody of the children was handed over to respondent No.4 by the parents of the petitioner in pursuance to the compromise-deed Annexure R-1. It was further envisaged in the compromise that the respondent No.4 will prepare Passports for the children and will go to Germany along with the children. Further, it has come on the record that both the children are living with respondents No.4 to 8 for the last more than one and a half years. They have been regularly going to the school. In pursuance of the order dated 12.8.2014, both the children were produced before this Court. This

Court interacted with the children. The children wished to stay with

their father. The respondent No.4 is a Portuguese national. The future of the children with respondent No.4 is bright. Even at this stage, the shifting of children from the custody of respondent No.4 to that of the petitioner will seriously affect their studies. There is no evidence that prior to filing the present petition, the petitioner made any effort to secure the welfare of the children because she had left them at the mercy of her parental family, therefore, this Court is of the opinion that it is in the interest of the children that they should remain with their father. The children are at present with their father and grandparents and by no stretch of imagination they could be said to be in illegal custody. The children are looked after well by the father, who has sufficient means to maintain them. Accordingly, the present petition for habeas corpus is dismissed.

31.10.2015.
SN

(JITENDRA CHAUHAN)
JUDGE