

\$~7

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of hearing and order: 27th July, 2015

+ W.P.(CRL) 755/2015

ALOK YADAVA

..... Petitioner

Through: Ms. Yogita Bansal, Proxy Counsel

versus

GOVT. OF (NCT) OF DELHI & ORS

..... Respondents

Through: Respondent Nos. 3 and 5 in person

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

27.07.2015

%

KAILASH GAMBHIR, J. (ORAL)

1. The petitioner is present in person alongwith, Proxy Counsel, Ms. Yogita Bansal appearing for Mr. G. Kumar Advocate. Mr. G. Kumar, Advocate is also present and has assisted the proxy counsel in addressing arguments on the present petition. Smt. Hemlata Yadav wife of the petitioner is also present in Court alongwith her son Master Arihant. Sh. Ran Pal Yadav, father of Smt. Hemlata Yadav and respondent No. 5 Gyan Chand Yadav, Uncle of Hemlata Yadav is also present in the Court.

2. Both the parties submit that mediation proceedings have resulted in non-settlement. Ms. Hemlata Yadav has apprised the Court that she was

being subjected to physical and mental torture at the hands of the petitioner and her in-laws because of not bringing sufficient dowry at the time of marriage. She further submits that she had left the matrimonial home on 08.11.2014 alongwith her child and the petitioner was well aware that she had gone to stay with her uncle at his residence in Dehradun. She further submits that she had lodged a police complaint against the petitioner and her family members at the Police Control Room on 31.10.2014 and with the Crime against Women Cell on 8.1.2015. She also states that she has been happily staying with her uncle at Dehradun and she has already admitted her child in a reputed school there.

3. Counsel for the petitioner on the other hand submits that on 8.11.2014, respondent Nos. 3 and 5 alongwith their family members came to the house of the petitioner and took away the wife of the petitioner on the pretext that she has to attend her cousin's marriage on 4.12.2014. Counsel also submits that she had filed a complaint against the petitioner and his family members under Section 498-A of IPC at Police Station, Maurya Enclave, Pitampura, Delhi under the pressure of her father with a view to get transferred half of properties of the petitioner in her name. Counsel also submits that the petitioner was not allowed to talk or meet

his wife and son and in fact his wife and son were being kept in illegal custody of the respondent Nos.3 and 5. Counsel also submits that the petitioner has been compelled to take recourse to invoke writ jurisdiction of this Court in the nature of Habeas Corpus as under these circumstances, he was left with no other efficacious remedy to meet his wife and child.

4. Mr. Jamal Akhtar, proxy counsel appearing for the State submits that the present Habeas Corpus petition filed by the petitioner is not maintainable in the eyes of the law, as neither his wife nor his son were in illegal detention as per own knowledge of the petitioner. Counsel also submits that the petitioner is fully aware as to under what circumstances his wife had left the matrimonial home and where she has been staying with her son Master Arihant. Counsel for the State also submits that exemplary costs be imposed upon the petitioner for filing such a frivolous and vexatious petition.

5. Counsel for the petitioner on the other hand, despite being advised not to pursue this petition, kept on justifying the course of action taken by him in securing the presence of his wife and child before the Court.

6. We have heard the submissions made by the learned counsel for

the petitioner as well as the counsel appearing for the State.

7. The petitioner and his wife got married on 17.4.2008 and out of the said wedlock; they were blessed with one son, Master Arihant on 12.06.2009. As per the petitioner, on 8.11.2014, the respondent Nos. 3 and 5 alongwith their family members came to the house of the petitioner and once again suggested the father of the petitioner to transfer half of his property in the name of petitioner's wife and his son and when it was refused by father of the petitioner, the family members of the wife of the petitioner got enraged and started using foul language for the father of the petitioner. It is also the case of the petitioner that his wife was taken by them on the same date on the pretext of attending marriage of her cousin on 4.12.2014. It is also the case of the petitioner that a complaint under Section 498-A of IPC was filed by his wife at Police Station, Maurya Enclave, Pitampura, Delhi against him and his family members. As per the petitioner, the same was filed by his wife under the dictates of respondent Nos. 3 and 4. It is also the case of the petitioner that he fears about the safety and security of his son and wife and that they are under the illegal confinement of respondent Nos. 3 and 5.

8. As can be seen from the facts of the present case, the wife of the

petitioner along with her son Master Arihant had left the matrimonial home along with respondent Nos.3 and 5 on 8.11.2014 and thereafter they never returned. As per the detenu, Mrs. Hemlata, she was subjected to mental and physical torture by the petitioner and her in-laws in relation to dowry demands and she did not return to her matrimonial home due to the ill-treatment meted out to her by her husband and his family. She has further submitted that she is happily living with her uncle at Dehradun. The fact that Ms. Hemlata is staying at her uncle's house is well known to the petitioner. Could these facts even remotely suggest that wife and son of the parties are under the illegal detention, the answer would certainly be 'no'. Instead of taking recourse to valid remedies under matrimonial laws, the petitioner ill advisedly has taken this remedy of filing a habeas corpus petition. The police in such a matter have unnecessarily been burdened to send their team at the parental house of the girl and also at the house of the uncle at Dehradun resulting into unnecessary wastage of public exchequer and manpower. The police who is already overburdened, their services could have been utilised for a more productive work than sending their teams for the search of a lady whose detention cannot be held as illegal.

9. The Court in this matter has also given direction for the personal presence of respondent Nos.3 and 5 alongwith wife and minor child of the petitioner and they had been attending the Court proceedings for the last few dates and they had also appeared before the Mediation Centre of this Court. Certainly, their presence before the Court and the Mediation Centre must have been at the cost of incurring avoidable expenditure. During the course of the hearing the matter, the Court had been apprised that the petitioner had not even been paying any maintenance to his wife. The wife of the petitioner has already filed a complaint against the petitioner and his family members under Section 498A IPC on 08.01.2015 and she has also been seeking transfer of the complaint to CAW Cell at Dehradun, Uttarakhand and filing of Habeas Corpus Petition by the petitioner is a counter blast to the said complaint lodged by the wife of the petitioner and this Court cannot appreciate this course adopted by the petitioner to put pressure on his wife and family members. The present petition is a gross abuse and misuse of the process of the Court as the petitioner herein has throughout been acquainted with the whereabouts of his wife and son and yet termed their stay at Dehradun as that of illegal detention. We again reiterate that the respondent being a

legally wedded wife of the petitioner has every right not to stay with her husband and in case the wife has walked out of the matrimonial house for no fault of the petitioner then he has other remedies available under law other than filing a writ in the nature of Habeas Corpus.

10. In *Union of India and another v. Chaya Ghoshal and another (2005) 10 SCC 97* the legality of the judgment rendered by the Division Bench of Calcutta High Court, quashing the order of detention passed under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act in a Habeas Corpus writ petition under Article 226 of the Constitution of India, filed by the wife of the detenu, was under challenge. The observations made by the Supreme Court in paragraphs-14 and 17 are relevant, which read thus:

“14. Article 21 of the Constitution having declared that no person shall be deprived of life and liberty except in accordance with the procedure established by law, a machinery was definitely needed to examine the question of illegal detention with utmost promptitude. The writ of habeas corpus is a device of this nature. Blackstone called it the great and efficacious writ in all manner of illegal confinement. The writ has been described as a writ of right which is grantable ex debito justitiae. Though a writ of right, it is not a writ of course. The applicant must show a prima facie case of his unlawful detention. Once, however, he shows such a cause and the return is not good and sufficient, he is entitled to this writ as of right

17. While dealing with a habeas corpus application, undue importance is not to be attached to technicalities, but at the same time where the court is satisfied that an attempt has been made to deflect the course of justice by letting loose red herrings, the court has to take serious note of unclean approach.".

11. The writ of Habeas Corpus has been described as a writ of rights which is grantable *ex debito justitiae*. Though a writ of right, it is not a writ of course. The applicant must show a prima facie case of his unlawful detention. The remedy of invoking writ jurisdiction in the nature of habeas corpus would not be available unless the applicant prima facie shows a case of a person under illegal detention. The prime object of writ of habeas corpus is to secure release of a person from illegal detention. Conversely recourse to this jurisdiction cannot be resorted to when the person is not under any illegal detention and is living at a place with his/her own wishes and desire.

12. The Habeas Corpus petition by the petitioner is thus misconceived in as much as the same cannot be filed by a person to adversely affect the reputation of his wife and her family members. Extraordinary writ jurisdiction is not meant for such a thing, which has been done in the instant case.

13. Thus we find no merit in the present Writ Petition; the same is a

gross abuse of process of the Court and therefore it is dismissed with a cost of Rs. 50, 000/- to be paid by the petitioner to his wife within a period of three weeks from the date of this order. The proof of deposit of cost shall be filed by the petitioner, in compliance of this order, with the Registrar (Appellate) of this Court and for this purpose only, the matter shall be listed before the Registrar (Appellate) on 12.08.2015 for compliance of this order. It is ordered accordingly.

KAILASH GAMBHIR, J.

P.S. TEJI, J.

JULY 27, 2015

Pkb/nk/v