

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1035 of 2015

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1. Shweta Singh, Wife of Mukul Kumar Singh and Daughter of Dr. Punyadeo Singh, resident of Village Raghunathpur, Police station Ramgarhwa, District East Champaran, at present C/o Dr. Punyadeo Singh, Mohalla Kashi Bazar, Town Chapra, P.O. & P.S. Bhagwan Bazar, District Saran

.... Petitioner

Versus

1. The State of Bihar Through The Principal Secretary, Department of Home Affairs, Government of Bihar, Secretariat, Patna

2. The Superintendent of Police, District East Champaran, Motihari

3. The Officer in Charge, Ramgarhwa Police Station, District East Champaran

4. Mukul Kumar Singh Son of Purushottam Singh

5. Purushottam Singh Son of Sheo Shankar Singh

6. Nirmala Devi Wife of Purushottam Singh

7. Neeal Singh Wife of Siddhartha Singh

8. Ritesh Singh Son of Purushottam Singh All R/o Village Raghunathpur, P.O. P.S. Ramgarhwa, District East Champaran

.... Respondents

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Appearance :

For the Petitioner : Mr. Nagendra Rai, Advocate

For the Respondents: Mr. Ram Balak Mahto, Advocate General

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

AND

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER

ORAL

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 29-01-2016

With the help of the writ petition, made under Article 226 of the Constitution of India, the petitioner has sought for issuance of a writ, in the nature of *Habeas Corpus*, commanding the respondents to produce before this Court her son and daughter, namely, Minnoli Singh and Shourya Pratap

Singh respectively, and to hand over their custody to the petitioner and, further prohibit respondent No. 4 from creating obstacle and hindrance in handing over the custody and upbringing of the said children of the petitioner.

2. It is not in dispute that the petitioner is legally wedded wife of respondent No. 4 herein, their marriage having been solemnized on 13.07.2005, according to Hindu rites and customs, at the parental house of the petitioner in Chapra town. Respondent No. 5 herein is the father and Respondent No. 6 is the mother of respondent No. 4; whereas respondent No. 7 is sister-in-law of the petitioner and respondent No. 8 is brother-in-law of the petitioner.

3. The petitioner and respondent No. 4 had maintained cordial conjugal relationship for about 6 years and, in their wedlock, a son, namely, Shourya Pratap Singh, and a daughter, namely, Minnoli Singh, were born on 06.10.2010 and 03.06.2006 respectively. Respondent No. 4 is a Graduate Engineer, who was in the employment of a company, at Bangalore, but for the last two years, respondent No. 4 has been unemployed.

4. On pressure being exerted by respondent No. 4, the petitioner's father gave to respondent No. 4 a sum of Rs. ten lakhs in the year 2002. However, respondent No. 4 had illicit relationship with a woman. The petitioner objected to the

illicit relationship which had been maintained by respondent No. 4 with another woman. The petitioner was driven out, on 04.07.2015, from her matrimonial house. While driving out the petitioner, as described hereinbefore, respondent No. 4 retained the said two children.

5. Despite threat to her life, the petitioner went to her matrimonial house, where she met with her children on 17.07.2015. However, after about 5-6 days, respondent No. 4 took their daughter, Minnoli Singh, somewhere, without informing the petitioner and when the petitioner made an enquiry with regard to her daughter's whereabouts, respondent No. 4 abused her. Respondent No. 4 and his family started torturing and assaulting the petitioner endangering the life of the petitioner, whereupon the petitioner informed her father and her father took her back to his house on 02.08.2015. While going to her parental house, when the petitioner tried to take her son, Shourya Pratap Singh, the private respondents herein forcibly snatched away the child.

6. Thereafter, the petitioner lodged a First Information Report with Ramgarhwa Police Station on 02.08.2015 and Ramgarhwa Police Station Case No. 87 of 2015 came to be registered under Sections 498A/341/342/323/317/406/504/506 of the Indian Penal Code. Since 02.08.2015, the petitioner has been living with her parents.



7. On coming to know that her daughter had been admitted to Birla Balika Vidyapeeth, Pilani, the petitioner went to the school on 15.08.2015, where she was not allowed to meet her daughter; but after great persuasion, she was permitted to meet her daughter, though respondent No. 4 herein had instructed the School authorities not to allow the petitioner to meet her daughter. Thus, the petitioner has been illegally denied the custody of her children.

8. We have heard Mr. Nagendra Rai, learned Counsel, appearing on behalf of the petitioner, and Mr. Ram Balak Mahto, learned Advocate General, appearing on behalf of the State respondents.

9. A counter affidavit has been filed by private respondents herein, which shows that in the case, which has been lodged by the petitioner against respondent No. 4 and his family members, respondent No. 4 is on bail and, on the other hand, the petitioner and her parents are accused in a murder case under Section 304(B) of the Indian Penal Code and that even her brother is an accused in a rape case and, in these circumstances, it would not be in the welfare of the children if their custody is handed over to the petitioner herein.

10. Having regard to the fact that it is the welfare of the minor children which is of paramount importance in a

case of custody, we are of the view that in the facts and attending circumstances of the present case, where several disputed questions of fact are involved, a proceeding, under Article 226 of the Constitution of India, is not an appropriate proceeding.

11. In view of the above, this writ petition is dismissed with liberty given to the petitioner to take recourse to relevant provisions of law for obtaining custody of her minor children if she is so advised.

12. This application shall stand disposed of.

(I. A. Ansari, ACJ.)

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

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