

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE M.S.K. JAISWAL

WRIT PETITION NO.22989 OF 2016

DATED:16-11-2016

Between:

Md. Abdul Kabeer Khan

... Petitioner

And

The State of Telangana
Rep. by its Principal Secretary
Home Department
Secretariat Building
Hyderabad
and others

... Respondents

COUNSEL FOR THE PETITIONER: Dr. J. Vijaya Lakshmi

COUNSEL FOR RESPONDENT NOS.1 to 3: Mr. S. Santosh Kumar,
Assistant Government Pleader,
attached to the office of the
Advocate General (TS)

COUNSEL FOR RESPONDENT NO.4 : Mr. Sarosh Sam Bastawala

THE COURT MADE THE FOLLOWING:

ORDER: (per the Hon'ble Sri Justice C.V. Nagarjuna Reddy)

This writ petition is filed for issue of habeas corpus by directing respondent No.4 to produce the two minor children, namely, Baby Zainab Khan and Master Md. Abdul Adil Khan.

The undisputed facts pleaded by the parties disclose that there are serious disputes between the petitioner and respondent No.4, who are estranged couple and contracted second marriages. While the petitioner claims that as biological father of the two children he has a right to their custody or at least visitation rights, respondent No.4 has taken the stand that the petitioner is prone to violent behaviour and that permitting him to have custody of the children or visitation rights will endanger their safety. Mr. Sarosh Sam Bastawala, learned counsel for respondent No.4, submitted and the same is not disputed by Dr. J. Vijaya Lakshmi, learned counsel for the petitioner, that the children are in the custody of respondent No.4 and her present husband in the United Kingdom. The learned counsel for the petitioner, however, expressed apprehension about the safety of the minor children.

The prerogative writ of habeas corpus is issued by the High Court only in cases where a person is in illegal custody of another. Admittedly, respondent No.4 is the mother while the petitioner is biological father of the two children. The petitioner has not obtained order from any competent court of law either for the custody of the minor children or his visitation rights over them. Therefore, the custody of the minor children by respondent No.4 cannot be termed as *per se* illegal for this Court to exercise jurisdiction to issue a writ of habeas corpus. The petitioner is entitled to avail common law remedies asserting his rights as biological father of the minor children and seek appropriate reliefs.

For the aforementioned reasons, the writ petition is dismissed with liberty to the petitioner to avail appropriate legal remedies as observed hereinbefore.

C.V. NAGARJUNA REDDY, J

M.S.K. JAISWAL, J

16-11-2016

bnr

