

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRWP No. 1183 of 2015

Date of decision: January 18, 2016

Manjinder Kaur

.... Petitioner..

Versus

State of Punjab and others

.... Respondents..

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Vivek Goel, Advocate,
for the petitioner.

Mr. J.S. Sekhon, AAG, Punjab.

Mr. K.B. Rajeha, Advocate,
for respondent No.3.

Jaspal Singh, J. (Oral)

Instant Criminal Writ petition has been preferred by the petitioner under Article 226/227 of the Constitution of India seeking issuance of a writ in the nature of Habeas Corpus directing respondents No. 1 to 3 to release/hand-over the custody of minors Randeep Singh and Manpreet Kaur i.e. respondents No. 4 and 5 to the petitioner.

2. The contention of learned counsel for the petitioner is that her marriage was solemnized with Mandeep Singh about 7 years ago at Kotkapur as per Sikh Rites. After the marriage, they lived and cohabited together and out of their wedlock Randeep Singh was born. Subsequent thereto, Manpreet Kaur took birth out of their wedlock. Her husband Mandeep Singh was taken away by the nature about 2½ years ago when the petitioner was in her family way and it

was only thereafter, Manpreet Kaur was born to her. After the demise of her husband, the petitioner continued to reside in her matrimonial home. Her mother-in-law has already expired and another son of respondent No.3 is living separately and he has already been dis-inherited by him. In the month of July 2015, the father and brother of the petitioner were called by respondent No.3 to take her back to her parental home and at that time respondent No.3 illegally and forcibly snatched the minor children from her custody and threw her out of matrimonial home. Since, then her minor children are in illegal custody of respondent No.3. Respondent No.3 did not hand-over the custody of minor children to her despite several Panchayats consisting of respectable and relatives. In fact, respondents No. 4 and 5 i.e. minor children of the petitioner are not brought up properly by respondent No.3. There is no female member in his house to look after and to watch their interest. Moreover, respondent No.3 is an old aged person and is unable to fulfil the daily necessities of minor.

3. Learned counsel for the petitioner further contends that the welfare of the child is basic question of fact requiring investigation and proof and in the case in hand, the paramount consideration is the welfare of the minor children, which is only possible in case the custody is given to the petitioner, who is their natural guardian i.e. mother. Since, the custody of the minor children with respondent No.3 is illegal, the petitioner is well within the right to exercise the extra ordinary forum by way of Criminal Writ Petition to have their custody.

4. This Court has evaluated the various submissions put forth by learned counsel for the petitioner but finds the same to be without any legal substance.

5. Through the instant petition, the petitioner has sought the custody of minor children and the contention of learned counsel for the petitioner is that she is natural guardian of the minor children being her mother and as such, she is legally entitled to their custody. Further, it has been contended by learned counsel for the petitioner that writ in the nature of habeas corpus is legally maintainable and in support of this contention, learned counsel for the petitioner has relied upon para 37 of the judgment of Hon'ble Apex Court passed in ***“Ruchi Majoo vs. Sanjeev Majoo”; 2011 AIR SC (Civil) 1570***. The relevant paragraph is reproduced as under:-

*“We do not propose to burden this judgment by referring to a long line of other decisions which have been delivered on the subject, for they do not in our opinion state the law differently from what has been stated in the decisions already referred to by us. What, however, needs to be stated for the sake of a clear understanding of the legal position is that the cases to which we have drawn attention, as indeed any other case raising the question of jurisdiction of the court to determine mutual rights and obligation of the parties, including the question whether a court otherwise competent to entertain the proceedings concerning the custody of the minor, ought to hold a summary or a detailed enquiry into the matter and whether it ought to decline jurisdiction on the principle of comity of nations or the test of the closest contact evolved by this Court in *Smt. Surinder Kaur Sandhu v. Harbax Singh Sandhu and Anr*; (1984) 3 SCC 698 have arisen either out of writ proceedings filed by the aggrieved party in the High Court or this Court or out of proceedings under the Guardian & Wards Act. Decisions rendered by this Court in *Mrs. Elizabeth Dinshaw v. Arvand M. Dinshaw and Anr*. (1987) 1 SCC 42, *Sarita Sharma's case (supra)*, *V. Ravi Chandran's case (supra)*,*

Shilpa Aggarwal's case (supra) arose out of proceedings in the nature of habeas corpus. The rest had their origin in custody proceedings launched under the Guardian & Wards Act. Proceedings in the nature of Habeas Corpus are summary in nature, where the legality of the detention of the alleged detainee is examined on the basis of affidavits placed by the parties. Even so, nothing prevents the High Court from embarking upon a detailed enquiry in cases where the welfare of a minor is in question, which is the paramount consideration for the Court while exercising its parens patriae jurisdiction. A High Court may, therefore, invoke its extra ordinary jurisdiction to determine the validity of the detention, in cases that fall within its jurisdiction and may also issue orders as to custody of the minor depending upon how the court views the rival claims, if any, to such custody. The Court may also direct repatriation of the minor child for the country from where he/she may have been removed by a parent or other person; as was directed by this Court in Ravi Chandran's & Shilpa Agarwal's cases (supra) or refuse to do so as was the position in Sarita Sharma's case (supra). What is important is that so long as the alleged detainee is within the jurisdiction of the High Court no question of its competence to pass appropriate orders arises. The writ court's jurisdiction to make appropriate orders regarding custody arises no sooner it is found that the alleged detainee is within its territorial jurisdiction”.

6. A perusal of aforesaid paragraph transpires that proceedings in the nature of habeas corpus are summary in nature and it can be availed of where the detention of the children is illegal or has been taken forcibly and in that situation, nothing is left with this Court except from protecting the person in illegal custody and to hand-over their custody to the mother or any other person.

As far as the judgment relied upon by the learned counsel for the petitioner

captioned as ***Ruchi Majoo's case*** (supra) is concerned, the same is not attracted in the facts and circumstances of the case in hand and is distinguishable on facts.

7. As per the case set up by the petitioner, after the untimely demise of her husband Mandeep Singh, she had been living in her matrimonial home and was ultimately, thrown out in the month of July 2015 while both the minor children were snatched by respondent No.3. Respondent No.3 is none-else but their grand-father. Moreover, from the facts and circumstances, it emerges that the custody of the minor children with respondent No.3 is not illegal or unlawful. Rather, it can be said to be a permissible. There is also nothing on the record to suggest that the minor children are being detained by respondent No.3 or that they have been taken by use of force or by exercising any kind of fraud. Hence, this Court is of the considered view that the children of the petitioner are not in unlawful detention of respondent No.3. As such, the judgment relied upon by ld. counsel for the petitioner in ***Ruchi Majoo's case*** (supra) is distinguishable. Thus, in the given circumstances, the petition under Article 226/227 of the Constitution of India is not maintainable and if the petitioner so desires to have the custody of the minor children, she can have recourse to the other remedies available to her under the civil law.

8. In the light of what has been discussed above, this Court does not find any merit in the instant petition. As such, the same is dismissed. However, any observation made in this case, shall have no bearing, in case, the civil proceedings are initiated for the custody of the minor children before the competent court of Jurisdiction.

January 18, 2016
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(JASPAL SINGH)
JUDGE