

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP No.1754 of 2015 (O&M)
Date of decision: April 06, 2016

Gauri Mehra

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vaibhav Narang, Advocate
for the petitioner.

Ms.Shivali, Asstt. Advocate General, Punjab
for the respondent-State.

Mr.R.S.Bajaj, Advocate
for respondents No.4 to 6.

INDERJIT SINGH, J.

The petitioner has filed this criminal writ petition under Article 226 of the Constitution of India against State of Punjab, Commissioner of Police, Amritsar, Station House Officer, Police Station D Division, Amritsar, Ajay Mehra, Shashi Mehra and Madhu Mehra, for issuance of a writ in the nature of Habeas Corpus directing respondents No.4 to 6 to release and produce detainee (Himani Mehra) minor daughter of petitioner, who has illegally and forcefully been detained by respondents No.4 to 6.

Notice of motion was issued and learned State counsel as well as learned counsel for respondents No.4 to 6 appeared and

contested the petition.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

From the record, I find that there is matrimonial dispute between the parties. Respondent No.4 is the husband of the petitioner. Respondents No.5 and 6 are parents-in-law of the petitioner. As per the facts stated in the petition, there was demand of dowry etc. by the husband and parents-in-law of the petitioner. A divorce petition was filed but the petitioner was staying with her husband i.e. respondent No.4, at that time in the matrimonial home. It is further stated that when petitioner after attending the Court came to the matrimonial home on 08.10.2015, the house was found locked and respondents No.4 to 6 did not allow her to enter in the house. It is also stated that even the minor daughter had been forcibly snatched from her and she was not allowed to take her belongings.

As per the petition, this occurrence had taken place on 08.10.2015 and the FIR has been got registered on 30.10.2015. But the perusal of the FIR shows that there is no averment in FIR that minor child was forcibly snatched from the petitioner. Otherwise also, if the house was found locked by respondents No.4 to 6, when the petitioner came back to house, it means that respondents No.4 to 6 were not present at that time in the house and there is no question of snatching of minor child at that time. Rather, it looks from the facts and circumstances of the present case and from the record that as the petitioner was residing in the matrimonial home, as per the

petitioner's version, till 08.10.2015 along with minor daughter and she was not allowed to enter the house or in other words, she was turned out of the matrimonial home on that day by locking the house, therefore, there is no question of forcibly snatching of minor daughter from her nor any particulars have been given as to whether minor daughter was taken to the Court along with her or as to who snatched the minor.

As already discussed, even from the FIR, which was allegedly got registered after 22 days of alleged snatching of minor daughter, it looks that there is dispute regarding custody of minor between the petitioner and respondents No.4 to 6 i.e. husband and parents-in-law. This dispute is to be determined by the Guardian Judge. No exceptional circumstance has been shown nor anything is on the record to show that minor daughter was forcibly snatched or taken away by respondents No.4 to 6 by playing fraud etc. It is for the Guardian Judge to decide the custody of the minor child as per law, between the parties.

In view of the above discussion, there is no need to issue writ in the nature of Habeas Corpus. Rather, the petitioner can avail alternative remedy available to her before the Guardian Judge.

Therefore, present petition stands dismissed accordingly, with the above-said observations.

April 06, 2016
Vgulati

(INDERJIT SINGH)
JUDGE