

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP No.1770 of 2015(O&M)
Date of Decision: May 16, 2016

Mona

...Petitioner

VERSUS

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Harjeet Sarva, Advocate
for the petitioner.

Mr.D.R.Singla, Deputy Advocate General, Haryana
for the respondent-State.

Mr.Harshit Jain, Advocate
for respondent No.4.

INDERJIT SINGH, J.

Petitioner has filed this criminal writ petition under Article 226 of the Constitution of India for issuance of writ in the nature of Habeas Corpus for producing the minor daughter of the petitioner namely Navidhi, aged 5 years from the unlawful detention/illegal custody of respondent No.4.

Notice of motion was issued and learned State counsel as well as learned counsel for respondent No.4 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 respondent No.4 Parveen Kumar is husband of petitioner Mona and there is matrimonial dispute between them. The detenue Navidhi is daughter of petitioner and respondent No.4, who is now residing with her father. The perusal of the record as well as from the arguments, it is clear that dispute between the parties is regarding the custody of the child and this petition has been filed under Article 226 of the Constitution of India in the nature of Habeas Corpus. The perusal of the petition further shows that the petitioner has applied for divorce and ex-parte decree of divorce has already been passed on 03.11.2014. It is also in the petition that respondent No.4 took the girl forcibly from the custody of petitioner during the pendency of the divorce petition, which means that girl is in custody of respondent No.4 since 2014 and this petition has been filed on 10.12.2015. No particular of any type has been mentioned as to how and on which date the minor was forcibly taken by the father.

Keeping in view the facts and circumstances of the present case, I find that the remedy available to the petitioner is to apply for the custody of the minor child before Guardian Judge, who will decide the same on the basis of evidence and also taking into consideration the welfare of the child which is the paramount consideration.

With the above-said observations that the petitioner has the remedy to approach Guardian Judge for custody of the minor child, the present petition stands disposed of.

May 16, 2016

Vgulati

**(INDERJIT SINGH)
JUDGE**