

CRWP No. 1834 of 2015
DATE OF DECISION: NOVEMBER 30, 2016

....PETITIONER

.....RESPONDENTS

Mr. Tajinderpal Singh Makkar, Advocate
for respondents No. 4 to 6.

2. Briefly stated the fact giving rise to the instant petition are that petitioner got married to respondent No.4 on February 19, 2006. After the marriage petitioner alongwith her husband has been residing at her matrimonial home. They were blessed with a baby boy December 07, 2007.

3. The contention of learned counsel for the petitioner is that the minor son of the petitioner aged about 9 years and as per Guardianship and Wards Act (for brevity 'Act' only), the custody of minor child always remains with the mother who is a natural guardian. However, in the instant case custody of the minor child is with private respondents which is illegal. Therefore, petitioner is entitled to his custody by way of instant criminal writ petition.

4. To buttress his contention, learned counsel for the petitioner has placed reliance upon the pronouncement of this Court rendered in the case of **Gippy Arora v. State of Punjab and others; 2012 (4) RCR (Civil) 397** as well as that of Hon'ble Apex Court rendered in the case of **Ruchi Majoo v. Sanjeev Majoo; 2011 AIR SC (Civil) 1570**.

5. This Court has given an anxious thought to the various submissions made by learned counsel for the parties and have minutely scanned the petition as well as documents annexed with it.

6. Through instant writ petition, petitioner has sought the custody of minor son aged about 09 years claiming herself to be a natural guardian being his mother. The question arises whether instant petition is maintainable in the given circumstances, especially in wake of the specific provisions envisaged in Act.

7. Before proceedings further, it is to be seen whether custody of minor son of the petitioner can be said to be illegal or legal with private respondents. Legally speaking, a writ in the nature of habeas corpus is maintainable only when the detinue is alleged to have been taken away by illegal means from the custody of a natural guardian. In Para 37 of the

judgment passed in the case of **Ruchi Majoo's case (Supra)**, Hon'ble Apex Court made following observation.

“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”.

8. A glance at the aforesaid paragraph transpires that a writ of habeas corpus can only be entertained where the minor son or daughter has been illegally detained, or his/her custody has been taken forcibly from husband or wife. As such, the above-said authority is distinguishable on facts.

9. In the afore-said case, the detention of detainee was illegal and the custody was obtained by illegal means and forcibly. Accordingly, Hon'ble Apex Court came to the rescue of the detainee by observing that writ of Habeas Corpus is also maintainable for seeking custody of minor child. To the similar effect is the observation made in **Gippy Arora's** case (supra), in which husband had forcibly removed 11 months old child from the custody of mother by playing fraud, which is not the case in hand. The minor son of the petitioner and respondent No.4 namely Aadil Mand who was born on December 07, 2007, aged about 9 years is now in the care and custody of his father Surinder Pal Singh (respondent No.4). As such, it cannot be said at this stage, that he has been illegally detained by him. Since, the detention of

Aadil Mand cannot be termed to be illegal or unlawful, at this stage, a writ in the nature of Habeas Corpus is not legally maintainable.

10. In the light of what has been discussed above, this Court does not find any merit in the instant criminal writ petition. Accordingly, instant criminal writ petition is dismissed.

NOVEMBER 30, 2016
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*