

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Writ Petition No.921 of 2014 (O&M)

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Date of decision:22.1.2016

Baljit Kaur

...Petitioner

v.

State of Punjab and others

...Respondents

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Ms. Surinder Kaur, Advocate for the petitioner.
Ms. Shivali, Assistant Advocate General, Punjab for the
respondents No.1 to 3.
Mr. A.P. Kaushal, Advocate for respondents No.4 and 5.

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Inderjit Singh, J.

This criminal writ petition has been filed under Article 226 of the Constitution of India praying for issuance of a writ of Habeas Corpus for releasing of detenus Ansh and Aryan minor sons of the petitioner from the illegal and wrongful confinement of respondents No.4 to 6.

Notice of motion has been issued in this case.

Ms. Shivali, learned Assistant Advocate General, Punjab, has put in appearance on behalf of respondents No.1 to 3 and Mr. A.P. Kaushal, learned Advocate has appeared on behalf of respondents No.4 and 5 and contested this petition.

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I have heard learned counsel for the petitioner as well as learned Assistant Advocate General, Punjab and learned counsel for respondents No.4 and 5 and have gone through the record.

As per the perusal of the petition, it is clear that it is a case of matrimonial dispute between the petitioner and her husband and in-laws. Respondent No.4 is the husband of the petitioner. As per the averments made in this petition on 6.6.2013, the petitioner was thrown out of her matrimonial home and she was even not allowed to meet her two minor sons and since then she was residing separately. The petitioner tried to meet her minor children but respondents No.4 and 5 did not allow her to meet her children. It is no where the case of the petitioner that the minor children were in her exclusive custody and the private respondents have illegally snatched the minor children from her custody. Rather, as per the averments, the petitioner, who is wife of respondent No.4, was residing in the matrimonial house and as per petitioner's case she was thrown out of the matrimonial house and minor children remained in the matrimonial house with their father, who is respondent No.4. So, from the perusal of the petition itself, it is clear that it is a matrimonial dispute and the dispute regarding the custody of the children. The appropriate remedy with the petitioner is to approach the Guardian Judge for the custody of the children, who will decide the case as per law. In no way, it can be held that the minors, as stated aged about 11 years and 5 years, can be held in illegal custody or illegally detained by their father.

Therefore, finding no merit in this petition, the same is

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dismissed.

However, the petitioner is at liberty to approach the Guardian Judge and also the lower Court where the proceedings regarding Section 125 Cr.P.C. and under Section 9 of the Hindu Marriage Act, 1955 are pending for meeting the children.

January 22, 2016.

(Inderjit Singh)
Judge

hsp