

CRWP No. 423 of 2015
DATE OF DECISION: MAY 25, 2016

....PETITIONER

.....RESPONDENTS

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

Instant petition has been preferred under Article 226 of Constitution of India for issuance of writ in the nature of Habeas Corpus directing respondent No.3 to release her minor daughters namely Aazeen Kaur Birl, aged about 09 years and Khwaish Kaur Birl, aged about 07 years, from the illegal custody of respondent No.3 and to produce them alongwith their passports in Court for handing over their custody to petitioner.

2. Briefly stated the facts giving rise to instant petition are that marriage of petitioner with Anant Birl was solemnized on February 06, 2002 in Punjab. In the month of June 2012, on sponsorship of Kuldeep Singh Birl

husband of respondent No.3 arrived in Canada and started residing with him in Abbotsford, BC with his parents. The marriage was consummated and they were blessed with two girls. It has further been alleged by petitioner that out of the wedlock of the petitioner and respondent No.3, the two minor daughters were born namely Aazeen Kaur Birl on October 15, 2005 and Khawaish Kaur Birl on November 13, 2007. His minor daughters and his wife have been neglected, maltreated and turned out from the house by the petitioner in three clothes along with their minor daughters in the month of June, 2012. Thereafter, they returned back to India and started living at Mohali. Respondent No.3 filed petition on July 16, 2014 under Sections 7, 10, 17 of the Guardian and Wards Act, 1890 read with Section 13 of the Hindu Minority and Guardianship Act for appointing her as guardian of the minors till they attain majority. Moreover, respondent No.3 also got registered the FIR No. 14, dated December 03, 2014, under Sections 406, 420, 498-A, 34 IPC at Police Station NRI, SAS Nagar against her husband and his parents, on false, frivolous and baseless allegations, just to put pressure on him and his parents. It has further been alleged by the petitioner that respondent no.3 filed another petition under Section 125 of the Code of Criminal Procedure for grant of maintenance to the minor daughters @ ₹25,000/- PM each.

3. Through instant writ petition, petitioner has sought the custody of minor daughters and contention of learned counsel for the petitioner is that petitioner is the natural guardian of minor daughters being their father and as such he is legally entitled to the custody of minor daughters. Further, it has been contended by 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**. It would be appropriate to reproduce the said paragraph, which reads 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”.

4. A glance at the aforesaid paragraph transpires that 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. Thus High Court *may*, invoke its extra ordinary jurisdiction to determine the validity of the detention.

5. The ***Ruchi Majoo's*** case (supra) relied upon by learned counsel for the petitioner is not at all attracted in the facts and circumstances of the case in hand and is distinguishable.

6. Adverting to the facts of the case in hand, after the birth of girl child her custody was handed over to respondent No.3 by petitioner who is

her husband when she was aged about 6 months. Since then, she is being looked after and taken care of by respondent No.3. Meaning thereby, that custody of minor child given to respondent No.3 is/was permissive one. There is nothing on record to suggest that minor child is being illegally detained by respondent No.3 or that minor child has been taken away by fraud or force.

7. Hence this Court is constrained to hold that children are not in unlawful detention of respondent No.3. Judgment relied upon by learned counsel for the petitioner captioned as **Ruchi Majoo vs. Sanjeev Majoo's** case (supra) is not applicable in the facts and circumstances of the case in hand. Especially, in view of the fact that custody of the alleged detainee is neither illegal and forceful, rather is permissive one. Moreover, petitioner has got other efficacious remedy to secure the custody of minor children under the provisions of Guardian and Wards Act, 1890.

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

May 25, 2016
sham

(JASPAL SINGH)
JUDGE