

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRWP-1144-2016 (O&M)

Date of decision: September 02, 2016.

Sandeep Kaur Dhillon

... **Petitioner**

v.

State of Punjab and others

... **Respondents**

CORAM: **HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: Shri Krishan Singh Dadwal, Advocate for the petitioner.

Ms. Rajni Gupta, Additional Advocate General, Punjab.

Shri Sanjay Majithia, Sr. Advocate with
Shri Inderjit Singh, Advocate for private respondents.

A.B. Chaudhari, J. (Oral):

CRM-W-242-2016 is allowed and the written statement filed by
respondents No.5 and 6 is taken on record.

Rule. Heard forthwith.

This is a petition for habeas corpus for custody of the minor
child named Pratap Singh Mea, aged about 5 years and 2 months, who is
admittedly in the custody of his grand-parents, i.e., the father and mother of
his father. This is a petition by wife.

In support of the petition, learned Counsel for the petitioner
argued that lastly the child was brought to India by the grand parents, i.e.,
respondents No.5 and 6 but the custody of the child has not been given back
by sending him to Canada. He submitted that the Superior Court of Justice,

Ontario, Canada has made an order at the behest of the present petitioner in relation to the child Pratap Singh Mea for getting his custody from the grand parents and giving it to the mother, i.e., the petitioner. According to him, admittedly, the child is a Canada born person and his father and mother, i.e., the petitioner and her husband both are permanent residents of Canada. He relied on several decisions to contend that the child being Canadian citizen, there is no occasion for keeping him in India. According to him, custody of the child by his grand parents is totally illegal and hence a writ for habeas corpus is required to be issued.

Per contra, learned counsel for respondents No.5 and 6 contended, inviting my attention to the reply filed by them, that the petitioner-wife herself had granted permission to travel from Canada number of times by giving custody of the child to them and that is how, they are in custody of the child. She did not bother about the welfare of the child, which is of paramount consideration. The child is now in the custody of the grand parents and is learning in an International School. There will be disruption in his education and therefore respondents No.5 and 6 have filed a petition under Section 7 of the Hindu Guardian and Wards Act in the District Court. Therefore, the custody of the child with the grand parents should not be disturbed. He prayed for dismissal of the petition.

Upon hearing, learned counsel for the rival parties what I find is the fact that the child was born in Canada and his father and mother are Canadian citizens and further that the petitioner mother has relinquished Indian citizenship, as contended by learned Counsel for respondents No.5 &

6. That assumes importance. Admittedly, the child was born in Canada and therefore, the scale of balance of convenience and legal right must be held to be in favour of the petitioner. In the case of Smt. Surinder Kaur Sandhu v/s Harbax Singh Sandhu and another, (1984)3 SCC 698. Hon'ble Supreme Court in the said judgment has been pleased to lay down as under:-

“The modern theory of Conflict of Laws recognizes and, in any even, prefers the jurisdiction of the State which has the most intimate contract with the issues arising in the case, Therefore, in matters relating to matrimony and custody, the law of that place must govern which has the closest concern with the well-being of the spouses and the welfare of the offsprings of marriage. Ordinarily jurisdiction must follow upon functional lines and is not attracted by the operation or creation of fortuitous circumstances such as the circumstance as to where the child, whose custody is in issue, is brought or for the time being lodged.

In the present case the facts that the child is a British citizen and that the matrimonial home of the spouses was in England, establish sufficient contracts or ties with that State to assume jurisdiction to enforce obligations which were incurred therein by the spouses.”

Apart from that, order made by the Superior Court of Justice, Ontario, dated 5.8.2016 reads thus:-

“THIS COURT ORDERS THAT:

1. All necessary police authorities in Canada, the Province of Ontario, anywhere in India or any other jurisdiction shall apprehend the child, Pratap Singh Mea born May 21, 2011 residing at village Headrowal, Post Office Piplawan, Hoshiarpur, Punjab, India or elsewhere on or before August 12, 2016 and shall be returned and given into the custody of his mother, Sandeep Kaur Dhillon as per the order of Justice Gibson dated July 15, 2016 from the Ontario Superior Court

of Justice granting her interim custody of the child, Pratap Singh Mea.

2. Any and all police authorities enforcing this order shall take any and all measures necessary to locate the child, Pratap Singh Mea, and the grand mother, Jasvir Kaur Mea, in order to apprehend and return the child to this mother, Sandeep Kaur Dhillon, along with the child's passport”.

In the light of the fact that the child was born in Canada and is a Canadian citizen, I think the petitioner has a far superior legal right than that of respondents No.5 and 6. The filing of petition under Section 7 of the Hindu Guardian and Wards Act cannot be an obstruction in the matter of execution of the said order, dated 5.8.2016 made by the Superior Court of Justice, Canada. The submission made by learned counsel for respondents No.5 and 6 about the acquiescence of the petitioner regarding the custody of the child with the grand parents cannot be held to be having any legal foundation. At any rate, the petitioner has right in law to have the child with her as compared to respondents No.5 and 6 who have no such rights even under the personal law.

Under the circumstances, the petition will have to be allowed.

In the result, I make the following order:-

ORDER

- (i) CRWP-1144-2016 is allowed;
- (ii) The minor child Pratap Singh Mea, son of the petitioner, who has been produced before the Court, is ordered to be given in the custody of the petitioner;

- (iii) The order shall be carried out by respondents No.2 to 4, in any case on or before 4.9.2016. Ordered accordingly.
- (iv) Copy dasti.

September 02, 2016.
kadyan

[A.B. Chaudhari]
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No