

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP No.610 of 2015 (O&M)

Date of decision: February 02, 2016

Hari Om

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Naresh Kaushik, Advocate
for the petitioner.

Mr.Brijesh Sharma, Asstt. Advocate General, Haryana
for respondents No.1 to 3-State.

Mr.Ashwani Gaur, Advocate
for respondents No.10 and 11.

INDERJIT SINGH, J.

Petitioner has filed this criminal writ petition under Article 226 of the Constitution of India read with Section 482 Cr.P.C. praying for issuance of a writ in the nature of Habeas Corpus and direction to police authorities and appointment of warrant officer for immediately release and recovery of detenue/minor son namely Shivmon from the illegal custody of respondents No.10 and 11 namely Monika and Daya Nand respectively.

Notice of motion was issued and learned State counsel and learned counsel for respondents No.10 and 11 appeared and contested the petition. The reply was also filed.

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 it is a case of matrimonial dispute. The petitioner is father and respondent No.10 is mother of minor child namely Shivmon. The minor child is stated to be with the mother. The age of the minor as on date is stated to be three years and one month. It is stated in the petition that on 18.12.2014, respondents No.10 and 11 along with their other relatives and family members attacked on the petitioner and the matter was reported to the police. Then police lodged the complaint against respondents No.10 and 11 and their family members vide FIR No.532 dated 08.12.2014. It is also stated in the petition that in the incident, the injuries were given by respondent No.9 and his musclemen causing breaking down of two teeth of the father of the petitioner. In counter blast of the above-said FIR, on 09.12.2014, respondent No.10 gave written complaint to the police alleging harassment and demand of dowry against the family members of the petitioner. It is further stated in the petition that in the said complaint, respondent No.10 has categorically stated that her son Shivmon is with the petitioner and his family. On that basis, cross version in the FIR vide DDR No.44 dated 09.12.2014 has been lodged. It is also stated that the complainant respondent No.10 has specifically stated that her son Shivmon is with the petitioner but the police illegally and unlawfully in connivance with the complainant has tampered with the complaint modifying the word 'unhi' as 'hami'. It is further stated in the petition that in the complaint

made by respondent No.10 to the police also, it has been mentioned that by the local police, the custody of the minor child was got delivered to her and there is also mention regarding some occurrence.

Keeping in view the facts and circumstances of the present case and that there is matrimonial dispute between husband and wife and the minor child is stated to be with the mother, in no way, it can be held minor child has been illegally detained or that mother is not entitled to custody of the minor child or the custody should be handed over to the petitioner-father by taking him from the mother.

It is settled law that while deciding the custody of the child, the paramount consideration before the Court is to consider the welfare of the child. As the age of the minor child is only three years and child is with the mother at this stage for the last more than one year, even as per version of the petition, in my view the fact regarding custody of the minor child can be decided only by leading evidence before the Guardian Judge. The Guardian Judge, on the basis of the evidence, age of the child and keeping in view the other circumstances, is to decide the welfare of the child. In the present petition, as no evidence is to be recorded, therefore, the petitioner is to avail remedy before the Guardian Judge.

Keeping in view the age of the minor child, in no way, it can be held that minor child is illegally detained by respondent No.10-mother.

Therefore, finding no merit in the present criminal writ petition, the same is dismissed.

However, the petitioner is at liberty to approach the Guardian Judge for the custody of the minor where the rights of the parties are to be determined on the basis of evidence produce before it, as per law.

February 02, 2016
Vgulati

(INDERJIT SINGH)
JUDGE