

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Writ Petition No.430 of 2016

Date of Decision: 31.08.2016

Smt. Shashi Bala

...Petitioner(s)

Versus

Smt. Amarjit Kaur & others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Naresh Kumar Bansal, Advocate
for the petitioner.

Mr. Ishaan Bhardwaj, Advocate
for respondents no.1 and 2.

Mr. Arun Kumar, AAG, Haryana.

HARI PAL VERMA, J. (Oral)

Through the instant petition filed under Article 226 of the Constitution of India, petitioner – Shashi Bala wife of Ranbir Singh has sought issuance of a writ in the nature of *habeas corpus* appointing a Warrant Officer, who shall visit the spot and get the detainee - Aarvi released, if found in illegal custody of respondents no.1 and 2.

The petitioner claims that the alleged detainee namely Aarvi is the adopted daughter of the petitioner and her husband namely Ranbir Singh, but she is in illegal custody of respondents no.1 and 2. Respondent no.1 – Amarjit Kaur is natural mother of the alleged detainee whereas respondent no.2 – Lakhwinder Singh is the husband of respondent no.1.

Her earlier husband namely Amrik Singh has died on 14.3.2013 and it is only after the death of Amrik Singh, the alleged detinue was given in adoption to the petitioner and her husband on 21.8.2013.

Learned counsel for the petitioner states that once the child has been given in adoption to the petitioner, respondents no.1 and 2 have no legal right to retain the custody of Aarvi and therefore, the child is in illegal custody of respondents no.1 and 2.

However, learned counsel for respondents no.1 and 2 says that Aarvi is not in their illegal custody, rather, respondent no.1 is her natural mother and therefore, the writ in the nature of *habeas corpus* is not maintainable.

I have heard learned counsel for the parties.

Short reply by way of affidavit of Subhash Chand, D.S.P., Bilaspur has been filed. As per the reply, the marriage of respondent no.1- Amarjit Kaur was solemnized with Amrik Singh in February, 2012 and a girl child namely Aarvi was born out of this wedlock on 17.1.2013. However, on 14.3.2013, husband of respondent no.1 died and therefore, on 21.8.2013, she gave her daughter Aarvi to the petitioner – Shashi Bala as well as her husband Ranbir Singh by way of adoption deed. It has also been stated that after the death of her husband, respondent no.1 remarried with respondent no.2 namely Lakhwinder Singh on 27.1.2015. However, on 17.12.2015, the petitioner and her husband filed a petition before the S.D.M., Bilaspur under Sections 97/98 CrPC but in the meanwhile, respondent no.1 also filed a petition for cancellation of adoption deed, which is pending before Civil Court, Panchkula.

Considering the fact that the matter regarding custody of child in question is pending before Civil Court and validity of said adoption deed is also a subject matter of challenge, this Court cannot go into the legality or illegality of the said adoption deed in the present proceedings under Article 226 of the Constitution of India. Therefore, this Court finds that when the matter is pending before Civil Court regarding validity of the adoption deed, the present petition under Article 226 of the Constitution of India seeking issuance of a writ in the nature of *habeas corpus* is not maintainable.

Accordingly, the present petition is dismissed.

However, the petitioner is at liberty to take recourse to her legal remedies available to her in accordance with law.

August 31, 2016
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No