

133 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRWP No. 704 of 2016
DATE OF DECISION: MAY 23, 2016**

SARVJOT KAUR

.....PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

- 1. Whether Reporters of local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr. Kiran Kumar Madan, Advocate
 for the petitioner.

JASPAL SINGH, J

Instant petition has been preferred under Article 226 of Constitution of India for issuance of writ in the nature of Habeas Corpus by Sarvjot Kaur seeking release of her minor daughter namely Harpreet Kaur, aged about 04 years, who has been illegally confined by respondents No.6 to 9 since the last week of March, 2016 at their residence and to produce her in Court for handing over her custody to her.

2. Briefly stated the fact giving rise to the instant petition are that petitioner got married to Davinder Singh resident of Village Gholu Majra, Tehsil and District Derabassi, District Mohali on October 25, 2009. After the marriage petitioner alongwith her husband has been residing at her matrimonial home i.e. at Village Gholu Majra. They were blessed with a

baby girl on August 24, 2012. Unfortunately, on January 02, 2016 husband of the petitioner, who was an agriculturist by profession, was found dead in the fields. After the sad demise of her husband, respondents No. 6 to 9 started harassing. Ultimately, on January 28, 2016, she alongwith her minor daughter was expelled from her matrimonial home. On February 01, 2016, petitioner alongwith her sister moved an application to the Superintendent of Police (Rural), Ambala for taking necessary action against respondents No.6 to 9 and in the last week of March 2016, private respondents came to her residence and settled the matter with her sister. Her sister in connivance with respondents No.6 to 9 forcibly took her minor daughter despite her consistent resistance. Though, she made various requests for handing over the custody of her minor daughter but respondents No. 6 to 9 flatly refused to accede her request, which necessitated the filing of instant criminal writ petition.

3. The contention of learned counsel for the petitioner is that the minor daughter of the petitioner aged about 4 years has been forcibly taken away by her sister in connivance with other private respondents and they have flatly refused to hand over the custody of her minor daughter to her. He further contends that though petitioner has a remedy under the civil law but since her minor daughter aged about 4 years has been taken illegally and forcibly by private respondents and is being detained unlawfully, petitioner is entitled to her custody by way of instant criminal writ petition.

4. To buttress his contention, learned counsel for the petitioner has placed reliance upon the pronouncement of this Court rendered in the case of **Gippy Arora v. State of Punjab and others; 2012 (4) RCR (Civil) 397** as well as that of Hon'ble Apex Court rendered in the case of **Ruchi Majoo v.**

Sanjeev Majoo; 2011 AIR SC (Civil) 1570.

5. This Court has given an anxious thought to the various submissions made by learned counsel for the parties and have minutely scanned the petition as well as documents annexed with it.

6. Through instant writ petition, petitioner has sought the custody of minor daughter aged about 04 years claiming herself to be a natural guardian being her mother. The question arises whether the petition is maintainable in the given circumstances.

7. Before proceedings further, it is to be seen whether custody of minor daughter of the petitioner can be said to be illegal or legal with private respondents. Unfortunately, husband of the petitioner has been taken away by nature and due to some matrimonial discord, petitioner started residing separately from her in-laws. The illegal detention of minor daughter of the petitioner has been alleged since the last week of March 2016. Legally speaking, a writ in the nature of habeas corpus is maintainable only when the detinue is alleged to have been taken away by illegal means from the custody of a natural guardian. In Para 37 of the judgment passed in the case of **Ruchi Majoo's case (Supra)**, Hon'ble Apex Court made following observation.

“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”.

8. A glance at the aforesaid paragraph transpires that a writ of habeas corpus can only be entertained where the minor son or daughter has been illegally detained, or his/her custody has been taken forcibly from husband or wife. As such, the above-said authority is distinguishable on facts.

9. In the afore-said case, the detention of detainee was illegal and the custody was obtained by illegal means and forcibly and accordingly, Hon'ble Apex Court came to the rescue of the detainee by observing that writ of Habeas Corpus is also maintainable. To the similar effect is the observation made in **Gippy Arora's** case (supra), in which husband had forcibly removed 11 months old child from the custody of mother by playing fraud, which is not the case in hand. The private respondents are looking after the minor daughter of the petitioner who is aged about 4 years. As such, it cannot be said at this stage, that she has been illegally detained by them especially, in the circumstances that the sister of the petitioner is also married with the younger brother of her husband and Harpreet Kaur (minor daughter of the petitioner) is living in her care and custody; besides the care and custody of her grand parents. Since, the detention of Harpreet Kaur cannot be termed to be illegal or unlawful, at this stage, a writ in the nature of Habeas Corpus is not legally maintainable.

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

MAY 23, 2016
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(JASPAL SINGH)
JUDGE