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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(CRL) 538/2016

RAUSHAN RAI & ORS

..... Petitioners

Through: Mr. Sunil Dalal, Mr. Pradeep
Sehrawat and Ms. Manju Sehrawat,
Advts.

versus

THE STATE & ORS

..... Respondents

Through: Mr. Rahul Mehra, Standing Counsel
with Mr. Jamal Akhtar, Adv. with SI
Parmila, P.S. B.H.D. Ngr.
Respondent no.2 produced from Nari
Niketan.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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06.10.2016

It emerges from the material placed on record that petitioner no.1 and respondent no. 3 have married against the wishes of their parents. Petitioner no.2 is father of petitioner no.1. They have married in a temple at Muzaffar Nagar on 30th December, 2014 as per Hindu rites and ceremonies. Admittedly, at the time of marriage petitioner no.1 as well as respondent no. 3 were minors and they still are. Date of birth of petitioner no.1 is 28th March, 1999 and he will attain majority on 28th March, 2017; whereas date of birth of respondent no. 3 is 7th January, 1999 and she will attain the age of majority on 7th January, 2017. It is also not in dispute that from their

wedlock one girl child, namely, Kirti was born on 25th December, 2015. Presently, respondent no. 3 along with baby Kirti is living in Nari Niketan, Delhi. Custody of respondent no. 3 and her child cannot be handed over to petitioner no.1 as he is still minor. However, custody of respondent no. 3 and child can be given to petitioner no.2, father of petitioner no.1, in view of the law laid down in 'Court on its Own Motion (Lajja Devi) Vs. State 2012 VI AD Delhi 465'.

On 2nd March, 2016 Zakir Hussain, father of respondent no. 3, had appeared in Court and stated that he was ready and willing to keep respondent no. 3 and her child till she attains the age of majority. However, it appears that father of respondent no. 3 has not taken custody of respondent no. 3 and her child, and for this reason, they are living in Nari Niketan.

Petitioner no.2, father of petitioner no.1, has filed his affidavit categorically stating therein that he takes the responsibility of respondent no. 3 and her daughter and they may stay at his house. He has further given assurance in the affidavit that petitioner no.1 and respondent no. 3 will not be permitted to cohabit till they attain age of majority.

Presently, respondent no. 3 and her nine months old child are living in Nari Niketan. In my view continuance of their stay in Nari Niketan will not

be in the interest of child, whose healthy growth will be better in homely atmosphere. Respondent no. 3 and her child would be better looked after in the house of petitioner no.2. Accordingly, respondent no. 2-Nari Niketan is directed to hand over the custody of respondent no. 3 and her child to the petitioner no.2 forthwith.

Writ petition is disposed of in the above terms. Miscellaneous application is disposed of as infructuous.

Dasti.

A.K. PATHAK, J.

OCTOBER 06, 2016

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