

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 4318 OF 2016

Ayesha Yacoob Nakhuda

..Petitioner

Versus

The State of Maharashtra and ors.

..Respondents

Mr. Raja Thakare i/b. Mr. Sushanth Murthy, advocate for the petitioner.
Mrs. A. S. Pai, APP for the State.

Mr. Nitin Dalvi along with Mr. A. A. Siddique, Mr. Sharif Shaikh and Mr. Ansar Tamboli, advocates for respondent No.3.

CORAM : RANJIT MORE,
DR. SHALINI PHANSALKAR-
JOSHI, JJ.

DATE : 10th JANUARY, 2017.

P. C. :

Heard Mr. Thakare, learned counsel for the petitioner,
Mr. Nitin Dalvi, learned counsel for respondent No.3 and Mrs. Pai,
learned APP for the State.

2. The petition is filed for writ of habeas corpus directing respondent No.3 to forthwith produce the minor child – Ammar before the Court. The petitioner is the mother of the said minor child aged about 6 ½ years and, respondent No.3 is her ex-husband and the father of the said child. It is the contention in the petition that the custody of the said child is given to the petitioner under the deed of divorce executed between the parties on 30th December, 2014.

3. It is the specific allegation of the petitioner that respondent No.3 has taken away the said child while he was returning from his school. The petitioner, accordingly, registered FIR against respondent No.3 for an offence punishable under Section 363 of the Indian Penal Code, 1860. The petition was placed for orders on 22nd December, 2016. After hearing learned counsel for the petitioner and learned APP, this Court directed respondent No.3 to produce the said child before the Court today. This Court also directed MIDC Police Station, Andheri, to serve the order dated 22nd December, 2016, on respondent No.3.

4. In pursuant of the above order, respondent No.3 has produced the said child before this Court. We have also heard Mr. Dalvi, learned counsel for respondent No.3. He raised the contention that the divorce deed is disputed by the petitioner herself. He also stated that it is in the interest of the child to remain in the custody of respondent No.3- the father. The fact remains that respondent No.3 has taken the custody of the said child forcibly without the consent of the petitioner-mother. While exercising the jurisdiction under Article 226 of the Constitution of India, this Court cannot go into the factual aspect of the welfare of the minor child or status and rights of the parties as the child is 6 ½ year old and taken away by respondent No.3 from the custody of the petitioner without her consent. We, therefore, direct respondent

No.3 to handover the custody of the said child-Ammar to the petitioner forthwith. Learned APP is also directed to give necessary instructions to the Police Personnel to aid in handing over the custody of the said child to the petitioner.

5. Needless to mention that all the rights and contentions of the respective parties are kept open to be agitated before an appropriate authority.

6. At this stage, Mr. Dalvi, learned counsel for respondent No.3, on instructions, expressed an apprehension that the petitioner-mother may take away the said child out of India. Mr. Thakare, learned counsel having taken instructions from the petitioner who is present before the Court, makes a statement that the child would not be taken out of India without the permission of the Court. The statement is accepted.

7. In the light of the above order, the petition stands disposed of.

(DR. SHALINI PHANSALKAR-JOSHI)

[RANJIT MORE, J.]