

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE T.AMARNATH GOUD**

WRIT PETITION No.38093 of 2017

ORDER : (Oral)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present petition, petitioner seeks directions thereby directing the respondents 1 to 4 to produce his minor child, namely, Jubiya, around two years old, from the clutches of respondent No.5, who is illegally detaining the child.

2. It is stated in the present petition that the marriage of petitioner with Mrs.Shalini took place on 10th April 2013 and they were blessed with the female child mentioned above, on 22nd January 2016. The family members of the petitioner and his wife together celebrated the cradle ceremony of his new born daughter happily at his residence. Thereafter, as his wife suffered with ill-health, he admitted her in Sigma hospitals, Dilsukhnagar on 12th June 2016 on Aarogyasri card as an out-patient. The hospital authorities sent his wife to the Osmania General Hospital. During the treatment, she died on the same day due to cardiac arrest. It is further stated that after death of his wife, her sister, namely, Smt.Sheedha (as mentioned in the petition, but the correct name is Shaheda) i.e. respondent No.5 requested him and his mother for custody of child as the baby is in mother feeding. She also got one breast-feeding daughter of her own. She promised that she will take care of the baby and would return after some time. Believing her version, he handed over his child to respondent No.5. Frequently, the petitioner used

to visit his daughter. Subsequently, respondent No.5 abused him in filthy language by saying that the child is not his daughter and asked him not to come again to the house. Therefore, he filed the present petition.

3. In the counter affidavit filed by respondent No.5, it is stated that the minor girl child whom the petitioner is seeking to be relieved from her clutches claiming to be his daughter, was born on 22nd January 2016 at Koti hospital, Hyderabad to her sister Shaheen Begum, who was staying at Wadi in Karnataka along with her husband. Due to some differences with her husband, her sister came down to Hyderabad and started living in Kothapet fruit market locality, where, she came into contact with petitioner herein. Out of their extra-marital relationship, the minor child in question was born. Immediately after the birth of the minor child, her sister Shaheen Begum had given the child in adoption to respondent No.5, with her own will and wish, when the minor was only 4 days old. Respondent No.5, as the sister of Shaheen Begum, is taking care of the child as of her own child, along with her another child, who is also a girl child aged about 3 years.

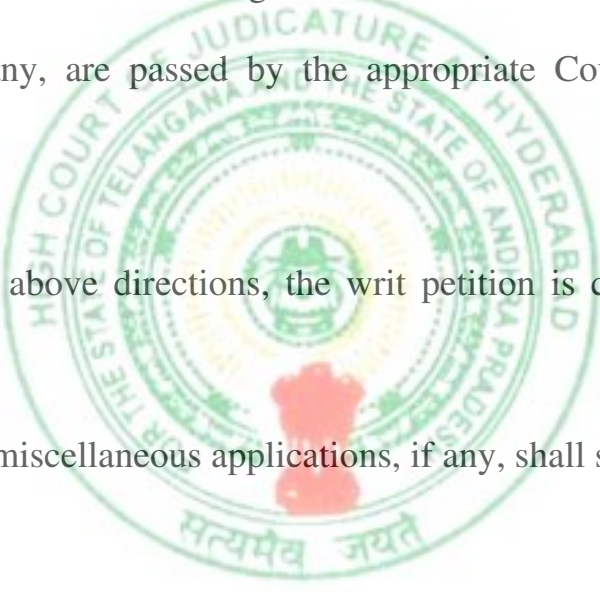
4. In the present petition, there is no proof of marriage between petitioner and the deceased Shaheen Begum. Respondent No.5 claimed that her sister was in extra-marital relation with the petitioner and due to said relationship, the child in question was born. Since the death of Shaheen Begum, the child is with respondent No.5. Thus, the child is not in illegal detention.

5. Though there is no record of the marriage, it is admitted by respondent No.5 and the petitioner that petitioner is father of the minor child in question. Since the child is being taken care by respondent No.5 since her birth, without passing further orders in the present petition, we hereby close the writ petition with liberty to the petitioner to approach appropriate Court for custody of the child, if so advised.

6. Till the petitioner files the custody petition before appropriate Court, we hereby grant him liberty to visit the child on every Sunday from 4 to 6 p.m. The said arrangement shall continue for three weeks or till orders, if any, are passed by the appropriate Court, whichever is earlier.

7. With the above directions, the writ petition is closed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.



SURESH KUMAR KAIT, J

T. AMARNATH GOUD, J

20th December, 2017

ajr