

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE SRI JUSTICE P.KESHA RAO

W.P.NO.35912 OF 2017

ORAL ORDER (Per SKK,J)

Vide the present petition, petitioner seek direction thereby directing the respondent No.3 to produce the minor child by name Mirza Arham Ali Baig, aged about 9 years, illegally detained by 4th respondent.

This court has put a specific query to the learned counsel appearing for the petitioner that when the child is in the custody of the respondent No.4, natural guardian, how the present writ petition for Habeas Corpus, is maintainable?

The learned counsel for the petitioner relied on the judgment of the Apex Court in RAJESH GUPTA v. RAM GOPAL AGARWAL¹ wherein the facts disclose that the father of the child by filing habeas corpus petition, sought for custody of his minor daughter, mainly on the ground that she has been abducted by respondents 1 and 2 therein, and that his wife is suffering from mental ailment. In the said case, alleging mental ailment, custody is sought. The facts of the said case are different from the facts of the present case and hence the said decision cannot be made applicable.

In the other decision of the High Court of Allahabad relied on by the counsel for the petitioner in BABY KAVYA AWASTHI vs. STATE OF U.P.² the facts disclose that the custody of the minor child was with some

¹ (2005)5 SCC 359

² 2013 AIR(ALL) 138

one else and father of the minor child was not alive, therefore, custody was sought by the natural mother and the said relief was allowed. But the facts of the present are different.

Finding no ground to issue directions to the respondent No.3, we hereby dismiss the present petition. No costs.

Miscellaneous petitions pending if any, shall stand closed.

SURESH KUMAR KAIT,J

P.KESHAVA RAO,J

DATE:31-10-2017

AVS

