

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

-.-

Crl. Writ Petition No. 1418 of 2016
Date of decision: 13.01.2017

Bharat Sharma

..... Petitioner

Versus

State of Punjab and others

.....Respondent(s)

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Petitioner in person

Mr. Navdeep Singh, DAG, Punjab

Mr. Sherry K Singla, Advocate
for respondents No. 4 and 5

-.-

Rekha Mittal, J.

While invoking Article 226 of Constitution of India, the present petition has been filed by Shri Bharat Sharma for issuance of a writ of Habeas Corpus directing the official respondents to get released detainee namely Aditi Sharma, minor daughter of the petitioner from illegal confinement of private respondents.

On the last date of hearing, order dated 19.12.2016 passed by this Court reads as follows:-

“Ms Aditi Sharma, aged 10 years present in Court today, who seems to be a confident young girl and has stated and opined that she is happily residing with her maternal grand parents and does not want to live with her father.

At this stage, petitioner, who is present in person, submits that Aditi Sharma is his only child

and kidnapped from his residence and being the natural guardian, he has a prior right to custody for the minor daughter.

Put up on 13.01.2017 for further consideration.”

Aditi Sharma is again present in Court along with her maternal grand father Shri Krishan Kumar-respondent No. 4. I had interaction with the child in the chamber. She states that she is happily residing at the house of her maternal grand father and his family consisting of her maternal uncle-Deepak Sharma, his wife and children. Even the petitioner was allowed to meet the child in the chamber as he expressed desire to meet his daughter. At present, the child does not hold a very good opinion about her father.

Counsel for respondents No. 4 and 5 has submitted that the petitioner, in place of taking recourse to remedy available under the Guardian and Wards Act, 1890, has filed the present petition, which is in violation of the directions issued by Hon'ble the Supreme Court vide order dated 16.08.2016 wherein arrest of the petitioner in criminal proceedings lodged vide FIR No. 94 dated 21.07.1994 with Police Station Nangal, District Rupnagar for offences under Sections 406, 498-A of Indian Penal Code was stayed.

I have heard the petitioner in person, counsel for respondents No. 4 and 5 and perused the records.

The Special Leave Petition filed by the petitioner was disposed of by Hon'ble the Supreme Court vide order 16.08.2016. An extract from the said order reads as follows:-

“The petitioner further states that he is entitled to custody of the child from the newly impleaded respondent

Nos. 2 to 4.

We feel that the matter of custody of the minor child should be mediated upon between the parties in the first instance. Hence, we direct the parties to appear before the Mediation Centre, Punjab and Haryana High Court, Chandigarh at 11 AM on 07.09.2016 and settle the dispute amicable in regard to the custody of the minor child.

We also make it clear that in case the mediation fails, the petitioner is given liberty to take recourse to avail remedy under the Guardians and Wards Act, 1890 before an appropriate forum in accordance with law.”

In view of the facts and circumstances discussed here-in-before coupled with the observations made by Hon'ble the Supreme Court of India, the present petition stands disposed of but without prejudice to rights of the petitioner to take recourse to appropriate proceedings under the Guardian and Wards Act, 1890 for seeking custody of the child. However, nothing stated in this order shall be construed as an expression of opinion on plea of the petitioner to have custody of the child.

(Rekha Mittal)
Judge

13.01.2017
mohan bimbura

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No