

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

CRWP No.1614 of 2016 (O&M)

Date of Decision: May 30, 2017

Mamta

...Petitioner

VERSUS

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Naresh Prabhkar, Advocate
for the petitioner.

Mr.B.S.Virk, Deputy Advocate General, Haryana
for the respondent-State.

Mr.Jainainder Saini, Advocate
for respondents No.3 and 4.

INDERJIT SINGH, J.

The petitioner has filed this criminal writ petition under Article 226/227 of the Constitution of India for issuance of a writ in the nature of habeas corpus to respondents No.3 and 4 to release the minor detainees mentioned in para no.2 from the unlawful detention and illegal custody of respondent No.2, with a further prayer for appointment of a warrant officer etc.

Notice of motion was issued. Learned State counsel as well as learned counsel for respondents No.3 and 4 appeared and contested the petition.

At the time of arguments, learned counsel for the petitioner

argued that the petitioner was turned out of the matrimonial house for her parents' house in August 2016 and children remained with the husband. He further argued that on 30.10.2016, husband of the petitioner along with respondents No.3 and 4 went to the parental house of the petitioner but the petitioner did not accompany them. On 05.11.2016, petitioner's husband committed suicide and FIR under Section 306 IPC has been registered against the parents and other relatives of the petitioner. Learned counsel for the petitioner further argued that the children, who are 13 years' old boy and 11 years' old girl namely Himanshu and Khushi, respectively, are in the illegal custody of respondents No.3 and 4. Therefore, he prayed that writ of habeas corpus be issued.

On the other hand, learned counsel for respondents No.3 and 4 argued that detenues Himanshu and Khushi are not illegally detained by private respondents. Rather, they are residing in their house with respondents No.3 and 4 as the petitioner had not taken the children when she left the matrimonial house in August 2016. He next argued that the remedy, if any, for custody of the minor children, lies with the Guardian Judge and not by way of habeas corpus.

After hearing learned counsel for the parties as well as learned State counsel and after going through the record, I find that it is nowhere case of the petitioner that minor children are taken away by respondents No.3 and 4 illegally or forcibly from the custody of the petitioner. Rather, as per the case, the petitioner left the matrimonial house alone (as per petitioner, she was turned out from the house). Admittedly, the husband of the petitioner committed suicide on 05.11.2016. The children are residing

grandfather of the children.

The perusal of the petition shows that the petitioner relied upon Hindu Minority and Guardianship Act for filing this petition. The dispute between the parties is regarding custody of the minor children and in the facts of the present case, remedy lies before the Guardian Judge and not by way of habeas corpus as the children are not taken away forcibly or illegally by the private respondents. Earlier, they were residing with their father and after the death of their father, the minor children are residing with grandfather etc. In no way, it can be held at this stage that children have been detained illegally by respondents No.3 and 4. The remedy lies with the petitioner to file a petition before the Guardian Judge. The Guardian Judge on the basis of evidence will decide the welfare of children and also regarding the custody of minors by taking note of so many facts including the wish of the minors.

Therefore, the present petition is not maintainable and the same is dismissed.

May 30, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No