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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP-819-2017[O&M]

Date of Decision:- August 24, 2017

Amandeep Kaur

....Petitioner

Versus

State of Punjab etc.

....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. C.K.Singla, Advocate,
for the petitioner.

Mr. Rahul Rathore, DAG, Punjab

Mr. Mohinder Kumar, Advocate,
for respondents No. 4 and 5.

SHEKHER DHAWAN, J.

Present petition Article 226 of Constitution of India for issuance of a writ in the nature of Habeas Corpus for effecting the release of detenue, Ekamdeep Singh (aged 3-1/2 years) son of the petitioner and Sukhraj Singh, respondent No.4 herein, was filed on the ground that Ekamdeep Singh was in illegal custody of respondent Nos. 4 and 5 from July 3, 2017 when he was forcibly snatched from the custody of the petitioner.

2. Learned counsel for the petitioner contended that the petitioner is mother of Ekamdeep Singh and he was forcibly taken from her custody by the private respondents on 3.7.2017. So, the present writ petition be accepted and custody of Ekamdeep Singh be handed over to her.

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3. In the reply filed by respondents no. 4 and 5, a preliminary objection was raised that the present writ petition was not maintainable as proper and appropriate remedy available with the petitioner to seek custody of the minor is by way of filing a petition under the Hindu Minority and Guardianship Act, 1956 (for short, "1956 Act") and Guardian & Wards Act, 1890 (for short, "1890 Act") before the Civil Court. As per respondents No. 4 and 5, the custody of the minor is with the father i.e., respondent no. 4 and the writ petition is not maintainable. The other allegations levelled in the writ petition regarding the conduct of respondent No. 4 were denied. Even the fact regarding date of marriage between the parties was disputed in the reply. It was further averred that in fact, the writ petitioner was having extra-marital affair with one Vishwajit Singh and even prior to marriage with respondent No.4, the petitioner had eloped with some person. Ekamdeep Singh was born on 9.8.2014. Ekamdeep Singh was never forcibly snatched from the petitioner. In fact, the petitioner had given/handed over the custody of Ekamdeep Singh to his father, respondent No. 4 in the presence of her parents, uncles and respectable persons of the area before the police of Police Station, Mattewal on 3.7.2017 and Panchayatnama (Annexure R-4/1) was signed by the parties including the petitioner, her parents, uncles, respectable persons of the area and respondent No. 4. So, the present petition be dismissed.

4. Learned counsel for the petitioner, while arguing on the point of maintainability of the writ petition, placed reliance upon the Division Bench judgment of this Court in **Preet Ranjan Kaur Vs. Harjit Singh and**

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another, 2013(2) HLR 22, wherein the husband was directed to hand-over the custody of the child to the mother. Reliance was also placed upon the judgments of Hon`ble Supreme Court in **Syed Saleemuddin Vs. Dr. Rukhsana, 2001(2) R.C.R. (Criminal) 591** and of this Court in **Jaswinder Kaur Vs. State of Punjab and others, 2010 (2) R.C.R. (Criminal) 891**; **Neelam Rani Vs. State of Haryana and others, 2007(3) R.C.R. (Criminal)664**; and **Navnimrat Kaur Vs. State of Punjab and others, CRWP No.1568 of 2016 decided on 19.12.2016**.

5. I have gone through the facts of the above cases referred and relied upon by learned counsel for the petitioner. There is no dispute on the law point that the writ petition is maintainable to restore the custody of the minor child to the mother, but that factor would be relevant only if the custody of the child has been taken forcibly. In this case, this very fact is in serious dispute because respondent no. 4 has come with the plea that the custody of the minor was handed-over to him by petitioner herself in the presence of her parents, uncles and respectable persons of the area before the police of Police Station, Mattewal on 3.7.2017 and Panchayatnama (Annexure R-4/1) in this behalf was executed by the parties.

6. Similar matter was before Hon`ble Supreme Court in **Sumedha Nagpal Vs. State of Delhi and others, 2000(9) SCC 745** and in that case, Hon`ble Apex Court held that if there are serious disputed facts and pleadings require examination with reference to evidence by an appropriate forum, a proper decision in the matter cannot be taken and such a course is impossible in the summary proceedings such as writ

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petition. Similarly, in the present petition and summary proceedings, the custody of the child cannot be handed over as it would not be in tune with the welfare of the minor child who is being looked after by his father, respondent No.4. The remedy in such like situation is by filing a petition seeking custody of the child by establishing legal rights and other ingredients under Section 6 of the 1956 Act and Section 25 of the 1890 Act.

7. In view of the above, the matter in controversy becomes a question of facts and evidence, which shall not be the subject matter of writ jurisdiction and the proper remedy shall be to relegate the parties to resort to appropriate remedy available under the law. Therefore, this Court finds that the right forum to establish their respective claims for custody of the minor child is Guardian Court. Accordingly, the parties, if so advised, may approach the Guardian Court and if such a petition is filed within 15 days from today, the Guardian Court shall consider and decide the interim custody of the minor child preferably within one month from the date of filing of the petition, in accordance with law.

8. With the aforesaid directions, the present petition stands dismissed being not maintainable.

August 24, 2017
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(SHEKHER DHAWAN)
JUDGE

Speaking/Reasoned
Reportable

Yes
Yes