

HIGH COURT OF CHHATTISGARH, BILASPUR

WPHC No. 6 of 2018

- Shailesh Lillariya S/o S/o D. Lillariya, Aged About 46 Years R/o 11/3, Nehru Nagar, West Bhilai, District Durg, Chhattisgarh., District : Durg, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh Through The Secretary, Home Department (Police), Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur, Chhattisgarh
2. Inspector General Of Police, Durg Range District Durg, Chhattisgarh,
3. Superintendent Of Police Durg, District Durg, Chhattisgarh
4. Station House Officer, Police Station Supela, District Durg, Chhattisgarh.,
5. Chowki Incharge, Police Chowki Smriti Nagar, Police Station Supela, District Durg, Chhattisgarh
6. Pratibha Lillariya W/o W/o Shailesh Lillariya, Aged About 35 Years R/o C/o Ishwar Lal Yadu / Prashansa Yadu, House No. 110, First Floor, Dindayal Housing Board Colony, Kaurinbhatha, Tahsil And District Rajnandgaon, Chhattisgarh

---- Respondents

For Petitioner/husband	: Shri R Pradhan, Advocate
For Respondents/State	: Shri UNS Deo, Government Advocate
For Respondent/wife	: Ms Deepali Pandey, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
& Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

Per Thottathil B. Radhakrishnan, Chief Justice

19.06.2018

1. We have heard the learned counsel for the petitioner, the learned counsel for the sixth respondent and the learned Government Advocate.
2. The Writ Petition was instituted seeking the issuance of a writ in the nature of Habeas Corpus *in re* the boy child born to the petitioner and the sixth respondent on 31.03.2012. The situation obtained as of now is that

the child is with the mother, the sixth respondent. We are satisfied that the said child cannot be treated as in any state of illegal detention in the physical sense.

3. The allegations as between the petitioner and the sixth respondent as emanating out of the pleadings and materials placed on record would show that the child was with the petitioner and there were proceedings before the Sub-Divisional Magistrate. Those proceedings came up to the High Court. The High Court had opined, quite rightly, that custody of child is essentially a matter within the domain of the Family Court. Sixth respondent is stated to have moved the Family Court. The petitioner alleges that while the child was returning from school, he was snatched away by the sixth respondent and it was thus that child is now in the company of the mother. The sixth respondent is stated to have, thereafter, not appeared before the Family Court; thereby, leading the proceedings initiated by her to be infructuous and accordingly dismissed.

4. The petitioner has materials which are utilised to levy criticisms on the sixth respondent, who in turn, has also loads of criticisms and materials against the petitioner. However, it is not within the adjudicating frame work of the Writ Petition before us to further pursue, any issue as to custody, here.

5. Family as a unit is conceived as a place where the child ought to be able to safely, freely, confidently and lovingly say, "Father and Mother, I love You". It depends upon the graceful dealings of the parents and the child's fortune to get good parental support, to grow up and bloom. Fundamentally, that is the birth right of every child. The Family Court

under the Family Courts Act, 1984 is bestowed with ample jurisdiction, which empowers it to act, by all means, as regards the affairs and best interest of a minor child.

6. We are dealing with this matter in writ jurisdiction. Learned counsel for the petitioner referred to the decision of Hon'ble Supreme Court in the matter of **Capt. Dushyant Somal Vs Smt Sushma Somal and others** (AIR 1981 SCC 1026) and very persuasively argued for the position that even as between biological parents, writ in the nature of writ of habeas corpus could be issued in instances where child is kidnapped or snatched off by one of its parents while it is in the custody of the other. That case dealt with the situation when the husband was convicted for offence punishable under Section 363 of the IPC for snatching away the child from the lawful custody of the other parent and such conviction and sentence were under challenge. The observations made by the Apex Court touching the scope and extent of writ jurisdiction in relation to issuance of writ of habeas corpus were essentially in answer to the contentions advanced by the appellant before the Supreme Court as is reflected in paragraphs 2 and 3 of the decision in **Capt. Dushyant Somal** (*supra*) as reported in AIR. That precedent does not delineate any compulsion to issue a writ of habeas corpus, but recognises the authority to do so, if the circumstances warrant. It is not that the writ court would give its seal of approval to any unlawful mode of reaching at and holding a particular child. On the given set of facts and circumstances, we do not deem it necessary for this Court to carry forward this Writ Petition seeking issuance of Habeas Corpus, after it has been noticed that the child is with the biological mother.

7. For the aforesaid reasons, taking note of all the materials on record, we order this Writ Petition recording that the child of the petitioner and the sixth respondent is now in the company of the sixth respondent, his mother. All rights of the petitioner and the sixth respondent to seek requisite orders from other competent jurisdictions in relation to the management of the affairs of that child shall stand preserved.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

padma