

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.3191 OF 2018

Kashima Datta

...Petitioner

V/s.

The State of Maharashtra & Ors.

...Respondents

Ms.Dhanalakshmi Iyer for the Petitioner.

Mr.J.P. Yagnik, APP for Respondent-State.

**CORAM : S.C. DHARMADHIKARI &
SMT.BHARATI H. DANGRE, JJ.**

DATE : 31st JULY 2018

P.C.:

1. The petitioner's counsel would submit that the petitioner is seeking the intervention of this Court and by issuance of Writ of Habeas Corpus directing respondent Nos.1 to 4 to produce Respondent No.8, who is the son of the petitioner before this Court.

2. The petitioner says that the husband of the petitioner, namely, fifth respondent married her at Faridabad in Haryana. From this wedlock they were blessed with the son on 23rd October 2013 at New Delhi. There have been disputes

between the couple and the complaint is that the father took away the son from the custody of the petitioner, though the son is a minor. She has made several attempts and has not been assisted even by the police machinery. The petitioner is presently at Mumbai, but has shifted to Delhi. She is desirous that the son be brought by the police machinery from the father and handed over to her.

3. Upon perusal of the petition and the annexures thereto, it is evident that the petitioner has approached a Competent Court. She first approached a Court at Saket, Delhi, and instituted proceedings complaining about the domestic violence. Then, she has filed a petition seeking divorce based on cruelty and there is a cross petition by the husband against the petitioner.

4. It is clear from these narration of events by the petitioner herself that she has remedies available to her in law to seek access to and custody of the child. She can pursue those remedies and it is not as if taking away her son by the

respondent No.5 means that he is in illegal detention. That cannot be termed *ipso facto* as illegal detention. The petitioner can pursue her legal remedies and in the teeth of such remedies, we do not wish to entertain this petition.

5. We clarify that we have not expressed any opinion on the merits of the allegations made by the petitioner against respondent No.5 and vice versa. All contentions are kept open for being raised in appropriate proceedings before competent Civil and Criminal Courts. The Writ Petition is disposed of with such clarifications.

(SMT.BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI,J.)

Nilam
Santosh
Kamble

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2018.08.02
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