

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

CRIMINAL WRIT PETITION NO.4058 OF 2018

Manish Rajnikant Sharma ..Petitioner
V/s.

Priyadarshani Manish Sharma
@ Priyadarshani Anil Pagare & Ors. ..Respondents

Mr.Mathew Nedumpara a/w Aarvinda Kamath, C.J. Joveson,
Preeti Dambre i/b Rohini Amin for the Petitioner.

Ms.Rebecca Gonsalves for Respondent Nos.1 to 4.

Mrs.A.S. Pai, APP for the Respondent No.8-State.

**CORAM : RANJIT MORE &
SMT.BHARATI H. DANGRE, JJ.**

DATE : 31st OCTOBER 2018

P.C.

1. Heard Mr.Nedumpara, learned counsel for the petitioner and Ms.Gonsalves for Respondent Nos.1 to 4 and learned APP for the respondent No.8-State.

2. The petitioner and the respondent No.1 got married in the year 2009 and out of the wedlock child named Prajwal is born and at present he is six years old. The respondent Nos.2,3 and 4 are the parents and brother of the respondent No.1.

3. There is matrimonial dispute between the petitioner and respondent No.1. Admittedly they are not staying together. It is the case of the petitioner that the minor child Prajwal was with him since 2014 and respondent No.1-the mother of the child forcibly removed the child from his custody and therefore he has approached this Court making grievance that respondent No.1 to 4 has illegally detained the minor son Prajwal.

4. At the request of the Ms.Gonsalves, learned counsel for respondent Nos.1 to 4, we had deferred the hearing till today. Meanwhile petitioner was granted access to the minor son Prajwal at the residence of the respondent No.1. Ms.Gonsalves, the learned counsel for the respondent Nos.1 to 4 makes a statement that access is availed by the father-petitioner of minor son and this fact is not disputed by Mr.Nedumpara, learned counsel for the petitioner. Ms.Gonsalves submit that respondent No.1 has already filed a petition in the Family Court seeking divorce and also praying for continuation of the custody of the minor son. The copy of the said petition is placed on record by Ms.Gonsalves.

5. The present petition before us seeking a Writ in the nature of Habeas Corpus for production of the child and the petition

contain allegation to the effect that the mother had forcibly removed child from the custody of the father. Since the petitioner is a father of the child and the respondent No.1 is mother of the child and the issue as regards custody of the child would lie before the appropriate Court which is empowered to grant custody of a child under the relevant provisions of the law. Since, now the whereabouts of the child are known to the petitioner, we express that the Writ of Habeas Corpus would not lie. The parties are relegated to the appropriate remedy for filing proceedings seeking custody of the child. The wife has already instituted the proceedings in the Family Court for continuation of the custody of the child. In such circumstances, we pass the following order :-

ORDER

- (i) The petitioner is at liberty to make an interim application seeking temporary custody of the child either by filing independent proceedings or by filing application in the proceedings instituted by the wife. The Family Court shall decide the said application after hearing both the sides as expeditiously as possible and in any case within 4 months from filing of the said application.

(ii) All points and contentions of the respective parties are kept open.

(iii) During the pendency of the petitioner's application seeking custody where he proposed to file before the Family Court, the respondent No.1 shall give access of the minor child Prajwal to the petitioner and his parents at her residence on every Saturday and Sunday between 4.00 p.m. to 7.00 p.m.

7. Both the parties i.e. petitioner and respondents are expected to create an healthy atmosphere for the child when the access is being availed and behave as responsible parents.

6. All concerned to act on an authenticated copy of this order.

(SMT.BHARATI H. DANGRE, J.)

(RANJIT MORE, J.)