

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice Gudiseva Shyam Prasad

Writ Petition No.24083 of 2018

Date: 31.07.2018

Between:

Amrit Talreja

... Petitioner

and

The State of Telangana
Rep. by its Prl.Secretary,
Home Department,
Secretariat, Hyderabad
and 4 others

... Respondents

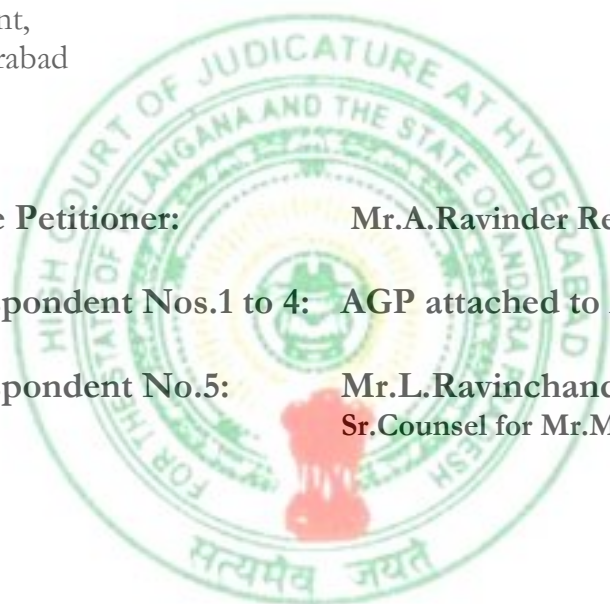
Counsel for the Petitioner:

Mr.A.Ravinder Reddy

Counsel for respondent Nos.1 to 4: AGP attached to AG (TS)

Counsel for respondent No.5:

**Mr.L.Ravinchander,
Sr.Counsel for Mr.Mahesh Raje**



The Court made the following:

Order: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Writ Petition is filed for issue of Habeas Corpus declaring the action of respondent Nos.1 to 4 in not producing the petitioner's daughter- Ms.Dolphin Talreja (for short 'the alleged *detenue*') before the Magistrate after her recovery from respondent No.5 as illegal, arbitrary and violative of Article 21 of the Constitution of India.

We have heard Mr.A.Ravinder Reddy, learned Counsel for the petitioner, and Mr.L.Ravi Chander, learned Senior Counsel appearing for Mr.Mahesh Raje, learned Counsel for respondent No.5.

At the outset, it needs to be observed that the prayer in the Writ Petition is inherently defective as the petitioner cannot seek a direction to produce the alleged *detenue* before the Magistrate in a Writ Petition filed for issue of Habeas Corpus. Be that as it may, in the counter-affidavit filed by respondent No.5, it was specifically pleaded that the alleged *detenue* was in her care and custody; that upon coming to know that the petitioner was about to remove the alleged *detenue* from the school with intention to take her abroad, due to fear, she took her to Bangalore for some days to ward off

the said danger; and that later, she has returned to Hyderabad and made the alleged *detenue* to attend the school.

The learned Counsel for the petitioner has not disputed the fact that the alleged *detenue* is in the custody of respondent No.5. He, however, submitted that as his client has secured an *ex parte* decree of divorce wherein an observation was made that the alleged *detenue* is in his custody, it is in fitness of things that the alleged *detenue* is kept in a boarding School.

From a perusal of the *ex parte* decree, dated 21-01-2010, in OP.No.1277 of 2009, it could be seen that the relief claimed therein by the petitioner was only to pass a decree dissolving the marriage between him and respondent No.5. However, in Clause 3 of the decree, it is mentioned as under:

“That the petitioner represented that out of their wedlock they have blessed with a daughter namely Dolphin Talreja, aged about 3 years and the child is under his care and custody.”

As rightly submitted by Mr.Ravi Chander, learned Senior Counsel, the said observation made on the representation of the petitioner in a decree granted for divorce whereunder the prayer for child custody was neither sought for nor was adjudicated is wholly irrelevant and the same cannot be enforced. In any event, when the alleged *detenue* is, admittedly, in physical custody of

respondent No.5, in the absence of any decree granted by the competent Court granting child custody to the petitioner, the custody of the alleged *detenue* by respondent No.5 cannot be treated as unlawful warranting issue of a Writ of Habeas Corpus. If the petitioner wants the custody of his minor daughter, the appropriate remedy for him is to approach the competent Court seeking child custody in accordance with law.

Subject to the liberty given to the petitioner as above, the Writ Petition is dismissed.



(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad, J)

Dt: 31st July, 2018
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