

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

and

The Hon'ble Sri Justice Gudiseva Shyam Prasad

Writ Petition No.26954 of 2018

Date: 08.08.2018

Between:

Devarapalli Srinivasa Rao

..Petitioner

and

The State of Telangana

Rep. by its Prl.Secretary to Govt.

Home dept., Secretariat, Hyderabad and 6 others

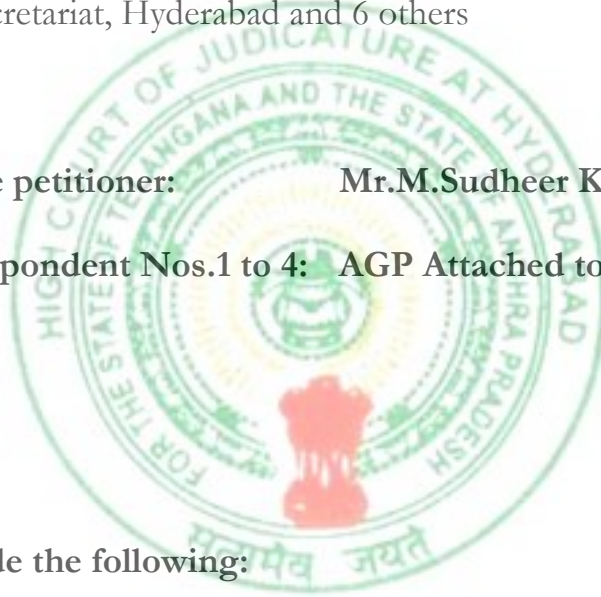
..Respondents

Counsel for the petitioner:

Mr.M.Sudheer Kumar

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

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 directing respondent Nos.1 to 5 to produce the petitioner's children *viz.*, Devarapalli Swarani Krishna and Devarapally Krish before this Court and set them at liberty.

In pursuance of this Court's direction, dated 01-08-2018, respondent No.3 is personally present. He has also produced the two minor children along with their mother- respondent No.7 in the Court. The father of respondent No.7 is also present.

As could be gathered from the facts narrated by both parties, respondent No.7, who is the wife of the petitioner, is presently living with her father due to serious differences arising between the spouses; that while Devarapalli Krish, who is aged about 3 years, continued to be with respondent No.7, Devarapalli Swarani Krishna, who is aged about five years, has been with the parents of respondent No.7 at Muthnuru Village, Indravelli Mandal, Adilabad District; and that she is admitted in Indravelli Public School. It has further come to light that for two months before the petitioner has handed over the custody of his daughter to respondent No.7, allegedly, at the instance of respondent No.3, his daughter was living with him.

The learned Assistant Government Pleader attached to the learned Advocate-General (TS) submitted that following the

judgment of the Supreme Court in **Arnesh Kumar vs State of Bihar & Anr**¹, respondent No.3 has called both the parties for counselling on a complaint given by respondent No.7 against the petitioner *inter alia* for the offence under Section 498-A IPC; that a Joint Memorandum of Settlement was reached between the petitioner and his two sisters on one side and respondent No.7 and her relatives on the other; and that as per the said settlement, the petitioner agreed to hand over the custody of his daughter-Devarapalli Swarani Krishna also to respondent No.7.

Mr.M.Sudheer Kumar, learned Counsel for the petitioner, has seriously refuted the above submission of the learned Assistant Government Pleader and stated that the petitioner's signature was taken in a register by respondent No.3, which might have been misused for preparing the purported settlement.

The age of both the minor children is below 5 years. Though the petitioner has made serious allegations against respondent No.7 about her conduct and character, considering the fact that both the children are of tender age and that they are in the care and custody of respondent No.7 and her parents, we are of the opinion that their interests would be better served if they are allowed to remain with them for the time being.

¹ 2014 (5) Supreme 324 = AIR 2014 SC 2756

In view of the submission of the learned Assistant Government Pleader that respondent No.3 has not acted high-handedly and instead, he acted in the best interests of both parties, we are not inclined to probe further into the alleged conduct of respondent No.3.

In the light of the above discussion, we are not inclined to direct respondent No.7 to hand over the custody of the two minor children to the petitioner. Further, if the petitioner wants to assert his right to have the custody of the two minor children as their father and natural guardian, he is entitled to avail appropriate remedy before the competent Court of law. In such an event, the observations made in this order shall not influence the competent Court while deciding the issue of custody of minor children.

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

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad, J)

Dt: 8th August, 2018
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