

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION No.39983 of 2017

16.02.2018

Between:

Smt.S.Saira Bhanu

..Petitioner

and

The State of Andhra Pradesh,
represented by its Principal Secretary,
Home Department, Secretariat, Velagapudi,
Amaravathi, and others

..Respondents

Counsel for the petitioner: Mr.A.Chandraiah Naidu

Counsel for respondent Nos.1 to 5: Mr.C.S.Surya Prakasha Rao,
Special Government Pleader (A.P.)

Counsel for respondent Nos.6 to 9: Mr.N.Aswartha Narayana

The Court made the following:



ORDER:

This writ petition is filed by the mother of the minor girl child – the alleged detainee *viz.*, S.Aynaaz Thabasum, for issue of Habeas Corpus by directing the District Police Administration of Anantapur District to produce her minor daughter from the illegal custody of respondent Nos.6 to 9.

2. The brief facts leading to the filing of this writ petition are as follows.

The petitioner's marriage was performed with one Mohammed Asif – the son of respondent Nos.6 and 7, on 17.11.2008. From the wedlock, the couple were blessed with two children, one female child and another male child. As the ill-luck of the petitioner would have it, her husband died on 20.10.2014 due to cardiac arrest. The petitioner alleged that all the properties standing in the name of her husband, including six container lorries, were got unilaterally transferred by respondent No.6 in his name and that thereafter, the petitioner was subjected to mental and physical harassment by respondent Nos.6 to 9, who are the members of her husband's family. The petitioner further alleged that on 04.07.2017, she was abused and necked out of their house by respondent Nos.6 to 9 by retaining her both the children with them. Though through the mediators, she was able to get the custody of her son, respondent Nos.6 to 9 refused to handover her

minor daughter – the alleged detainee. That her complaint to the Police having not yielded any positive result, the petitioner has filed this writ petition.

3. On 05.12.2017, this Court ordered notice to respondent Nos.1 to 9 with the direction to respondent Nos.1 to 5 to ensure the presence of the petitioner's minor daughter – the alleged detainee on the next date of hearing. On 21.12.2017, respondent Nos.6 to 9 were present in the Court along with the alleged detainee. The petitioner was also present along with her son. After interaction with both the children, this Court found that the alleged detainee was tutored by respondent Nos.6 to 9. In its order, dated 21.12.2017, while recording the said fact, this Court further observed that on account of such tutoring, the alleged detainee even refused to identify her mother – the petitioner, while the petitioner's son had identified his grandfather, grandmother and the alleged detainee. This Court directed that as the alleged detainee is the school going girl and her school vacation would be from 06.01.2018 to 17.01.2018, her custody may be handed over to the petitioner and that later, the Court will interact with the alleged detainee and decide whether her custody should be with the petitioner or the grandparents, as per law. This Court further directed all the parties to be present in the Court along with the alleged detainee on 18.01.2018.

4. On 18.01.2018, the petitioner along with the alleged detainee was not present. The learned counsel representing her made a representation that she was suffering from fever and therefore, she could not attend the Court. This Court, however, felt that the petitioner tried to overreach the order of this Court having taken the custody of the alleged detainee and therefore, it has directed respondent No.5 – the Station House Officer to take custody of the alleged detainee from the petitioner by 19.01.2018 and handover her to respondent Nos.6 and 7, pending further orders. On 25.01.2018, the learned Special Government Pleader submitted that in pursuance of order, dated 18.01.2018, the Police restored the custody of the alleged detainee to respondent Nos.6 and 7. As respondent Nos.6 and 7 were not present in the Court on that day, the case was posted to 01.02.2018. On 02.02.2018, when the case was taken up for hearing, all the parties were personally present. After interacting with all the parties, we have passed the following order.

“The parties are personally present along with the minor girl child.

Though we *prima facie* feel that the petitioner, being the mother and natural guardian, is entitled to the custody of the child, we noticed that the child has been wailing unconsolably on coming to know that her custody will be handed over to her mother.

Respondent No.6 stated that he will get a mediation conducted and see that all the disputes between him and the petitioner are solved. He requested for two weeks' time for this purpose. The petitioner also agreed for this course. Hence, post on 16.02.2018.”

5. Today, when the case is called, respondent Nos.6 and 7 are not present along with the alleged detainee. The petitioner, who is personally present, has stated that respondent Nos.6 and 7 had not met her after the case was last adjourned and that on the contrary some third parties were sent by them to her and that no settlement has materialized. Interestingly, respondent No.6, who has not filed counter-affidavit till the last hearing of the case, has filed a counter-affidavit, wherein he has narrated his purported efforts to settle the disputes. He has further stated that the petitioner has spurned all the fair offers; that the alleged detainee is bluntly refusing to join her mother – the petitioner and that since being the grandparents *viz.*, respondent Nos.6 and 7, they are in lawful custody of the alleged detainee, and the petitioner can only assert her rights, if any, by availing appropriate legal remedies.

6. The short issue for consideration in this writ petition is whether the alleged detainee is in unlawful custody of respondent Nos.6 and 7 or not.

7. It is not in dispute that after the death of her husband, the petitioner lived with her in-laws i.e., respondent Nos.6 and 7 at the latter's house along with the two minor children. The petitioner alleged that following the quarrel occurred on 04.07.2017, during which she was beaten by respondent No.9 – the brother of her deceased husband, she was necked out of her in-laws' house. In paragraph No.9 of his counter-affidavit, respondent No.6, while denying the said allegation, however, stated that while both the minor children were in their custody, the father of the petitioner forcibly took away the petitioner's son by leaving her daughter with them.

8. The undisputed facts would reveal that the petitioner is no longer living with respondent Nos.6 and 7 and the latter have been retaining the custody of the petitioner's minor daughter against her (petitioner's) will and consent. Having lost her husband, the petitioner becomes the natural guardian for both her children. Even if the grandparents have affection towards their granddaughter, the petitioner, being the widowed mother, cannot be denied the custody of her minor girl child – the alleged detainee and respondent Nos.6 and 7 cannot forcibly retain her custody against the petitioner's will and consent. Perceived from this angle, we have no hesitation to hold that the forcible detention of the alleged detainee by respondent Nos.6 and 7 against the will of her

mother amounts to unlawful detention. Respondent Nos.6 and 7, who obviously tutored the girl child to develop aversion towards her mother – the petitioner, cannot drive the petitioner to undergo ordeals of civil disputes. On the contrary, after handing over the custody of the alleged detainee, respondent Nos.6 and 7 are free to avail the common law remedies, if any, available to them in law seeking her custody before the jurisdictional Court, which in such event, would weigh the balance of convenience keeping in view the welfare of the alleged detainee and decide as to who is entitled to the legal custody of the child. Till this process is completed, the petitioner is entitled to get the custody of her minor daughter restored.

9. From the failure of respondent No.6 to be present along with the alleged detainee in spite of this Court directing him to do so, it is reasonable to presume that he is avoiding to appear before the Court and we perceive this as highly unfair conduct on his part.

10. For the aforementioned reasons, the Writ Petition is allowed. Respondent No.5 accompanied by a woman Constable attached to his Police Station and the petitioner shall take the custody of the alleged detainee *viz.*, S.Aynaaz Thabasum from respondent Nos.6 and 7 in the presence of the petitioner and handover her custody to the petitioner within a period of three days from today.

11. As a sequel to allowing the Writ Petition, I.A.No.1 of 2017 (W.P.M.P.No.49577 of 2017) and I.A.No.1 of 2018 stands disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

16th February, 2018
GHN

