

Crl. W.P. No. 356 of 2018 (O&M)

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. W.P. No. 356 of 2018 (O&M)

DATE OF DECISION: 9.7.2018

Amarjeet Kaur Takhar

.....Petitioner

Versus

State of Punjab and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. K.S. Dadwal, Advocate
for the petitioner.

Mr. Hittan Nehra, Addl. A.G., Punjab.

Mr. Kanwaljit Singh, Senior Advocate with
Mr. Sanjeev Duggal, Advocate
for respondents No. 7 to 9.

DAYA CHAUDHARY, J.

CRM-W-86 of 2018

This application has been filed for placing on record Annexures
R-6 to R-26.

Application is allowed and Annexures R-6 to R-26 are taken on
record.

CRWP No. 356 of 2018

The present petition has been filed by the petitioner under
Article 226 of the Constitution of India for issuance of a writ in the nature
of habeas corpus for searching the detenue, namely, Jaskirat Kaur Takhar,

the minor daughter of the petitioner, who is stated to be Canadian citizen and has been detained by respondents No. 7 and 8 in connivance with respondent No. 9 at Hoshiarpur or any other place to be pointed out by the petitioner. A further prayer has also been made that said detinue be got released immediately and her custody be given to the petitioner with permission to go abroad with petitioner in view of consented order passed by the Supreme Court of British Columbia.

Briefly, the facts of the case as made out in the present petition are that the petitioner was married to respondent No.9 (Jagjit Singh Takhar) on 22.11.2006. While living in Canada, two children, namely, Jaskirat Kaur Takhar (daughter) and Kunwar Singh Takhar (son) were born out of the said wedlock on 30.1.2010 and 26.1.2011, respectively. Due to some matrimonial dispute between the petitioner and her husband, they were not in a position to pull on together. Respondent No. 9 filed a divorce petition against the petitioner before the Supreme Court of British Columbia, Canada. During the proceedings, the matter was settled between the parties. As per settlement dated 26.8.2012, Jaskirat Kaur Takhar (daughter) was to stay with the petitioner, whereas, custody of Kunwar Singh Takhar (son) was given to respondent No.9, which was duly signed by the petitioner as well as respondent No.9. After the settlement arrived at between the parties, a certificate of divorce was issued by the Supreme Court of British Columbia on 17.1.2013, which was made effective from October 27, 2012. Since the custody of minor Jaskirat Kaur Takhar was given to the petitioner, Care Card Personal Health being citizen of Canada was issued to the minor as she was born in Canada. Even social insurance number was also issued to the minor. Alleged detinue Jaskirat Kaur Takhar

is also getting Child Tax benefit, Canada child benefit and petitioner is also depositing 50.00 dollars in Educational Monthly Plan. Furthermore, the petitioner is having Life Insurance of Half Million Dollars to which Jaskirat Kaur Takhar has been nominated as one of the nominee. After divorce between the petitioner and respondent No.9, the petitioner solemnized second marriage with one Jaswinder Singh on 8.11.2017. It is pertinent to mention that after 2012 till 2017, detenue-Jaskirat Kaur Takhar was residing with the petitioner but in the month of January, 2017 when the petitioner came to India along with detenue-Jaskirat Kaur Takhar, she was left with respondents No. 7 and 8. While the petitioner was residing in Canada, she was continuously sending money for her minor daughter, which is clear from the receipts annexed as Annexure P-6. After the second marriage, the petitioner was to go back, respondent No. 7 (brother of the petitioner) insisted that Jaskirat Kaur Takhar be allowed to stay with him to continue her session till March, 2018. The petitioner alone went to Canada and Jaskirat Kaur Takhar stayed in India with brother and sister-in-law of the petitioner. Meanwhile, respondent No. 9 (earlier husband) took her daughter with him from the custody of respondents No. 7 and 8. On knowing this fact, the petitioner came to India on 28.3.2018 and submitted an application to Senior Superintendent of Police, Hoshiapur, which was marked to SHO, Police Station, NRI, Hoshiarpur for the purpose of getting warrant under Section 97 Cr.P.C.

As per case of the petitioner, respondents No. 7 and 8, who are her brother and sister-in-law have handed over the child to respondent No. 9 (earlier husband). In pursuance of the said warrant, the police went to District Jalandhar, where Sarpanch, Lambardar and other persons had

undertaken to produce the minor daughter of the petitioner before Sub Divisional Magistrate on 30.3.2018. Respondents No. 7 to 9 produced the child on 30.3.2018. Statement of respondent No. 9 was also recorded, wherein, it has been stated that divorce had been granted as per mutual consent. He also submitted that respondent No. 7 had informed him that the petitioner had remarried and asked him to take away the daughter. As per case of the petitioner, this foul play was played by respondents no. 7 and 8 in connivance with respondent No. 9 just to grab the property of the petitioner, therefore, the petitioner got cancelled her Power of Attorney on 3.4.2018 vide Cancelled Deed No. 3 dated 3.4.2018. The Sub Divisional Magistrate, Hoshiarpur handed over the custody of minor Jaskirat Kaur Takhar to her maternal uncle-Racchpal Singh (respondent No.7) as the child had also given her consent to go with him and directed both the parties to take out proceedings before the competent Court of law. Aggrieved by said order dated 30.3.2018 passed by Sub Divisional Magistrate, the present petition has been filed by the petitioner for handing over the custody of minor Jaskirat Kaur Takhar being her mother.

Learned counsel for the petitioner contends that the minor-Jaskirat Kaur Takhar is citizen of Canada by birth and the petitioner who is her mother is also residing and earning in Canada. She can easily look after the interest of the child as earlier also she has been sending money to India not only for bringing up her well but for education while staying in India. The petitioner has also invested in many schemes for the welfare of detenue-Jaskirat Kaur Takhar and being the citizen of Canada her interest is to be looked into by the Government of Canada being Canadian citizen and there is no occasion to keep her in India. Learned counsel further submits

that all these factors have not been taken into consideration by learned Sub Divisional Magistrate while passing order of handing over the custody to respondents No. 7 and 8. Learned counsel for the petitioner also submits that the custody of male child is already with the father (respondent No.9) and respondents No. 7 and 8 in connivance with respondent No. 9 have hatched a conspiracy just to grab the property of the petitioner being NRI. Learned counsel has also relied upon the judgments of Hon'ble the Apex Court in the cases of **Smt. Surinder Kaur Sandhu Vs. Harbax Singh Sandhu and another** 1984 AIR (SC) 1224, **Mrs Elizabeth Dinshaw Vs. Arvand M. Dinshaw and another** 1987 (1) SCC 42, **Gohar Begum Vs. Suggi @ Nazma Begum and others** 1960 AIR (SC) 93, **Gaurav Nagpal Vs. Sumedha Nagpal** 2008 (4) RCR (Civil) 928, of this Court in the cases of **Sandeep Kaur Dhillon Vs. State of Punjab and others** (CRWP No. 1144 of 2016 decided on 2.9.2016), **Kulwinder Dhalilwal Vs. State of Punjab and others** 2009 (1) RCR (Civil) 224, **Mrs. Kuldeep Sidhu Vs. Chanan Singh and another** 1988 (1) RCR (Criminal) 534, **Ajay Bansal Vs. State of Punjab and another** 2013 (3) RCR (Civil) 340, **Marilynn Ainat Dhillon Gilmore @ Anita Dhillon Vs. Margret Nijjar and others** 1983 (1) RCR (Criminal) 396 and **Baldev Kaur Vs. General Public and another** 2013 (3) RCR (Civil) 237, in support of his contentions.

Learned senior counsel for respondents No. 7 to 9 has opposed the submissions made by learned counsel for the petitioner by raising a preliminary objection that the petitioner has availed wrong remedy by way of filing the present habeas corpus petition, which is not maintainable. It has also been argued by learned senior counsel for respondents No. 7 to 9 that custody of minor daughter was given by the petitioner to respondents

No. 7 and 8 as per her own free Will. Learned senior counsel for respondents No. 7 to 9 submits that petitioner and respondent No. 9 remained together as husband and wife even after divorce, which is clear from the documents like income tax return, air tickets etc. It has also brought to the notice of this Court that even the minor is not interested to accompany the petitioner. Learned senior counsel for respondents No. 7 to 9 has also relied upon the judgments of Hon'ble the Apex Court in the cases of **Dr. Mrs. Veena Kapoor Vs. Varinder Kumar Kapoor** 1982 AIR (SC) 792, **Nithya Anand Raghavan Vs. State of NCT of Delhi and another** 2017 (3) RCR (Civil) 798, **Prateek Gupta Vs. Shilpi Gupta and others** 2018 (1) RCR (Civil) 210 and of this Court in the cases of **Om Pati Vs. Suraj Bhan** 1997 (4) RCR (Civil) 6, **Smali Bagga Vs. State of Punjab and others** 1996 (2) RRR 202, **Kiran Rani Vs. Krishan Kumar and others** 1995 (1) RCR (Criminal) 430, **Kulwinder Kaur Vs. State of Punjab and others** 2014 (2) RCR (Civil) 1051, **Preet Ranjan Kaur Vs. Harjit Singh and another** 2012 (19) RCR (Criminal) 837, in support of his contentions.

Heard the arguments advanced by learned counsel for the parties and have also gone through the order passed by the Sub Divisional Magistrate, Hoshiarpur and other documents available on the file.

From the arguments and perusal of documents available on the file, it appears that alleged detenue-Jaskirat Kaur Takhar, who is daughter of the petitioner was born in Canada and is a Canadian citizen. It is not disputed that divorce has already been granted between petitioner and respondent No. 9 by Supreme Court of British Columbia. After the divorce, the petitioner remarried with Jaswinder Singh. From the earlier wedlock, the

petitioner is having two children i.e. son, namely, Kunwar Singh Takhar and daughter, namely, Jaskirat Kaur Takhar. As per settlement arrived at between the parties before the Supreme Court of British Columbia, son of the petitioner was to stay with respondent No.9 and daughter with the petitioner. Now in the present case, the dispute is of the custody of daughter of the petitioner, which is with respondents No. 7 and 8, who are brother and sister-in-law of the petitioner. On hearing the arguments, it appears that brother and sister-in-law of the petitioner/maternal uncle and aunt of the alleged detainee-Jaskirat Kaur Takhar are interested in having her custody. The temporary custody of the alleged detainee-Jaskirat Kaur Takhar was given to respondents No. 7 and 8 by Sub Divisional Magistrate, Hoshiarpur with liberty to the parties to take appropriate proceedings before the competent Court. Respondent No. 9, who is earlier husband of the petitioner is also claiming custody of alleged detainee- Jaskirat Kaur Takhar. Several arguments have been raised to show that although divorce was granted but after divorce also petitioner and respondent No. 9 remained together as wife and husband. Their relationship is also reflected in many documents.

At the time of hearing of the case, petitioner and respondents No. 7 to 9 along with both the children were present in the Court. The judgment of the case was reserved on 1.6.2018 as learned senior counsel for respondents No. 7 to 9 requested for some time to supply the written submissions and the same were thereafter supplied. Respondent No. 9 has supplied copy of the petition filed under Sections 7 and 25 of Guardian and Wards Act, 1890 read with Sections 6 and 13 of Hindu Minority and Guardianship Act, 1956 for grant of legal custody of minor daughter

Jaskirat Kaur Takhar, which is stated to be filed in the Court of Sh. Rajesh Ahluwalia, Guardian Judge-cum-ACJ (SD), Nakodar but neither any number nor date of filing is mentioned on the same. It has been signed by respondent No. 9 as well as by Sh. Rohit Narang, Advocate, Civil Courts, Nakodar. Without having date of filing and number, it cannot be ascertained as to whether it has actually been filed or got prepared. Petitioner-Amarjeet Kaur Takhar filed an application before Sub Divisional Magistrate, Hoshiarpur regarding custody of minor daughter, which was given to maternal uncle and aunt (respondents No. 7 and 8) vide order dated 30.3.2018. However a direction was issued to both the parties that they can avail the appropriate remedy for custody of minor girl before the competent authority. The relevant portion of order dated 30.3.2018 is reproduced as under:-

“Therefore, I hereby pass an order for sending the girl Jaskirat Kaur Takhar to her maternal uncle Shri Racchpal Singh because the child has given her consent to go to her maternal uncle and maternal aunt. The police department at his own level can decide the security of the girl and while handing over the girl Jaskirat Kaur Takhar to her maternal uncle Shri Racchpal Singh, can produce his report. Both the parties are hereby directed that they for the custody of the girl Jaskirat Kaur Takhar can take out proceedings before the Hon'ble competent Court.”

It is also relevant to mention here that none of the parties had challenged the aforesaid order passed by Sub Divisional Magistrate, Hoshiarpur, which shows that they have accepted the same. However, the

present criminal writ petition has been filed by the petitioner under Section 226 of the Constitution of India for searching detenue-Jaskirat Kaur Takhar, minor daughter of the petitioner, who is stated to be detained by respondents No. 7 and 8 in connivance with respondent No.9. From the arguments as well as documents available on the file, it is not clear as to whether the petition for custody of child has actually been filed or not as in absence of any case number and date of filing, it cannot be presumed that actually it has been filed.

Keeping in view the facts and circumstances of the case as mentioned above, the present petition is dismissed.

In case any petition for custody of alleged detenue-Jaskirat Kaur Takhar has been filed, the parties are at liberty to pursue with the proceedings. In case no such petition has been filed, the parties are at liberty to avail the appropriate remedy before the competent authority as directed by learned Sub Divisional Magistrate.

9.7.2018
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes