

Crl. W.P. No. 560 of 2018

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. W.P. No. 560 of 2018

DATE OF DECISION:11.10.2018

Mohd. Rashid

.....Petitioner

Versus

State of Punjab and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Vikas Bali, Advocate
for the petitioner.

Ms. Rashmi Attri, AAG, Punjab.

None for respondents No.5 and 6.

DAYA CHAUDHARY, J.

The present petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of habeas corpus to release the detenu from illegal custody of respondents No. 4 to 6.

As per case of the petitioner, petitioner and his wife entered into an adoption agreement with respondents No. 5 and 6 for adopting detenu-Mohd. Ayan, who was only 17 days old at the time of execution of said agreement on 4.3.2008. Since the date of execution of said agreement dated 4.3.2008, detenu had been staying with the petitioner at Ludhiana. In every document like Aadhar Card and school record of the detenu, he has been shown to be the son of the petitioner. On 19.6.2018, respondents No. 5

and 6 who are natural parents of the detenu came to Ludhiana and met him at the residence of the petitioner. Respondents No.5 and 6 insisted to take the detenu to their relatives house, on which, he was allowed to accompany respondents No. 5 and 6 as they assured that he will be sent back after sometime. The detenu was not sent back inspite of giving assurance and even no response has been given to the phone calls of the petitioner. As per averments made in the petition, it was stated by respondents No.5 and 6 that they would not return the detenu unless the property is transferred in his name. A representation was also made to the police authorities but no action has been taken thereupon so far.

Learned counsel for the petitioner contends that as per adoption deed, which was executed validly, the petitioner is father of the detenu and he has been taken by respondents No.5 and 6 and now is in their illegal custody. Learned counsel further contends that the custody of the detenu be given to the petitioner as the detenu was not only brought up by him but was got admitted in the school as well. Learned counsel also contends that the custody of the child cannot be taken away when the child has already been adopted by way of written adoption deed.

In response to notice of motion, reply on behalf of respondents No.1 to 3 has already been filed and the same is on record.

The facts regarding adoption of the detenu and relation with respondents No.5 and 6 are not disputed by learned State counsel. No police proceedings are warranted against respondents No.5 and 6 being natural parents of the child and habeas corpus petition is not maintainable as the petitioner is having remedy to file civil suit against respondents No.5 and 6.

None has appeared on behalf of respondents No.5 and 6 inspite

of service. Hence, they are proceeded ex parte.

Admittedly, the petitioner had adopted detenu-Mohd. Ayan by way of proper adoption deed dated 4.3.2008 with respondents No.5 and 6. Certain documents like Aadhar Card and identity card of the detenu have been placed on record by the petitioner to show his relationship with the detenu, wherein, it has been reflected that he is father of detenu, namely, Mohd. Ayan.

The grievance of the petitioner in the present petition is that the child (detenu) has been taken away by respondents No.5 and 6, whereas, the child (detenu) has been adopted by him by way of executing adoption deed and now said respondents have no legal authority to take the child (detenu) with them. A prayer has also been made to hand over the custody of the child (detenu) being in illegal custody of respondents No.5 and 6, who have not appeared inspite of service. The documents which have been placed on record are matter of evidence, which cannot be tested/ascertained in habeas corpus petition being not maintainable as remedy to file civil suit for handing over the custody of the child before the appropriate Court is available with the petitioner.

Accordingly, the habeas corpus is dismissed being not maintainable.

However, the petitioner is at liberty to file civil suit for custody of the child (detenu) before the appropriate Court.

October 11, 2018
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No