

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1300 of 2019

Arising Out of PS. Case No.- Year-0 Thana- District-

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SONI DEVI W/o Late Mukesh Kumar Sharma Resident of Village - Fatha,
P.S.- Warsaliganj, Dist.- Nawada.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH THE DIRECTOR GENERAL OF POLICE, BIHAR, PATNA Bihar
2. The Superintendent of Police, Nawada. Bihar
3. The S.D.P.O. , Warsaliganj Bihar
4. The S.H.O., warsaliganj P.S.- Nawada. Bihar
5. Shashi Kumar Thakur Son of late Kesar Thakur Resident of Village - Fatha, P.S.- Warsliganj, Distt - Nawada.
6. Ranjay Kumar Son of Shashi Kumar Thakur Resident of Village - Fatha, P.S.- Warsliganj, Distt - Nawada.
7. Lalti Devi W/o Shashi Kumar Thakur Resident of Village - Fatha, P.S.- Warsliganj, Distt - Nawada.

... .. Respondent/s

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Appearance :

For the Petitioner	: Mr. Kamlesh Kumar Pathak, Advocate Mr. Kundan Kumar Singh, Advocate
For the Respondent Nos. 5-7	: Mr. Dr. Anjani Pd. Singh, Advocate
For the State	: Mr. Prabhu Narayan Sharma, AC to AG

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 06-11-2019

Heard the learned counsel for the parties and the

learned counsel for the State.



The matter was entertained earlier in view of the peculiar facts of the present case which stands recorded in our order dated 16.10.2019 which is extracted hereunder:

"Heard learned counsel for the parties.

2. The Court after having noticed the background had passed the following order on 11th of September, 2019:

"This is a case where it is alleged that the petitioner, who is the mother of a one and a half year old child, has been segregated from her child by the grand parents. The dispute obviously is a family dispute but in order to further assess the controversy and the reason for the petitioner being not accepted in the house of the grand parents, it would be appropriate that the opposite parties are put to notice and affidavit is called for from them.

Accordingly, issue notice to Opposite Party Nos. 5, 6 and 7, by both modes, i.e., under ordinary process as well as registered cover with A/D, on steps being taken by the petitioner for



filing requisites etc. within a period of two weeks from today, returnable at an earlier date, i.e., on 14th of October, 2019.

The pendency of this writ petition shall also be informed to them by the Station House Officer-the Respondent No. 4 through a notice dispatched from the police station.

The Respondent Nos. 5, 6 and 7 shall file their affidavit before this Court on or before 14.10.2019.

After filing of the affidavits in case the Court finds to proceed further, the production of the child may be ordered.”

3. On 14th of October, 2019, respondents/opposite parties had put in appearance through a counsel and we directed that the child should be produced before us today.

4. Mr. Shashi Kumar Thakur along with his wife Lalti Devi, who are respondent Nos. 5 and 7 respectively, are present in Court along with the child/Suman Kumar, who has been identified by the parties present.



5. *The child/Suman Kumar is stated to be approximately one and a half years of age and is the only son of the petitioner/Soni Devi, who was married to late Mukesh Kumar Thakur, the son of respondent Nos. 5 and 7. The marriage had taken place in the year 2014 and the father of the child, viz., Mukesh Kumar Thakur, unfortunately died on 11th of July, 2019.*

6. *It appears that some family dispute took place and the petitioner has filed a copy of a settlement that was made at the village level, wherein it was agreed that the child would be living with his paternal grand-parents, viz., respondent Nos. 5 and 7. The petitioner is at present for the past three months after the death of her husband is living with her parents.*

7. *However, the petitioner being the mother and natural guardian has now come-up, contending that she is unable to have any contact with her child for the past three months and that she being the natural guardian and mother, it is not only her rights, but the child also needs protection, care and affection at this tender age. She claims that the child should be handed over to her as she is entitled for his lawful custody.*



8. On a query raised by the Court, the petitioner has stated that she does not intend to remarry at present and, therefore, she will be able to take care of her child. Her father, Mr. Gauri Shankar Thakur, who is also present in Court, seconded the said statement of the petitioner and also undertook to provide all help to the petitioner to maintain the child.

9. We had an interaction with Mr. Gauri Shankar Thakur, the father of the petitioner, who is also present in Court and, prima facie, we could gather that on account of the bickerings between the two families, the petitioner is not in a position at present to visit her in-laws, viz., respondent Nos. 5 and 7, to have the company of her child.

10. As an interim measure, we, therefore, find it expedient to make an arrangement in the paramount interest of the child that the child should be handed-over to the petitioner for a period of fifteen days and the petitioner will have the custody of the child, whereafter the petitioner will again appear on the date fixed in order to enable this Court to proceed to consider any further orders being passed with regard to the custody of the child.



11. *This arrangement, we find it necessary on the principle that there cannot be a substitute for a mother that too even for a child who is only one and a half years of age.*

12. *At the same time, the love and affection of grand-parents also cannot be denied and we, therefore, provide that respondent Nos. 5 and 7 shall be permitted by the petitioner and by Mr. Gauri Shankar Thakur, the father of the petitioner, to visit their house and have company of the child as per their convenience during day hours for at least two hours, subject to the convenience of the parties. They shall mutually inform each other about the visiting time of respondent Nos. 5 and 7 to the house of the petitioner.*

13. *The aforesaid interim arrangement has been made in the presence of the parties and the matter shall again be now taken-up after fifteen days, i.e., on 06th of November, 2019. The child's custody has been given to the petitioner by the respondent Nos. 5 and 7 in the presence of the Court that shall be subject to any further orders to be passed in this regard.*



14. The parties are directed, therefore, to be present on the said date and the petitioner shall produce the child before the Court.

15. List on 06th of November, 2019.”

The petitioner is present in Court along with the child and apparently, in our view, we find the child to be in no discomfort at present and appears to have mingled back in the company of his mother.

Learned counsel for the respondent nos. 5 and 7 has however submitted that they being the grand-parents and this being the only child of their late son, complications might arise in future if the petitioner remarries, and therefore, they should be given visiting rights and it may be left upon them to seek custody of the child, in future, if so required, keeping in view any further development with regard to the marital status of the petitioner.

Having heard the learned counsel for the parties and having assessed the arguments, we dispose of this *Habeas Corpus* petition making the interim arrangement



recorded by us in Paragraph 10 to 13 in our order dated 16.10.2019 absolute which arrangement shall continue with the custody of the child with the petitioner until a court of competent jurisdiction directs otherwise or till he attains majority.

It shall be open to the respondent nos. 5 to 7 to seek their remedy before the appropriate forum in the event they find that in between the custody of the child may require any further arrangement.

The writ petition, therefore, stands disposed of accordingly with the above directions.

(Amreshwar Pratap Sahi, CJ)

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

