

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1266 OF 2019

Sohil Premkumar Kothari ... **Petitioner**

V/s.

The State of Maharashtra & Ors. ... **Respondents**

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Mr.Satish Maneshinde with Mr.A.S.Pal Ms.Shaanal Shah with Mr.Anand Damle with Mr.Ameya Chaudhari i/b. Mehta & Padamsey, Advocate for the Petitioner.

Mrs.Taubon Irani with Mr.Yusuf Iqbal Yusuf with Neville Majra, Anvee Mehta with Ms.Shaista Pathan with Ms.Gyanika Kochar i/b. Taubon Irani, Advocate for the Respondent No.3.

Mr.Sanjog Parab with Mr.Yusuf Iqbal Yusuf with Neville Majra, Anvee Mehta with Ms.Shaista Pathan with Ms.Gyanika Kochar i/b. Y & A Legal Advocate for the Respondent Nos.4 and 5.

Mr.Yusuf Iqbal Yusuf with Neville Majra, Anvee Mehta with Ms.Shaista Pathan with Ms.Gyanika Kochar i/b. Neville Majra, Advocate for the Respondent Nos.6 and 7.

Mrs.Kalpana Ashar with Mr.Yusuf Iqbal Yusuf with Neville Majra, Anvee Mehta with Ms.Shaista Pathan with Ms.Gyanika Kochar i/b. Anvee Mehta, Advocate for the Respondent No.8.

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**CORAM : INDRAJIT MAHANTY &
 A.M.BADAR, JJ.**

DATED : 12th MARCH 2019.

P.C. :

1 Heard the learned Counsel for the respective parties.

2 This Writ Petition is for the writ of *Habeas Corpus* filed by cousin brother of respondent No.9. By order dated 11th March 2019, the following directions were passed :

“1 Learned Counsel for the petitioner is directed to implead Mrs.Rachna Vishal Doshi the alleged abducted cousin of the Petitioner as Respondent No.9, during the course of the day.

2 Issue notice to the added respondent No.9-Mrs.Rachna Vishal Doshi returnable on 12th March 2019. Learned APP waives notice on behalf of respondent Nos.1 and 2. In addition to the Court notice, counsel for the Petitioner to serve newly added respondent No.9 by private notice and file affidavit of service to that effect. The police authorities of Gamdevi Police Station are also requested to ensure service on newly added respondent No.9-Mrs. Rachna Vishal Doshi.

3 The newly added respondent No.9 is at liberty to remain present in the course of the proceedings and to file affidavit in reply if she so desires.

 All the concerned to act on the authenticated copy of this Order.

 Matter be placed on 12th March 2019.”

3 Today, when the matter was taken up, respondent No.9 namely Rachna Vishal Doshi appeared in person and filed an affidavit narrating various difficulties encountered by her in the present case. Since the present case arises for consideration for writ of *Habeas Corpus*, we do not intend to enter in the various issues raised in the affidavit in view of exercise of our jurisdiction in such matters. It is stated in her affidavit that on 3rd March 2019 while she was on a way back from her trip she received a email from respondent No.3 husband that he had filed a divorce petition and that he had obtained Order of status-quo of the custody of the children which is marked as Exhibit A. Respondent No.9 has further stated that she was not allowed to enter in the matrimonial house and she was not allowed to meet her children and she went and lodged complaint at the Gramdevi Police Station and it is only with the assistant of the police authority she was given access to her matrimonial house.

4 In the affidavit she has narrated various difficulties that she is facing while living in the said house and further she has averred that her husband respondent No.3 came to the matrimonial house on 10th March 2019 without the children accompanying him. It is further averred that her entry and egress in the matrimonial house have been substantially curtailed since the main lock of the house has been changed in the meanwhile and she does not possess the key for allowing her entry and egress from the house.

5 The learned Counsel appearing for the petitioner supports the submissions contained in the affidavit made by respondent No.9.

6 On the other hand, the learned Counsel appearing for the respondent Nos.4 and 5 (in-laws) of respondent No.9 strenuously denied the allegations made by the respondent No.9 that she has not been provided with necessary food etc. to the respondent No.9. The learned Counsel appearing for respondent No.3 submits that her husband has initiated a matrimonial proceedings before the Family Court at Bandra, Mumbai bearing No. A-532/2019 and in the said proceedings, in Interim Application No.31 of 2019, the following Order has been passed.

“Read application and heard learned Counsel for husband. To avoid complications, the respondent No.1 is directed to maintain the status quo in respect of children as on today by the time till further Order on next date”

Learned Counsel for respondent No.3 submits that the next date fixed by the learned Family Judge is the 18th March 2019.

7 After hearing the learned Counsel for the respective parties and on perusing the affidavit filed by respondent No.9 and having heard respondent No.4 (father-in-law) and respondent No.9 in person.

8 Presently respondent No.9 is residing in her matrimonial house. Therefore, we direct the respondent Nos.4 and 5 to hand over a copy of key of the main entrance to the respondent No.9 by this evening in order to enable her entry and exit from the house as per her need. The Respondent No.9 shall keep in mind and consideration the advanced age of the respondent Nos.4 and 5 and other family members residing in the house. Respondent No.9 is requested to respect their needs and to ensure that no disturbance is caused to them.

9 In the present writ of *Habeas Corpus* further prayer is for production of two children of the respondent Nos.3 and 9 namely Master Aman Vishal Doshi and Miss Aria Vishal Doshi. In so far as this prayer of petitioner is concerned, in view of the Order passed by the Family Court, as noted herein above, since temporary custody has been provided in favour of the respondent No.3, in view of the said Order, this Court is not entering into issue about their production except directing that the respondent No.3 shall be responsible for two children until the Family Court decide the issue of custody finally. The Respondent No.9 is at liberty to take such steps as she may be advised regarding the custody of the children before the learned Family Judge.

10 We also note herein that in the event respondent No.9 faces any difficulty, she may contact the local police station, who shall provide her necessary assistance to ensure the compliance of

our directions. Respondents Nos.4 to 5 have the liberty to approach the local Gramdevi Police Station if any unwarranted situation arises. However, we hope and trust that the parties concerned being directly related to each other as father-in-law, mother-in-law as well as daughter-in-law, they should respect each others dignity and ensure that no difficulty is caused to the right of residence of the respondent No.9 till the matter is adjudicated by the competent Family Court.

11 We further observe herein that none of our observations herein shall have any impact on the pending proceedings initiated by the respondent No.3 before the Family Court as well as the proceedings initiated by respondent Nos.4 and 5 before the appropriate forum and the said Courts/Tribunals should arrive at such conclusion as per evidence produced before the said Court/Tribunal. Reference made in this Order to the affidavit filed by the respondent No.9 are only for the purpose of disposal of the present Writ Petition of *Habeas Corpus*.

12 With these directions and observations the Writ Petition of *Habeas Corpus* is disposed of accordingly.

(A.M.BADAR, J.)

(INDRAJIT MAHANTY, J.)