

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE ACTING CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.6435 OF 2019

DATE: 22.04.2019

BETWEEN:

Smt. Shailaja

... Petitioner

AND

**The State of Telangana, rep. by its Principal Secretary,
And others.**

... Respondents

Counsel for the petitioner : M/s. Chekuri Yadagari

Petitioner: Smt. Shailaja also present

**Counsel for respondents 1 to 4: Sri A. Manoj Kumar,
Assistant Government Pleader for Home,
Attached to Government Pleader for Home.**

**Respondent No.5 : Mr Mahesh B.P.,
present party-in-person**

**Counsel for respondent No.6: Mr S.V.Giri Kumar,
Addl. Government Advocate,
High Court of Karnataka.**

**Mr Annamaiah, Deputy Commissioner of Police,
South Division, Bengaluru City, is present.**

The Court made the following:-

ORDER: (per the Hon'ble the Acting Chief Justice Raghvendra Singh Chauhan)

Smt. Shailaja, the petitioner, and Mr. Mahesh B.P., the respondent No.5, are present before this Court in compliance of the Order, dated 18.04.2019. Mr. Annamaiah, Deputy Commissioner of Police, South Division, Bengaluru City, is also present, in compliance of the Order, dated 18.04.2019.

This Court has spoken to both the parties in the Chamber.

Smt. Shailaja has filed this Habeas Corpus petition *inter alia* on the ground that her minor son, Master Dhyaan, is illegally being detained by the respondent No.5, Mr. Mahesh B.P.

Briefly the facts of the case are that according to the petitioner, on 26.02.2012, she was married to the respondent No.5. During the wedlock, on 27.05.2013, they were blessed with Master Dhyaan. However, subsequently, differences arose between the parties and the parties parted their ways. Since the petitioner claims that she has been subjected to mental and physical cruelty by the respondent No.5, and his family members, on 14.01.2017, she lodged an F.I.R., against the respondent No.5, and his family members, for the offence under Section 498-A IPC, and under Sections 3 and 4 of the Dowry Prohibition Act. According to her, as a counter-blast, the respondent No.5 has filed a divorce petition before the V Additional Principal Judge, Family Court, at Bengaluru. During the pendency of the said petition, by Order, dated 25.09.2018, the learned Family Court had granted the visitation rights to the respondent No.5. According to the learned Family Court, the respondent No.5 would have the right to visit the child on every third Saturday of the month in the premises of the Bengaluru Mediation Centre (BMC), between 3:00 p.m., and

5:30 p.m., till disposal of the petition. In case, the third Saturday happens to be general holiday, then the respondent No.5 would have the right to visit the child on fourth Saturday in the premises of the BMC. Moreover, on the first Saturday of every month, the respondent No.5 would visit the child at the residence of the petitioner between 3:00 p.m., and 5:00 p.m. The said order has neither been challenged nor request has been made for modification of the said order by the respondent No.5, so far.

The petitioner further claims that on 02.03.2019, the respondent No.5, along with his parents, came to her residence, and asked her to permit them to take the child outside for eating purpose. Believing their assurance that the child would be returned immediately after he has been fed by them, she handed over the custody of the child to the respondent No.5. However, ever since then, the respondent No.5 has refused to handover the custody of the child. According to the petitioner, despite her repeated requests, the respondent No.5 has not handed over the custody of the child to her. In fact, eventually, he has blocked all her telephone calls. Thus, the petitioner claims that the child is being illegally detained by the respondent No.5, as the custody of the child by the respondent No.5 is contrary and in violation of the Order, dated 25.09.2018, passed by the learned Family Court.

In his defence, Mr. Mahesh B.P., the respondent No.5, submits that the petitioner was eager to have the child admitted in a school, which would have cost both of them an amount of Rs.1.5 lakhs, there was some discussion between him and the petitioner. However, when he sought some time to think over the investment to be made, according to him, the petitioner handed over the

custody of the child, and told him “to keep the child as he is not willing to pay the tuition fee of the child”. Therefore, according to him, he is keeping the custody of the child as it is in the benefit of the child himself. Thus, according to him, he is merely discharging his duty as a father. Therefore, according to him, the custody of the child with him is not an illegal one, but is a legal one. He further submits that he has already filed an application under the Guardianship and Wards Act, which is presently pending before the Family Court, Bengaluru.

Heard both the parties in person.

Admittedly, the application filed under the Guardianship and Wards Act is presently pending before the Family Court, Bengaluru, and no final order, on the same, has been passed so far. Undoubtedly, the Order, dated 25.09.2018, giving limited visitation rights to the respondent No.5 holds the field. For, the said order has neither been challenged, nor set aside, nor modified by any Court of law. Therefore, the respondent No.5 is only having visitation rights, and does not have the right to keep the custody of the child. According to both the parties, the custody of the child is presently with the respondent No.5. However, under the Order, dated 25.09.2018, the custody cannot be with the respondent No.5. Therefore, the custody of the child with the respondent No.5 is patently illegal as it is in violation of the Order, dated 25.09.2018. Once the said order was passed, the respondent No.5 is legally bound to adhere to the said order. No matter how laudable his intentions may be, he is not permitted to violate the said order. Thus, this Court is of the opinion that continued custody of the child with the respondent No.5 is an illegal custody.

Since Master Dhyaan has been produced before this Court in compliance of the Order, dated 18.04.2019, the respondent No.5, and other respondents are directed to ensure that the custody of the child is restored to the petitioner immediately.

Therefore, the Habeas Corpus petition is hereby allowed.

(RAGHVENDRA SINGH CHAUHAN, ACJ)

(A.RAJASHEKER REDDY, J)

22.04.2019
pln

