

HIGH COURT FOR THE STATE OF TELANGANA

**THE HON'BLE THE ACTING CHIEF JUSTICE
RAGHVENDRA SINGH CHAUHAN**

AND

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

W.P.No.10260 of 2019

Date: 10.06.2019

Between:

Mohd. Younus

...Petitioner

and

The State of Telangana,
Rep. by its Principal Secretary (Home),
Secretariat Buildings,
Hyderabad, and two others.

...Respondents

Counsel for the petitioner: Mr. V. Balaiah

**Counsel for the respondent Nos.1 & 2: GP attached to the
office of the Advocate General**

The Court made the following:

ORDER: *(per Hon'ble Sri Justice Raghvendra Singh Chauhan)*

Mohd. Younus, the petitioner, has filed the present Habeas Corpus Petition ostensibly on the ground that his two children, namely, Hureen Fathima, aged 5 years, and Mohd. Fahad, aged 3 years, are being detained illegally by his wife-Mrs.Saba Unnisa, the respondent No.3.

Mr. V. Balaiah, the learned counsel for the petitioner, pleads that marital disputes have arisen between the petitioner and the respondent No.3. Due to the mental illness of the respondent No.3, the children should not be left in her custody. For, her company may adversely affect the growth of the two children. *Secondly*, since the father is the natural guardian, his right to custody of the children has to be preferred to the right of the mother. Therefore, the custody of the two children should be restored to the petitioner.

On the other hand, Mr. Mohammed Hasnain Abbas, the learned counsel for the respondent No.3, submits that there is no evidence to show that the respondent No.3 is suffering from any mental problem. *Secondly*, since the children are aged five years and less, it is the mother, who is the natural guardian. Therefore, if the custody of the children is with the mother, the custody cannot be held to be any illegal one. *Lastly*, the petitioner has already filed an Original Petition before the concerned Family Court for seeking the custody of the children in the form of O.P.No.707 of 2019 before the Family Court, City Civil Court, Hyderabad. Therefore, the

petitioner should not be permitted to go forum shopping by filing the present Habeas Corpus Petition.

Heard the learned counsel for the parties.

It is, indeed, trite to state that till the age of five, the mother is the natural guardian of the children. Therefore, if the custody of the children is with the respondent No.3, the mother, it cannot be deemed to be any illegal detention of the children. Moreover, there is not an iota of evidence produced by the petitioner in order to establish his plea that the respondent No.3 is suffering from any mental problems.

Further, since the petitioner has already filed his application before the Family Court, City Civil Court, Hyderabad, for seeking the custody of the children, he cannot be permitted to go forum shopping by filing the present Habeas Corpus Petition. Hence, the filing of the present Habeas Corpus Petition is an abuse of process of law.

For the reasons stated above, this Court does not find any merit in the writ of Habeas Corpus.

The writ petition is accordingly dismissed. There shall be no order as to costs.

As a sequel, miscellaneous petitions, pending if any, stand dismissed as infructuous.

(RAGHVENDRA SINGH CHAUHAN, ACJ)

Date: 10.06.2019

(Dr. SHAMEEM AKTHER, J)

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