

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.10767 of 2019

Date: 10.06.2019

Between:

Kumbala Padma

...Petitioner

and

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

...Respondents

Counsel for the petitioner: Mr. M. Durga Prasad

**Counsel for the respondent Nos.1 to 5: GP attached to the
office of the Advocate General**

The Court made the following:

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

Mrs.Kumbala Padma, the petitioner, has filed the present Habeas Corpus Petition ostensibly on the ground that her husband, Kumbala Narsimlu, the respondent No.6, is illegally detaining their children, namely, Keerthi Prasanna, aged 10 years, and Kireet Kumar, aged 8 years.

By order dated 06.06.2019, this Court had directed the respondent Nos.1 to 5 to produce both the children before this Court. Consequently, today, both the children have been produced before this Court.

Mr.M.Durga Prasad, the learned counsel for the petitioner, pleads that marital disputes arose between the petitioner and the respondent No.6. Although the children were staying with the petitioner, subsequently, the respondent No.5-the Station House Officer, Gajwel Police Station, took the children away from her, and handed over the possession of the children to the respondent No.6. Ever since then, the respondent No.6 is refusing to handover the custody of the children to the petitioner. Therefore, the children are being illegally detained by the respondent No.6. Hence, their custody should be restored to the petitioner forthwith.

On the other hand, the learned counsel for the respondent Nos. 1 to 5 has raised an objection about the maintainability of the present Habeas Corpus Petition. For according to the learned counsel, the issue is with regard to the custody of the children. Therefore, the petitioner has sufficient efficacious alternative remedy of filing an application for custody of the children in the competent Family Court. Moreover, he submits that since the children are above the age of five years, the petitioner cannot claim

that she is the natural guardian of the children. In fact, after the age of five, it is the father, who becomes the natural guardian. Therefore, according to the learned counsel, the writ of Habeas Corpus is highly misconceived.

Heard the learned counsel for the parties.

Since the issue is with regard to the custody of the children, the petitioner has an efficacious alternative remedy of applying for the custody of the children before the competent Family Court. Therefore, the present Habeas Corpus Petition is highly misplaced.

Furthermore, since the father does have the right to have the custody of the children, merely because the custody of the children had been restored to the father by the respondent No.5, it would not make their custody an illegal one.

For the reasons stated above, this Court does not find any merit in the writ of Habeas Corpus. The writ petition is accordingly dismissed. By way of abundant caution, it is hereby clarified that any observations made by this Court shall not influence the decision of the competent Family Court in case an application for the child custody is filed by the petitioner against the respondent No.6. 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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