

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY

WRIT PETITION No.20019 of 2019

26.09.2019

Between:

Juvvadi Vamshi Krishna

...Petitioner

and

The State of Telangana and another

...Respondents

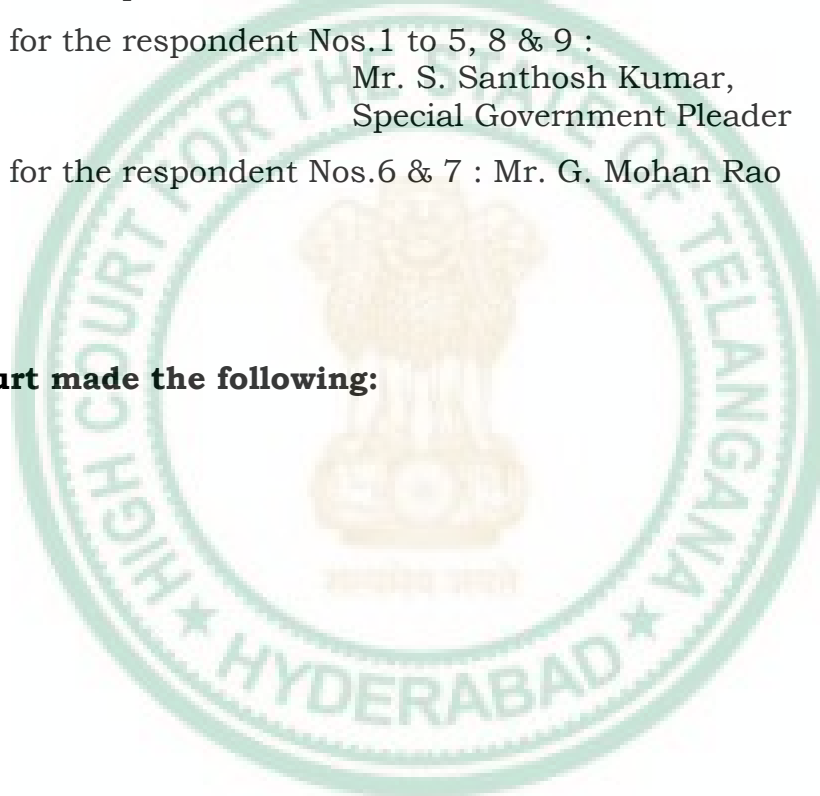
Counsel for the petitioner: Mr. D. Madhava Rao

Counsel for the respondent Nos.1 to 5, 8 & 9 :

Mr. S. Santhosh Kumar,
Special Government Pleader

Counsel for the respondent Nos.6 & 7 : Mr. G. Mohan Rao

The Court made the following:



ORDER: (Per the Hon'ble the Chief Justice Sri Raghvendra Singh Chauhan)

Mr. Juvvadi Vamshi Krishna, the petitioner, has filed the present Habeas Corpus Writ Petition, *inter alia*, on the ground that his daughter, Juvvadi Medini, is being illegally detained by the respondent Nos.6 and 7, the maternal uncles. Therefore, her custody with the maternal uncles is an illegal one.

Briefly the facts of the case are that in February, 2011 the petitioner and Juvvadi Srilatha, the sister of the respondent Nos.6 and 7, were married in Hyderabad. According to the respondent Nos.6 and 7, immediately after the marriage, Juvvadi Srilatha was ill-treated by the petitioner's parents and by the petitioner, due to lack of dowry which was promised but was never delivered during the marriage. Despite the fact that the petitioner went to England after his marriage, Smt. Juvvadi Srilatha was not permitted to join her husband for some time. It is only in February, 2012 that finally she could join her husband in England. The couple stayed in London, where Juvvadi Srilatha also joined an IT company. During their stay in London, according to the respondent Nos.6 and 7, there were certain differences that arose between the couple. On 12.11.2017, i.e. after a lapse of five years, the couple was blessed with a daughter, baby Medini.

According to the respondent Nos.6 and 7, the petitioner's family was not happy with the birth of a daughter. Due to the harassment allegedly meted out by the mother-in-law, who had joined Juvvadi Srilatha in London, on 02.02.2018 Juvvadi Srilatha tried to commit suicide by walking on a railway track in London. However, she was miraculously saved. Certain reports were filed by the police in London. In December, 2018 the couple came back to

India. Despite the request of Juvvadi Srilatha to the petitioner to take her back to London, he refused to do so. He went back to London without even informing his address. In February, 2019, hoping to discover her husband in London, Juvvadi Srilatha went back to London. But unable to find her husband, she returned to India. During her stay in India, she continued to stay with her parents and brothers. But, unable to face the embarrassment for living separately from her husband, unfortunately, on 06.05.2019 Juvvadi Srilatha committed suicide by consuming poison at Mumbai.

According to the respondent Nos.6 and 7, immediately the petitioner was informed about the sudden demise of his wife. Despite their repeated requests to the petitioner, who was available in India, that too in Hyderabad, to perform the last rites of his wife, according to Hindu rites and customs, he failed to do so till certain agreements were reached between the parties. Therefore, after negotiations, three agreements were allegedly entered into between the parties. One of the agreements stated that the petitioner's in-laws would not file any case against the petitioner, or his family members. Another agreement also stated that the custody of the child will be left with the respondent Nos.6 and 7. It was also agreed upon that the petitioner would pay Rs.25,000/- per month for the maintenance of the child, and would transfer 50% share of his immovable properties in favour of the minor daughter. It is only upon entering into these agreements, copies of which have been produced by the respondent Nos.6 and 7 before this Court, that the petitioner performed the last rites of his wife. According to the respondent Nos.6 and 7, the petitioner has not interacted with the minor child since 2018, i.e ever since Juvvadi Srilatha came back to India.

Mr. D. Madhava Rao, the learned counsel for the petitioner, has strenuously contended that the reports submitted by the British Transport Police, dated 03.02.2018, do not indicate that there were any disputes or difficulties in the marital life of the couple. Even after Juvvadi Srilatha was referred to a Psychiatrist and was hospitalized for some time, there is no indication that there were any difficulties or harassment meted out to Srilatha, while she stayed with the petitioner in London.

Secondly, the learned counsel pleads that according to Section 6 of the Hindu Minority and Guardianship Act, 1956 ("the Act", for short), it is the father who is the natural guardian of a child. Therefore, the father is entitled to have the custody of the child. In order to buttress this plea, the learned counsel has relied upon the case of **Tejaswini Gaud and others vs. Shekhar Jagdish Prasad Tewari and others [(2019) 7 SCC 42]**. Thus, according to the learned counsel, it is the father, i.e. the petitioner, who should be handed over the custody of the child. Hence, the custody of the child with the maternal uncles is an illegal one.

Heard the learned counsel for the parties, perused the case laws cited at the Bar and considered the documents submitted by both the parties.

The petitioner has filed the discharge summary issued by the Bethlem Royal Hospital, Beckenham, Kent, England. According to the discharge summary, Smt. Srilatha was hospitalized on 03.02.2018, i.e the date on which she tried to commit suicide. She was not discharged till 09.05.2018. Thus, she was in hospital for a period of three months. According to the said discharge summary, *"she described an altercation between herself and her mother-in-law on the evening prior to the incident, in which she felt extremely*

criticized. She felt that her husband had not stood up for her and she felt that she had lost her only emotional support. She felt that this event was related to her behaviour the next day". The psychiatrist has further noted that "it became clear that there had been a lot of conflict between the couple since Sri had joined Vamshi in the UK, which they had not been able to resolve. Each partner had a different personality style and expectations of each other. Vamshi disclosed that they had almost reached the decision to separate before the arrival of Medini, but the wider family on both sides had encouraged them to stay together, suggesting that things would change when they started a family. Vamshi also disclosed that Sri had left the house on several occasions before the incident following arguments and had stayed out for a few hours at a time. She has also rung him on at least one occasion saying that she would put herself under a train. She had not however made any attempts to harm herself before the incident, and she had left the house on the day of the incident without warning. He had tried to call her. She had rung him back only after the incident had taken place. The couple sessions served to highlight these differences, but not to begin to resolve them. Both partners decided that a return to India, with Sri staying with her own family until she felt stronger and more confident in herself was the safest next step".

A bare perusal of the said report of the Psychiatrist, *prima facie*, seems to support the contention raised by the respondent Nos.6 and 7 that there were differences between the couple. Therefore, the learned counsel for the petitioner is unjustified in claiming that the couple had lived happily in London.

Admittedly, the mother and the child had come back to India on 13.05.2018. Undoubtedly, almost a year later i.e on 06.05.2019, unfortunately, Juvvadi Srilatha committed suicide. Therefore, for the

period of one year from 13.05.2018 to 06.05.2019, there was no physical interaction between the father and the daughter.

The respondent Nos.6 and 7 have filed copies of the alleged agreements, which were entered into between the parties. The learned counsel for the petitioner has not questioned the existence of these agreements. According to the agreement letter dated 08.05.2019, it was decided that *“the two maternal uncles, namely Peechara Venkateswar Rao and Peechara Sreedhar Rao, shall be the nominees and guardians of the child”*. According to another agreement letter, dated 08.05.2019, it was decided that *“the girl child shall be in the custody of the maternal uncles. They shall also have the full rights regarding maintenance of the movable and immovable properties that will accrue to the girl child”*. It was also decided that *“the father of the girl child should give Rs.25,000/- towards monthly maintenance for the baby”*. It was further decided that *“he shall take the responsibility of giving money as and when necessary for the purpose of the baby’s education, health, insurance, customary celebrations, major expenses, from time to time”*. Thus, according to these two agreements, *prima facie*, the father has relinquished his rights over the daughter by handing over her custody to the respondent Nos.6 and 7. Once the right has been relinquished by the father, the learned counsel for the petitioner is unjustified in claiming that the custody is an illegal one.

It is, indeed, trite to state that while dealing with the question of child custody, the proper remedy lies in filing an application for seeking the child custody before the Family Court. A Habeas Corpus Writ Petition may not be the proper remedy for seeking custody of the child. For, in many cases, there might be disputed questions of facts. As pointed above, there are disputed questions of facts, which are

involved in the present case. Therefore, this Court is not equipped to decide the disputed questions of facts which would have a great bearing on the welfare of the child. Needless to say, it is the welfare of the child and the interest of the child which is of paramount importance while deciding as to which party should have the custody of the child.

Admittedly, the child is less than two years old. Admittedly, she has been staying with her maternal side, and with the maternal uncles, since 13.05.2018. Thus, she has been living in a house with people with whom she is familiar, with people with whom she has developed an emotional and physical bonding, with people who have looked after her every need. Therefore, to wrench the child away from surroundings she is familiar with, to take the child away from the people whose faces, gestures, language and physical presence the child is used to, for over a period of one and half years, certainly would not be in the interest of the child. For, the children of such tender age have a very delicate psychology, which may be adversely affected, if there is a sudden change of place, surroundings, and people.

Obviously, for the child, the father is a total stranger, as the child has not seen him and has had no physical interaction with him for a period of one and half years. Therefore, to suddenly give the custody of the child to the petitioner may not only adversely affect the psychology of the child, but may also adversely affect the emotions of the child. The child will unnecessarily find herself with a total stranger, and in a surrounding which is unknown and unfamiliar. Therefore, to suddenly change the custody of the child from the maternal uncles to the father would not be in the interest of the child. A Habeas Corpus proceeding is too short a proceeding to

finally decide the delicate issue as to who should have the custody of the child.

Even in the case of **Tejaswini Gaud** (supra), the Hon'ble Supreme Court has opined as under :-

“In child custody matters, the ordinary remedy lies only under the Hindu Minority and Guardianship Act or the Guardians and Wards Act as the case may be. In cases arising out of the proceedings under the Guardians and Wards Act, the jurisdiction of the court is determined by whether the minor ordinarily resides within the area on which the court exercises such jurisdiction. There are significant differences between the enquiry under the Guardians and Wards Act and the exercise of powers by a writ court which is summary in nature. What is important is the welfare of the child. In the writ court, rights are determined only on the basis of affidavits. Where the court is of the view that a detailed enquiry is required, the court may decline to exercise the extraordinary jurisdiction and direct the parties to approach the civil court. It is only in exceptional cases, the rights of the parties to the custody of the minor will be determined in exercise of extraordinary jurisdiction on a petition for habeas corpus.” (Emphasis added)

Although, the learned counsel for the petitioner has stressed upon the case of **Tejaswini Gaud** (supra), in order to argue that in the said case, the custody of the minor child was, indeed, handed over to the father, but the Hon'ble Supreme Court has repeatedly opined that a decision should not to be treated as a provision of law. Each case depends on its own peculiar facts and circumstances. Therefore, merely because the custody of the minor child was handed over to the father in the case of **Tejaswini Gaud** (supra), the case does not necessarily bind the discretion of this Court. This Court is required to decide the issue of custody of the child on the basis of the peculiar facts and circumstances of the present case.

In the case of **Gaurav Nagpal vs. Sumedha Nagpal [2009 (1) ALT 1 (SC)]**, the Hon'ble Supreme Court has clearly opined as under:-

“The word “welfare” used in Section 13 of the Act has to be construed literally and must be taken in its widest sense. The moral and ethical welfare of the child must also weigh with the Court as well as its physical well being. Though the provisions of the special statutes which govern the rights of the parents or guardians may be taken into consideration, there is nothing which can stand in the way of the Court exercising its parens patriae jurisdiction arising in such cases.”

For the reasons stated above, and considering the interest of the child as paramount, this Court does not find any merit in the present Habeas Corpus Writ Petition; it is, hereby, dismissed.

However, it is hereby clarified that any observations made by this Court shall not influence the finding of the Family Court, which the petitioner may approach for seeking the custody of his daughter. There shall be no order as to costs.

The miscellaneous petitions pending, if any, shall stand closed.

RAGHVENDRA SINGH CHAUHAN, CJ

A. ABHISHEK REDDY, J

26th September, 2019
JSU

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