

High Court for the State of Telangana

The Hon'ble The Chief Justice Raghvendra Singh Chauhan

and

The Hon'ble Sri Justice A. Abhishek Reddy

W.P. No. 23790 of 2019

Date: 06-11-2019

Between:

Priya Yadav

...Petitioner

And

The State of Telangana
Rep. by its Prl. Secretary
Home Dept., Secretariat,
Hyderabad and 5 others

...Respondents

Counsel for the petitioner: Mr. D. Raghavendar Rao

Counsel for the respondents: Mr. Sripathi Santosh Kumar

GP attached to the office of the Advocate General

The Court made the following:

Order: (per Hon'ble The Chief Justice Raghvendra Singh Chauhan)

Mrs. Priya Yadav, the petitioner, has filed the present Habeas Corpus petition ostensibly on the ground that her husband, *namely* Dr. Amardeep Yadav (respondent No. 6), has taken both their children, *namely* Devyan Yadav, aged about eight years, and Tejas Yadav, aged about six years, out of her custody without her permission.

According to the petitioner, her husband had come to her matrimonial home, and had requested her that he wants to meet both the children. In good faith, she handed over the custody of both the children to him. But, to her utter surprise, respondent No. 6 whisked away the children, and took them to his parental house at Gurugram. Moreover, according to the petitioner, ever since the children have been taken away by respondent No. 6, she has not been able to speak to them. Hence, the present Habeas Corpus petition before this Court.

On 31-10-2019, the learned counsel for the petitioner had not only narrated the above facts, but had also vehemently pleaded that respondent No. 6 is not sending the children to the school. Therefore, their education is being jeopardized by respondent No. 6.

By order dated 31-10-2019, this Court had directed respondent Nos. 1 to 5 to ensure that both the children are produced before this Court today. Consequently, respondent No. 6 has appeared today before this Court along with both the children. This Court had an occasion to speak to respondent No. 6, and to both his children.

Respondent No. 6 informs this Court that his parental house is in Gurugram. Although he is working in Yashoda Hospital at Hyderabad, he has got both his children admitted in the Delhi Public School at Gurugram. The children are being looked after by their grand parents with whom they have grown up on and off. Moreover, he informs this Court that he has already filed a petition under Section 6(a) of the Hindu Minority and Guardianship Act, 1956, read with Sections 6, 7, 8 and 9 of the Guardian and Wards Act, 1890, before the Family Court at Gurugram, for the custody of both the children.

This Court also had an occasion to speak to both the children. While Master Devyan Yadav informs this Court that he is studying in Class III, Master Tejas Yadav informs that he is studying in Class I.

The learned counsel for the petitioner has reiterated the contention raised by him on 31-10-2019. He further emphasized the fact that the children have been taken away from the custody of the petitioner without her consent and knowledge, and in a rather clandestine manner. Therefore, according to him, the custody of the children with the father is an illegal one. Moreover, according to him, if fathers are permitted to whisk away their children from the custody of their mothers, it will create a bad precedent. Therefore, according to him, the custody of the children with the father, notwithstanding the law, continues to be an illegal one.

Heard the learned counsel for both sides.

It is, indeed, trite to state that once a child completes the age of five, the father becomes the natural guardian of the children. Therefore, the father does have the right to have the custody of the children. Merely because the custody of the children may have been obtained through clandestine means, it would not transform their custody from legal one to an illegal one.

Moreover, respondent No. 6 has already filed a petition seeking custody of the children before the Family Court at

Gurugram. Thus, the present dispute between the petitioner and respondent No. 6 happens to be a dispute with regard to the child custody. The petitioner has sufficient remedies to raise her objections in the application filed by respondent No. 6 before the Family Court, Gurugram. However, the custody of the children with the father cannot be held to be an illegal one. Therefore, this Court does not find any merit in the present Habeas Corpus Petition. It is, hereby, dismissed.

It is hereby clarified that any observation made by this Court would not influence the decision of the Family Court, Gurugram. The Family Court, Gurugram, is, obviously, expected to decide the case impartially and objectively on the basis of the evidence available on record.

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

(Raghvendra Singh Chauhan, CJ)

(A. Abhishek Reddy, J)

Dt: 06-11-2019
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