

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

WRIT PETITION No.28262 of 2019

Date: 30.12.2019

BETWEEN

Syeda Sanjeera Kousar.

... PETITIONER

AND

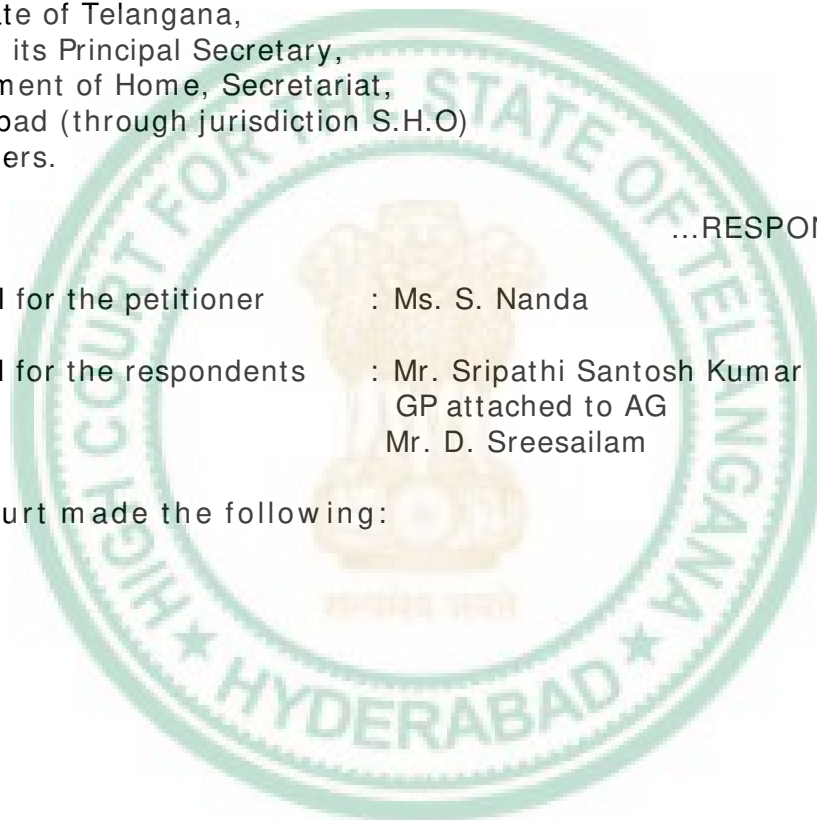
The State of Telangana,
Rep. by its Principal Secretary,
Department of Home, Secretariat,
Hyderabad (through jurisdiction S.H.O)
and others.

...RESPONDENTS

Counsel for the petitioner : Ms. S. Nanda

Counsel for the respondents : Mr. Sripathi Santosh Kumar
GP attached to AG
Mr. D. Sreesailam

The Court made the following:



ORDER: { Per the Hon'ble the Chief Justice Sri Justice Raghvendra Singh Chauhan}

The petitioner has filed the present Habeas Corpus petition, *inter alia*, on the ground that her 19 months son, Md. Mufeezuddin, is being illegally detained by his grandparents, respondents 6 and 7.

2. The brief facts of the case are that the petitioner and Md. Mohizuddin, respondent No.5, were married. During the wedlock, they were blessed with a son, Md. Mufeezuddin. The child was born at Riyadh, Saudi Arabia. Subsequently, the mother and the child came back to India. Although initially the child was in the custody of the petitioner, but thereafter, the child was taken by respondents 6 and 7. The respondent No.5 filed a guardianship petition, namely, G.O.P.No.593 of 2018 before the I Additional District Judge, Warangal, under Section 25 of the Guardians and Wards Act, 1890, to declare him as the guardian of the minor child. However, by order dated 23.09.2019, the learned trial Court dismissed the said petition, *inter alia*, on the ground that since the petitioner was not residing in India, but was residing in Riyadh, Saudi Arabia, he cannot be declared as the guardian of the minor child. However, even presently, the custody of the child continues to be with respondents 6 and 7, who are the grandparents of the minor child. Hence, the present Habeas Corpus petition before this Court.

3. Ms. S. Nanda, learned counsel for the petitioner, submits that since respondent No.5, the father, continues to be residing in Riyadh, since the petitioner happens to be the natural mother of the minor child, the custody of the child should be restored to her. Secondly, that, by order dated 23.09.2019, the petition filed by the father has already been dismissed. Therefore, the custody of the child with the grandparents is patently illegal.

4. On the other hand, learned counsel for respondents 6 and 7, submits that the custody of the child should not be handed over to the petitioner as the petitioner suffers from mental problems. According to the learned counsel, the Case Sheet issued by the hospital in Riyadh, when the delivery was made, clearly indicates that the petitioner is suffering from “transient psychotic disorder”. Therefore, according to the learned counsel, it would not be in the interest of the child to restore his custody with the mother.

5. In rejoinder, Ms. S. Nanda, the learned counsel for the petitioner, submits that although “the Case Sheet” has been mentioned in the order dated 23.09.2019 passed by the learned trial Court, the said document was never submitted before the learned trial Court. Therefore, the said document cannot be relied upon by the respondents to buttress their plea. Secondly, since the child is only 19 months old, the mother happens to be the natural guardian of such child. Therefore, the mother cannot be deprived the custody of the child.

6. Heard the learned counsel for the parties.

7. This Court has asked a pointed query to the learned counsel for the respondents whether the Case Sheet mentioned in the order dated 23.09.2019 was ever submitted before the learned trial Court or not? Although the learned counsel claims that the said Case Sheet was submitted, it is a misstatement of fact. For, the said Case Sheet has not been marked as a document even in the testimony of respondent No.5 (as the petitioner in the said case). Therefore, there is not an iota of evidence to establish the fact that the petitioner is suffering from any mental disorder.

8. Needless to say, the mother is the natural guardian of the child, who is less than five years. Admittedly, the child presently is 19 months old. Therefore, the mother has a legal right to the custody of the child. The continued custody of the child with his grandparents is patently illegal. Therefore, this Court directs that the custody of the child should be restored to the petitioner forthwith.

Therefore, the writ petition is allowed. As a sequel, the miscellaneous petitions, pending if any, shall stand closed. There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, CJ

A. ABHISHEK REDDY, J

December 30, 2019
DSK

