

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRWP No.131 of 2019 (O&M)
Date of Decision: February 28, 2019**

Rupali Kapoor

...Petitioner

VERSUS

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sumeet Goel and Ms.Ramandeep Kaur, Advocates
for the petitioner.

Mr.Dhruv Dayal, Sr.DAG, Punjab
for the respondent-State.

Mr.Amit Jhanji, Advocate
for respondent No.4

INDERJIT SINGH, J.

The petitioner has filed this criminal writ petition against State of Punjab and other respondents under Article 226/227 of the Constitution of India read with Section 482 Cr.P.C. seeking issuance of an appropriate writ, order or direction in the nature of Habeas Corpus for production of minor children of the petitioner namely Smarth Kapoor and Shresth Kapoor and for handing over the custody to the petitioner.

Notice of motion was issued. Learned State counsel as well as learned counsel for respondent No.4 appeared and contested the petition.

I have heard learned counsel for the parties as well as learned

State counsel and have gone through the record.

From the record, I find that as per admitted case of the parties, the petitioner as well as respondent No.4 were residing together at Mohali and on 10.01.2019, minor children Smarth Kapoor and Shresth Kapoor were taken away by respondent No.4 to Mumbai to enable to meet their grand-parents and now, respondent No.4, who is working in Merchant Navy, has not come back to Mohali along with children and as per arguments, matrimonial dispute arose between the parties and litigation has been started.

Learned counsel for respondent No.4 has relied upon the statement of minor against his mother that she has some relations with a person whereas learned counsel for the petitioner argued that these false allegations have been got levelled by respondent No.4. It is admitted fact that petitioner agreed that children be taken to Mumbai for meeting their grand-parents but it is argued that they have to leave on 17.01.2019 but respondent No.4 took them on 10.01.2019. Admittedly, respondent No.4, who is father of the minors, is natural guardian and minors are in the custody of their father and in no way, the custody of the children can be held as illegal custody nor it can be held that they have been illegally detained.

Keeping in view the facts and circumstances of the present case and in view of the serious allegations levelled by respondent No.4 against the petitioner, due to the matrimonial dispute or in view of the alleged statement of the minor etc., I find that the dispute regarding custody of the minors is required to be determined by the Guardian Judge. The Guardian Judge, on the basis of evidence, will decide regarding the custody of the minors that whether custody should be with the mother or father. The

paramount consideration for the Guardian Judge is to see welfare of the minors, on the basis of evidence produced before him.

Learned counsel for respondent No.4 has relied upon the law laid down by the Hon'ble Supreme Court in ***Nithya Anand Raghavan vs. State (NCT of Delhi) and another, 2017 (8) SCC 454***, in which, it is held as under:-

“47. In a habeas corpus petition as aforesaid, the High Court must examine at the threshold whether the minor is in lawful or unlawful custody of another person (private respondent named in the writ petition). For considering that issue, in a case such as the present one, it is enough to note that the private respondent was none other than the natural guardian of the minor being her biological mother. Once that fact is ascertained, it can be presumed that the custody of the minor with his/her mother is lawful. In such a case, only in exceptionable situation, the custody of the minor (girl child) may be ordered to be taken away from her mother for being given to any other person including the husband (father of the child), in exercise of writ jurisdiction. Instead, the other parent can be asked to resort to a substantive prescribed remedy for getting custody of the child.”

In view of the law cited above and in view of the above discussion, I do not find any merit in the present petition and the same is dismissed. However, the petitioner is at liberty to avail appropriate remedy before the Guardian Judge.

February 28, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No