

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Writ Petition No.396 of 2019

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Date of decision:29.05.2019

Amar Singh

...Petitioner

v.

State of Punjab and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Sandeep Arora, Advocate for the petitioner.

Mr. Dhruv Dayal, Senior Deputy Advocate General, Punjab
for the respondent-State.

Mr. Rajiv Joshi, Advocate for respondent No.4.

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Inderjit Singh, J.

The petitioner has filed this criminal writ petition under Article 226/227 of the Constitution of India for issuance of a writ in the nature of Habeas Corpus for releasing detenues i.e. daughters of the petitioner, namely. Armani Kaur Khaira (aged 2½ years) and Tamana Kaur Khaira (aged 1½ years) from the illegal custody of respondents No.4 to 9, who have illegally kidnapped and snatched the detenues from the lawful custody of the petitioner, in connivance and with the help of respondent No.3 and other police officials by taking law into their own hands by misusing the powers in a most gruesome and shocking manner and an order to produce detenues before this Court.

Notice of motion was issued in this case.

Mr. Dhruv Dayal, learned Senior Deputy Advocate General, Punjab has appeared on behalf of the respondent-State and Mr. Rajiv Joshi, learned Advocate has appeared for respondent No.4 and contested this criminal writ petition.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

At the time of arguments, learned counsel for the petitioner argued that he is a NRI and has got the decree from the Court at U.K. in which the custody of the children has been given to the petitioner. Learned counsel for the petitioner further argued that respondents No.4 to 6 with the help of Police have taken away the minor children illegally from the custody of the petitioner.

On the other hand, learned counsel for respondent No.4 stated that respondent No.4 is wife of present petitioner Amar Singh. The minor children are aged 2½ years and 1½ years i.e. less than five years. As per the law, the custody of the minor children less than five years should be with the mother. Learned counsel for respondent No.4 argued that the custody of the minor children with the mother cannot be held as illegal.

As regards the decree, learned counsel for respondent No.4 argued that the petitioner has committed a fraud and has obtained ex-parte decree from the Court in U.K. They came together to India and after coming to India, she came to know that the petitioner has obtained an ex-parte decree by way of fraud. Respondent No.4 also came to know that the petitioner has already married and is having one child from that marriage.

Keeping in view the facts and circumstances of the present case

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and in view of the age of the minor children i.e. 2½ years and 1½ years and in view of the fact that the custody is with the mother, the same with the mother, in no way, can be held as illegal. Rather, as per law, the custody of children less than five years of age should be with the mother.

In these circumstances, I find that this petition before this Court is not maintainable. However, the petitioner is at liberty to avail the remedies before the Guardian Judge as per law, if so advised.

In view of the above, this petition is dismissed.

May 29, 2019.

**(Inderjit Singh)
Judge**

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No