

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP No. 519 of 2019
Date of Decision: 12.09.2019

Sita Rani

...Petitioner

VERSUS

State of Punjab and others

...Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Arjunveer Sharma, Advocate
for the petitioner.

Mr. Avtar Singh Sandhu, Addl. A.G. Punjab.

Mr. Karan Singla, Advocate
for respondents no. 4 to 6.

SURINDER GUPTA, J.(Oral)

This is habeas corpus petition filed by Sita Rani seeking custody of child, namely, Gurwinder Kumar (later on referred to as 'the child'), who is 7 years and 6 months old. Presently, 'the child' is living with private respondents. The dispute over the custody of 'the child' is in the family, as such, was initially referred to Mediation and Conciliation Center of this Court but could not be amicably resolved.

2. This case has very peculiar facts as disclosed during my interaction with 'the child', petitioner and private respondents.

3. Respondent no. 7 is biological father of 'the child'. Respondents no. 4 and 5 are parents of respondents no. 6 and 7 while petitioner is daughter of respondents no. 4 and 5 and sister of respondents no. 6 and 7.

4. Facts regarding birth of 'the child' as disclosed to me during course of arguments and also my interaction with parties are as follows:-

1. Respondent no. 7 is the biological father of 'the child'.
2. Petitioner submits that immediately after birth 'the child', he was put in her lap by his parents with consent of grandparents and of child's uncle. With their consent birth certificate of 'the child' was got prepared mentioning names of petitioner and her husband, namely, Bharat Kumar, as his parents.
3. In support of her contention, she has shown me following documents:-

- (i) Birth certificate of child 'Gurwinder Kumar' issued by Sub-Registrar (Births and Deaths), Municipal Corporation, Ludhiana on 04.01.2012 having particulars as follows:-

(a)	Child Name	Gurwinder Kumar
(b)	Date of birth	28.12.2011
(c)	Place of birth	Ludhiana
(d)	Father's name	Bharat Kumar
(e)	Grandfather's name	Harbans Lal
(f)	Mother's name	Sita Rani (petitioner)
(g)	Registration	04/01/12

- (ii) Aadhaar Card no. 3970-8096-1785 of 'the child' having father's name mentioned as that of petitioner's husband.
- (iii) Ration card issued in the year 2016, wherein Gurwinder Kumar is mentioned as son of petitioner.
- (iv) School certificates/reports from the year 2015 onwards of child with his photograph, in which names of parents of 'the child' is mentioned as Sita

Rani (petitioner) and Bharat Kumar, her husband.

- (v) The child studied in Sahib Public School in Nursery class during the years 2015-2016 and 2016-2017. Thereafter, he studied in Er. Anmol Memorial Senior Secondary School, Bhamian Kalan, Ludhiana.

5. Private respondents denied that 'the child' was living with petitioner, and respondent no. 7 was asked to produce all documents relating to 'the child' vide order dated 06.09.2019, which reads as follows:-

“I have met with child in the presence of respondent no. 7 and his wife separately and also in the presence of petitioner. Respondent no. 7 submits that child is living with them throughout and is going to school.

Respondent no. 7 is directed to produce all the documents of admission of child in school along with his date of birth certificate, ration card or any other document in proof of his living with them.

Put up on 12.09.2019.

Child be produced on the date fixed. Today child is permitted to go with respondent no. 7.”

6. Today, learned counsel for private respondents submits that neither of the respondents including biological parents of 'the child' do not have birth certificate or any other document to show that 'the child' was living with them. This fact is not disputed that private respondents have not challenged the birth certificate of 'the child' dated 04.01.2012. This lends support to statement of petitioner that 'the child' was put in her lap after birth. On seventh day, his birth was registered and till date biological parents have neither challenged this birth certificate nor ever got his birth separately recorded with their parentage. It is nowhere their case that birth

certificate of 'the child' was got issued without their knowledge or consent. Even otherwise, parents will not sit idle without getting birth of their child registered for such a long period of 7½ years.

7. Learned counsel for the petitioner submits that 'the child' was going to school upto March, 2019. He used to address respondents no. 4 and 5 as *Nana* and *Nani* (maternal grandparents) and respondents no. 6 and 7 as *Mama* (maternal uncle).

8. The petitioner has alleged that her relations with her brothers and parents became strained because of demand of money raised by them. The petitioner and her family sold their residential house on 25.04.2019 and were looking for a more suitable accommodation. Since the day of receipt of sale consideration private respondents were pressurizing her and her husband to advance them a sum of ₹5 lakhs alleging that they have serious financial crises. They were apprised that petitioner and her family members are not having roof on their head and money is required to purchase a better accommodation, as such, they cannot meet their demand. At this, parental family of petitioner became annoyed and detained 'the child'. Father of petitioner had already taken ₹4 lakhs out of the sale consideration and threatened that in case the petitioner fails to bring another sum of ₹5 lakhs she should forget 'the child'.

9. Even if, I do not go by plea taken by petitioner for detaining the child by private respondents, it is evident that there is some reason for private respondents to detain him and keeping him at home instead of allowing him to pursue his studies. Respondents have not come up with any plea for detaining 'the child' with them fully knowing and aware, rather acknowledging the fact that 'the child' was given to petitioner immediately

after his birth and for the last more than seven years he has been living with her and going to school where he is recorded as son of petitioner and her husband.

10. I had personal interaction with 'the child', private respondents and petitioner in my chamber. I discussed with 'the child' about the school he had been going and he told me that from the time he is living with private respondents he has not been sent to any school for the last many months and earlier he had been going to Engineer Anmol Memorial Senior Secondary School, Bhamian Kalan, Ludhiana, while living with petitioner.

11. The question, which arises for consideration at this juncture, is as to whether custody of 'the child' should be given to petitioner with whom he had lived from his birth till April, 2019 or to his biological parents, who have no documents of his birth, their parentage and have not sent him school during last four months and have kept him at home?

12. Though, it has been disputed by private respondents that 'the child' lived with the petitioner but there is a candid admission that he actually lived with her after his birth. All the documents produced by petitioner prove this fact. In these circumstances, custody of 'the child' with private respondents is not in the interest of 'the child', who had lived for about 7 years in a family and has been cared and brought up there. He has developed intimacy with the environment and family members around him, whom he has seen and dealt with as his sisters, father and mother. To detach 'the child' from that environment will not only be torturous for him, but also effect his personality and overall development.

13. The biological parents of 'the child', if intended to take his custody, could go to their sister (petitioner), sit with her and tried to find an

amicable solution. Instead, they adopted the other method of retaining custody of the child and depriving him from going to school. It has not been denied by private respondents that child has not gone to school during the period he remained in their custody. They cannot admit child in any school as they do not possess his birth certificate with their parentage mentioned therein. In these circumstances, 'the child' is a great sufferer, while living in custody of private respondents.

14. Taking note of all the above facts and circumstances, I am of the considered opinion that it will be in the interest of justice at this stage that custody of the child is given to petitioner, so that, he may go to school and his daily routine is not upset. Private respondents, if intend to have custody of 'the child', may approach the Guardian Judge or avail other legal remedy available to them. Custody of the child has been handed over to petitioner in Court.

15. The instant petition is disposed of in above terms.

September 12, 2019

jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No