

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

**CRWP No.3553 of 2020 (O&M)
Date of Decision: 24.07.2020**

Gurpreet Singh

.....Petitioner

Vs

State of Punjab and others

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Munish Gupta, Advocate
for the petitioner.

Mr. V.G. Jauhar, Sr. D.A.G., Punjab
for respondents No.1 to 5.

Mr. R.L. Batta, Sr. Advocate with
Mr. S.S. Sarwara, Advocate and
Mr. Mandeep K. Sajjan, Advocate
for respondents No.6 and 7.

Ms. Nisha, Advocate
for respondent No.8.

RAJ MOHAN SINGH, J.

This case was taken up for hearing through video-conferencing due to outbreak of pandemic COVID-19.

CRM-W No.543 of 2020

For the reasons mentioned in the application, the same
is allowed.

Rejoinder to the reply filed by respondent No.5 along with report of Child Welfare Committee, Sangrur dated 04.06.2020 is taken on record.

CRWP No.3553 of 2020 (O&M)

[1]. Petitioner has preferred this petition for the issuance of an appropriate writ in the nature of habeas corpus, directing respondents No.6 and 7 to produce and release the detainee namely Avneet Kaur, aged 9 years, who is daughter of the petitioner from their illegal custody. Petitioner has also prayed for the issuance of directions for taking action against the officials, who have helped respondents No.6 and 7 in removing the detainee from the lawful custody of petitioner.

[2]. Learned counsel for the petitioner submitted that petitioner is serving in Indian Army and is going to retire in January 2021. Minor Avneet Kaur took birth on 30.07.2011 from the wedlock of petitioner and Rajwinder Kaur. Petitioner obtained divorce from Rajwinder Kaur and the custody of minor remained with the petitioner in view of consenting order. Thereafter the petitioner got re-married with one Jasmeet Kaur, but she lived with the petitioner for a short period and thereafter she shifted to Australia and is presently residing there. This marriage is also under litigation.

[3]. Learned counsel further submitted that minor Avneet Kaur remained in proper care and custody of the petitioner being father, her uncle and aunt since 2015, when her uncle got married. The minor was studying in Lady Fatima School, Patiala. Respondent No.6 is the real 'Massi' and respondent No.7 is real 'Massad' of the petitioner. The school of the minor was little far away from Sunam, therefore, for the convenience of the minor and to avoid travelling during school days, a temporary arrangement was made by the petitioner for stay of minor with respondents No.6 and 7.

[4]. Learned counsel further submitted that during the lockdown period due to outbreak of pandemic COVID-19, minor was brought by the petitioner at Sunam and she was happily residing with the petitioner, her grandfather namely Jagwinder Singh, paternal uncle (*Chacha*) namely Jatinder Singh and paternal aunt (*Chachi*) namely Manjit Kaur. Petitioner was on duty at Jalandhar Cantt and he often used to come to meet the minor. Petitioner and his family consisting of his younger brother Jatinder Singh and his wife Manjit Kaur decided to put an end to the temporary arrangement of stay of the minor child with respondents No.6 and 7 and they were informed accordingly. The expenses of the child towards school fee etc. have been borne by the petitioner throughout.

[5]. Learned counsel further submitted that respondents No.6 and 7 are influential persons of the area. Son of real *Taya* of respondent No.7 is a sitting MLA from the ruling party. Respondents No.6 and 7 wanted to have complete control and custody of the minor with them and they repeatedly threatened the petitioner to hand over the minor to them. Petitioner and his family members resisted the alleged venture of the respondents. They explained their position that now Jatinder Singh has got married to Manjit Kaur and since there is a family atmosphere in the house of the petitioner, therefore, his family wants to put an end to temporary arrangement of the child with respondents No.6 and 7. They also decided to make arrangements for conveyance of minor for going to school at Patiala.

[6]. Learned counsel further submitted that respondents No.6 and 7 felt offended and insisted that the custody of minor be given to them. During the lockdown period, the minor was living under the care and protection of her natural father. On 30.05.2020, respondent No.7 along with Gagandeep Singh son of MLA, respondent No.8 and 5-6 persons in police uniform came to house of the petitioner and picked up the father of petitioner and took him to Police Station Sunam. Father of the petitioner is an old aged person and he was made to sit in the Police Station and was also tortured for about four hours. He

was allowed to go back home with the directions to make the entire family understand for handing over the custody of minor to respondents No.6 and 7.

[7]. Learned counsel further alleged *mala fide* on the part of respondent No.8, who has played role in pressurizing the petitioner and his family. Feeling threat perception, petitioner asked his father to approach the SSP Sangrur, for protection of life and liberty. Father of petitioner and brother approached the office of SSP Sangrur, by way of representation giving details of the facts, but no action has been taken so far. They also filed a petition for seeking protection of life and liberty in the High Court.

[8]. Learned counsel further submitted that in the meantime, the petitioner received a call on 03.06.2020 from a lady namely Roopwant Kaur, who alleged herself to be an official in the office of Child Welfare Committee, Patiala and asked the petitioner to produce the minor child before the Committee. She also told the petitioner that some complaint has been received by the Committee regarding the minor child. Petitioner was told to produce the child on 04.06.2020. On 04.06.2020, some persons from the office of Child Welfare Committee, Sangrur came to house of the petitioner and they

told the petitioner that they want to record the statement of minor child. The officials of the Child Welfare Committee, Sangrur satisfied themselves regarding minor child and also recorded her statement. They were satisfied about the well being of the child.

[9]. Learned counsel further submitted that in the evening of 04.06.2020, petitioner again received a telephonic call from the office of respondent No.5. Petitioner apprised the official of respondent No.5 in respect of visit of the officials of respondent No.4 that they already visited the house of petitioner and have recorded the statement of minor, but the petitioner was told that respondent No.5 has a separate procedure and, therefore, the petitioner should appear along with the child. On 05.06.2020, the petitioner reached the office of respondent No.5 along with minor child. The minor child was made to sit in a room with an official and petitioner along with his brother was told to wait outside. After about half an hour, the petitioner was surprised to see that respondents No.6 and 7 along with son of respondent No.8 with 7-8 unknown persons also reached the office. After about one hour, the petitioner was told by the official of respondent No.5 that he should go and enquire about the proceedings after two hours and only thereafter the child would be handed over. Petitioner was told that the child will be kept at

the Centre for some time and he was asked to wait. Petitioner called up official of respondent No.5 at about 4.00 p.m. and at that time petitioner was told that the child has made a statement and accordingly the custody of child has been handed over to respondents No.6 and 7. By that time, respondents No.6 and 7 had already left with the child and no person was available with respondent No.5. The request made by the petitioner to respondent No.7 yielded no positive result. With this background, the present petition has been filed.

[10]. Notice of motion was issued to the respondents on 09.06.2020. Respondent No.5 has opposed the petition on the ground that on 01.06.2020, a complaint was received from respondents No.6 and 7 alleging that the minor was being maltreated by her grandfather and uncle and she is being kept forcibly at Sunam. The complaint was sent to DCPO, Sangrur to do the needful. On 03.06.2020, the complainants were called at the office of Child Welfare Committee to know about background of the case. The complainants submitted some documents relating to education and health of the minor along with other documents. Report from DCPO, Sangrur was received on 04.06.2020. Thereafter, the petitioner was called to bring the child before the Child Welfare Committee, Patiala. Petitioner along with minor child came on 05.06.2020. The Child

Welfare Committee at Patiala interacted with the petitioner and came to know about his matrimonial status and service pursuits. The Committee recorded the fact that the petitioner was married with Rajwinder Kaur in the year 2010. Minor Avneet Kaur took birth in July 2011. Petitioner took divorce from Rajwinder Kaur in the year 2012. Rajwinder Kaur left the minor with petitioner at the age of 10 months only. Petitioner gave the custody of minor to respondent No.6 i.e. real *massi* for upbringing the child. Petitioner re-married in the year 2015 with Jasmeet Kaur. They also got separated and divorce case was filed. In this way, the minor remained with respondents No.6 and 7 for about nine years. Respondent No.5 had attached Annexures R-5/1 and R-5/2. Annexure R-5/1 is the final order dated 05.06.2020. Annexure R-5/2 is the statement of minor recorded on 05.06.2020.

[11]. In the reply filed by respondents No.6 and 7, they have also staked their claim for custody of the minor as the same would be in the best interest of the minor. Respondent No.8 has also filed reply thereby denying the incriminating allegations against him.

[12]. Mr. R.L Batta, learned Senior Advocate duly assisted by Mr. S.S. Sarwara and Mr. Mandeep K. Sajjan, Advocate(s) appearing on behalf of respondents No.6 and 7 vehemently

submitted that in custody issues welfare of the child is of paramount consideration.

[13]. I have considered the submissions made by learned counsel for the parties and have gone through the material placed before the Court with their assistance.

[14]. There cannot be any denial to the proposition that welfare of the child is supreme in custody issues arising between the parties. The final order dated 05.06.2020 (Annexure R-5/1) passed by the Child Welfare Committee, Patiala comprising of Chairperson and one Member of the Committee would show that the child was given in foster care to ensure her protection, education, health and best interest. Petitioner will have every right to meet the child at any time at the place of residence of foster family. Petitioner during his holidays and vacation in the school can take the child with prior permission of the Child Welfare Committee at Patiala. In no case the petitioner will take the daughter to his parental house and allow to meet with her grandfather and biological uncle. The foster family will not send the child to any of the relative's place.

[15]. The aforesaid order dated 05.06.2020 (Annexure R-5/1) passed by the Child Welfare Committee, Patiala on Form 32 would show that the order is in respect of foster care

placement with a family or group foster care. The foster care has been defined in Section 44 of the the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter to be referred as 'the Act') in the following manner:-

“44. Foster Care:-

(1) *The children in need of care and protection may be placed in foster care, including group foster care for their care and protection through orders of the Committee, after following the procedure as may be prescribed in this regard, in a family which does not include the child's biological or adoptive parents or in an unrelated family recognised as suitable for the purpose by the State Government, for a short or extended period of time.*

(2) *The selection of the foster family shall be based on family's ability, intent, capacity and prior experience of taking care of children.*

(3) *All efforts shall be made to keep siblings together in foster families, unless it is in their best interest not to be kept together.*

(4) *The State Government, after taking into account the number of children, shall provide monthly funding for such foster care through District Child Protection Unit after following the procedure, as may be prescribed, for inspection to ensure well being of the children.*

(5) *In cases where children have been placed in foster care for the reason that their parents have been found to be unfit or incapacitated by the Committee, the child's parents may visit the child in the foster family at regular intervals, unless the Committee feels that such*

visits are not in the best interest of the child, for reasons to be recorded therefor; and eventually, the child may return to the parents homes once the parents are determined by the Committee to be fit to take care of the child.

(6) The foster family shall be responsible for providing education, health and nutrition to the child and shall ensure the overall well being of the child in such manner, as may be prescribed.

(7) The State Government may make rules for the purpose of defining the procedure, criteria and the manner in which foster care services shall be provided for children.

(8) The inspection of foster families shall be conducted every month by the Committee in the form as may be prescribed to check the well-being of the child and whenever a foster family is found lacking in taking care of the child, the child shall be removed from that foster family and shifted to another foster family as the Committee may deem fit.

(9) No child regarded as adoptable by the Committee shall be given for long-term foster care.”

[16]. Evidently, the foster care is applicable to the children in need of care and protection. Section 2(14) of the Act deals with 'child in need of care and protection'. Section 2(14)(v) of the Act prescribes that children in need of care and protection means a child, who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child. The word 'Committee' has also been defined in Section 2

(22) of the Act, which means 'Child Welfare Committee' constituted under Section 27 of the Act. Section 27 of the Act prescribes that the State Government shall by notification in the official Gazette constitute for every district, one or more Child Welfare Committees for exercising the powers and to discharge the duties conferred on such Committees in relation to children in need of care and protection under this Act and ensure that induction training and sensitization of all members of the committee is provided within two months from the date of notification. The Committee shall consist of a Chairperson, and four other members as the State Government may think fit to appoint, of whom at least one shall be a woman and another, an expert on the matters concerning children. The District Magistrate shall be the grievances redressal authority for the Child Welfare Committee and anyone connected with the child, may file a petition before the District Magistrate, who shall consider and pass appropriate orders. The powers of the Committee has been defined in Section 29 of the Act, whereas functions and responsibilities of the Committee have been defined in Section 30 of the Act.

[17]. The Juvenile Justice (Care and Protection of Children) Model Rules, 2016 came into being on the date of publication in the official gazette. Chapter VI of the aforesaid Rules i.e. Rule

21 deals with rehabilitation and social re-integration. The manner of registration of child care institutions is defined under Rule 21 of the aforesaid Rules. Rule 23 of the aforesaid Rules deals with foster care. According to Sub-Rule (15) of Rule 23, the Committee shall pass the final order in Form 32 for placing the child in foster care, specifying the period for which the child is placed in foster care. There shall be at least three Members of the Committee to be present at the time of final disposal of the case.

[18]. Perusal of final order dated 05.06.2020 (Annexure R-5/1) passed by the Child Welfare Committee, Patiala would show that the order has been passed by only two Members of the Committee. The order on Form 32 is in respect of foster care placement with a family or group foster care. A foster care is defined under Section 44 of the Act is applicable only in respect of children in need of care and protection, which means a child, who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child.

[19]. The order dated 05.06.2020, passed by the Child Welfare Committee, Patiala is totally silent about the factum of

petitioner and his family being unfit or incapacitated for taking care and for protection and well being of the child. The aforesaid order has been passed by Chairperson and one Member of the Committee as against the requirement in terms of proviso to Section 28 of the Act which prescribes that there shall be at least three members present at the time of final disposal of the case.

[20]. With the assistance of learned counsel for the petitioner I have verified the list of public holidays in Punjab for the year 2020. It is found that 5th June was Friday and was a gazetted holiday on account of Sant Guru Kabir Jayanti. The order has been passed on a gazetted holiday, without there being any disclosure and justification for incomplete composition of the members of the Committee to work on a gazetted holiday.

[21]. In reply, filed by respondent No.5, a reference has been made to the report from DCPO, Sangrur which was received on 04.06.2020. Learned counsel for the petitioner while filing replication has produced on record Annexure P-7 i.e. Counselling Report dated 04.06.2020 prepared by the District Programme Officer, Sangrur. The same reads as under:-

“Counselling Report

On dated 04.06.2020, in the morning at 10.00 AM,

*upon the counseling of child Avneet Kaur daughter of Gurpreet Singh, resident of Guga Mari Road, Sant Atar Singh Nagar, Sunam, District Sangrur, it has been informed by the child, that 'I am studying in Third Class in Lady Fatima Convent School, Patiala and my father is employed in Army'. Thereafter, the child was conversed with, regarding her hobbies and then the child told that 'I am fond of studying and alongwith the studies, I am also fond of driving'. Thereafter, it was told by the child that 'I have been residing with my Daadi (Masi Maa) in Jalalpur and I am pursuing my studies there and during school holidays, I come to my home at Sunam. Now, since lockdown, I have been residing in my house at Sunam **and I am very happy with my father and want to reside with him.** The family of child (Chacha Ji & Dada Ji) was also talked with and they told that 'we are ready to look after our child'.*

*Sd/-
Counsellor
04.06.2020*

*Sd/-
District Programme Officer
Sangrur"*

[22]. Perusal of the aforesaid counselling report would show that the Counsellor interacted with the minor and found that the minor was living happily with her father and also wanted to reside with him. In the presence of such report, what prompted respondent No.5 to adopt different approach is beyond comprehension of this Court. The order dated 05.06.2020, passed in Form 32 which relates to foster care placement with a family, by the Child Welfare Committee, Patiala is with

incomplete coram and that too on a gazetted holiday. The foster care can only be resorted to in case of children in need of care and protection. For the children in need of care and protection, the Committee has to be satisfied that the parents or guardians of the minor are either unfit or incapacitated to take care and to protect the minor and well being of child is safe in their hands. Report dated 04.06.2020 submitted by the office of DCPO, Sangrur has not been denied by respondent No.5. The said report would show that the child was happy in the company of her father and wanted to reside with her father. At the time of recording of alleged statement of minor on 05.06.2020, petitioner was not included though he was very much present in the premises of respondent No.5.

[23]. In view of aforesaid facts and circumstances, since the order dated 05.06.2020 passed by the Child Welfare Committee, Patiala is found to be the result of colourable exercise of powers, therefore, I deem it appropriate to restore the custody of the minor in favour of the petitioner leaving the respondents No.6 and 7 to avail their legal remedies in accordance with law. No final opinion in respect of any custody issue is being made in the present case. In the event of filing any petition under the relevant statute for custody of minor in regular proceedings, the same shall be decided in accordance

with law without being influenced by any observation made hereinabove. The child shall be produced before DCPO, Sangrur on 05.08.2020 and thereafter, custody of the child shall be handed over to the petitioner.

[24]. Petition stands disposed of accordingly.

July 24, 2020

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No