

In the High Court of Punjab and Haryana, at Chandigarh

Criminal Writ Petition No. 3877 of 2020 (O& M)

Date of Decision: 19.06.2020

Tulika Arora

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Mandeep Singh Sachdev, Advocate
for the petitioner(s).

Anil Kshetarpal, J.

The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of writ in the nature of habeas corpus to release the detenue i.e. son of the petitioner, namely Azai, aged about two and a half years from the illegal confinement of respondent No.4- father of the child.

The writ petitioner claims that she was married to respondent No.4 on 09.05.2016. She further claims that she gave birth to Azai on 26.01.2018. She further claims that she was turned out of the house on the intervening night of 4th/5th May, 2020 at about 2.00 a.m., whereas Azai, the son, was forcibly kept by the respondent No.4.

At the outset, this Court is of the considered view that the petitioner has already availed effective alternative remedy and therefore, this Court is not inclined to entertain the present writ petition. Hence, it would not be appropriate for this Court to examine the facts of the case in detail,

lest it prejudices the case of any of the party. The detailed reasons as to why this Court has formed an opinion to relegate the petitioner to the alternative remedy, are as under:

1. The writ petitioner has already filed a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as “the 2005 Act”). Section 21 of the 2005 Act enables the Family Court to pass appropriate orders for custody of the child. The 2005 Act further enables the Family Court to pass temporary orders. The writ petitioner herself has pleaded that she has already filed an application under Section 23(2) of the 2005 Act for handing over the custody of the minor child Azai. The aforesaid application is stated to be pending before the Family Court.
2. The present writ petition is likely to involve the disputed questions of fact particularly in view of the averments made in para No.13 thereof.
3. Respondent No.4 has also filed a civil suit restraining the writ petitioner and her family members from taking over or snatching the custody of minor child through police. In the aforesaid suit, an order dated 09.05.2020 has been passed restraining the writ petitioner and her family members from taking over or snatching the custody of minor child through police authorities except following the procedure of law relating to the custody of the minor child.
4. The writ petitioner also has equally efficacious

alternative remedy of filing an application under Chapter 2 of the Guardian and Wards Act, 1890 (hereinafter referred to as “the 1890 Act”). Section 12 thereof enables the Court to pass interlocutory orders for temporary custody of the child.

Learned counsel for the writ petitioner has heavily relied upon a judgment passed by the co-ordinate Bench in “Criminal Writ Petition No. 3013 of 2020 titled as “Neha v. State of Haryana and Others” decided on 01.06.2020. This Court has carefully read the judgment, copy whereof has been annexed as Annexure P7. In the aforesaid case, the minor daughter had been forcibly taken away by her father in a clandestine manner. The mother of the child had not filed any petition either under the 1890 Act or the 2005 Act. On the other hand, the father of the child had filed a petition under Section 25 of the 1890 Act, which was found to be misconceived. Still further, the Court, in the peculiar facts of the case, considered it appropriate to issue various directions.

In the considered view of this Court, such order passed by the Court in the peculiar facts of the case do not lay down as *ratio decidendi*, a preposition of law that every petition under Article 226 of the Constitution of India filed by the mother for custody of a minor child is maintainable. It is well settled that only *ratio decidendi* in a judgment is binding.

Keeping in view the aforesaid facts, this Court considers it appropriate to relegate the writ petitioner to the alternative remedy which she has already availed. However, in the facts of the case, the Presiding Judge of the Family Court, where the petition under Section 12 of the 2005 Act is stated to be pending, is requested to make earnest efforts for disposal

of the application expeditiously.

Disposed of.

(Anil Kshetarpal)
Judge

June 19, 2020
“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No