

In the High Court of Punjab and Haryana, at Chandigarh

Criminal Writ Petition No. 4587 of 2020

Date of Decision: 06.07.2020

Simranjeet Kaur

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Arvind Galav, Advocate
for the petitioner(s).

Anil Kshetarpal, J.

The writ petitioner has filed this criminal writ petition under Article 226 of the Constitution of India for issuance of a writ in the nature of habeas corpus directing the official respondents No.2 and 3 to get the detenue - Master Divyansh, her son, aged three years and two months, released from illegal, unlawful and unauthorised custody of respondents No. 4 to 6 (father and grandparents of the child) and hand over the custody of the detenue to the writ petitioner.

At the outset, it must be noticed that the writ petitioner claims to be the mother of the minor whereas respondents No.4 to 6 are the father and grandparents of the minor, the alleged detenue. The minor was born on 30.05.2017.

This Court has heard learned counsel for the writ petitioner at length and with his able assistance, has gone through the paper book. After hearing arguments of the learned counsel for the writ petitioner, this Court

has formed an opinion that the writ petitioner is required to be relegated to

the remedy available under the law and it would not be appropriate for this Court to entertain and decide this writ petition in the exercise of its extraordinary jurisdiction. The reasons for arriving at this conclusion are as under:

1. No doubt that in appropriate cases, keeping in view the facts of a particular case, a writ petition for custody of a minor child can be entertained, however, such power is to be exercised only in rare and exceptional cases. A reference in this regard can be made to a judgement passed by the Hon'ble Supreme Court in *Tejaswini Gaud and Others v. Shekhar Jagdish Prasad Tewari and Others* (2019) 7 SCC 42.

2. The writ petitioner has following effective alternative remedies -

(i) The Guardians & Wards Act, 1890 (hereinafter referred to as "the 1890 Act"). The Court while deciding an application under the 1890 Act also has the power to pass an interlocutory order for interim custody of the child.

(ii) The writ petitioner also has a remedy under the Hindu Minority and Guardianship Act, 1956 (hereinafter referred to as "the 1956 Act").

(iii) The writ petitioner also has an effective alternative remedy under the Protection of Women From Domestic Violence Act, 2005. Section 21 of the Act enables the Family Court to pass an appropriate order for custody of the child. The Act further enables the Family Court to pass an interlocutory order for the custody of the child.

3. No doubt, Section 12 of the 1890 Act as well as Section 6 of the 1956 Act provide that while deciding the custody of a minor who has not completed the age of five years, preference is required to be given to the mother. However, the word used in both the Acts is “ordinarily”. The word “ordinarily” is not a synonym of mandatory. The writ petition under Article 226 of the Constitution of India has to be decided on the basis of affidavits and the documents filed. Whereas the Courts under various statutes referred to above would have the benefit of appreciating evidence to be led by the parties. In such circumstances, it would be more appropriate for the petitioner to avail the alternative remedy.

4. Learned counsel for the writ petitioner has failed to draw attention of the Court to any special or extraordinary reasons as to why this Court should entertain a petition under Article 226 of the Constitution of India. Still further, no attempt has been made by the learned counsel for the writ petitioner to draw attention of the Court to any special circumstance which may make it inconvenient for the writ petitioner to file applications/petitions under various statutes referred to above.

5. Learned counsel for the writ petitioner has very heavily relied upon a judgement passed in ***Neha v. State of Haryana (Criminal Writ Petition No. 3013 of 2020, decided on 01.06.2020)***. This Court has carefully gone through the aforesaid judgement which does not as a *ratio decidendi* holds

that in every case filed by the mother for custody of child below the age of five years, the writ petition under Article 226 of the Constitution of India should be entertained.

This Court has also considered the judgement passed in the case of *Neha (supra) in Tulika Arora v. State of Punjab and others (Criminal Writ Petition No. 3877 of 2020, decided on 19.06.2020)*.

In view thereof, the present writ petition is disposed of relegating the writ petitioner to the alternative remedy available under various statutes referred to above. However, if the petitioner files an application for interim custody of the child, this Court has no doubt that the competent Court would make a sincere endeavour for expeditious disposal thereof.

(Anil Kshetarpal)
Judge

July 06, 2020
“DK”

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