

23.07.2021

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WPA (H) 46 of 2021
(Through video conference)

In re : An application under Article 226 of the Constitution of India

And

In re : Smt. Shatabdi Kundu @ Choudhury ...petitioner

Mr. Sarthak Choudhury

Mr. Sourav Paul

...for the petitioner

Mr. Rana Mukherjee

Mr. Santanu Chatterjee

...for the State

Mr. Sibaji Kr. Das

Ms. Rupsa Sreemani

Mr. A Ahmed

...for respondent nos. 5,6 & 7

The present *habeas corpus* petition has been preferred stating *inter alia* that the petitioner married one Sankar Choudhury (in short, Sankar) in the year 2011. A girl child was born from the said wedlock in the year 2014. She was named Ayantika Choudhury (in short, Ayantika). Subsequent thereto, there was some understanding between the petitioner and her husband, namely, Sankar and as such both of them preferred a petition for mutual divorce. The same was registered as Mat. Suit no. 321 of 2020. In the said matrimonial suit, on 5th April 2021 the marriage tie in between the petitioner and Sankar was dissolved by a decree of divorce. In the said order it was also directed that Ayantika shall be in the custody of the petitioner herein and Sankar shall have the right to meet the child once in

a month in a place convenient to both the parties. Thereafter on 27th June 2021, the petitioner lodged a complaint before the Officer in Charge, Kalyani police station stating *inter alia* that the private respondents have illegally detained her daughter. As no steps were taken by the police authorities, a further complaint was lodged by the petitioner before the Superintendent of Police on 28th June 2021 stating *inter alia* that Ayantika had been unlawfully detained by her father being the respondent no.5 and the other private respondents herein, but in vain.

Mr. Chowdhury, learned advocate appearing for the petitioner argues that though there had been a specific mandate of the competent court to the effect that custody of the child should be with the petitioner, the private respondents have illegally detained her and as such necessary orders need be passed in the present petition for handing over custody of Ayantika to the petitioner.

Mr. Mukherjee, learned advocate appearing for the State denies the allegation of the petitioner that appropriate steps have not been taken by the police authorities on the basis of the complaint lodged and submits that upon enquiry it was found that the petitioner was having a matrimonial dispute with Sankar. Pertaining to the said dispute, a complaint was lodged

by the petitioner against Sankar and the same was registered as FIR. During enquiry, the petitioner did not extend any co-operation as sought for. It was also ascertained by the police authorities that the respondent no. 5 had filed a Miscellaneous Case no. 1 of 2021 under the Hindu Minority and Guardianship Act 1956 and the same is pending. Let the report, as filed, be kept on record.

Mr. Das, learned advocate appearing for the private respondents submits that the petition is liable to be dismissed for suppression of material facts. The respondent nos.5 is the father of the petitioner, the respondent no.6 is her mother and the respondent no. 7 is her sister. After mutual divorce, the petitioner herein married another person and left her parental house and presently she is residing with her husband in Kolkata. The petitioner herself left the child with the private respondents and left her parental house to stay with her husband with whom marriage was solemnized after dissolution of marriage with Sankar. In view thereof, it cannot be said that the petitioner's child has been illegally detained by the private respondents.

Heard the learned advocates for the respective parties.

A writ in the nature of *habeas corpus* is a prerogative writ by virtue of which the causes and validity of detention of a person are investigated by summary procedure.

At the time of mutual divorce, custody of the child was given to the petitioner. Thereafter, the petitioner married another person and left her parental house leaving the child in her paternal house with the private respondents. The petitioner is presently residing at Kolkata with her husband.

We are afraid that the exercise of power of writ in the nature of *habeas corpus* would perhaps not be feasible in the fact situation of the instant case. The allegation that the petitioner's child had been illegally detained by the private respondents is not acceptable to this Court and accordingly, no interference is called for in the present writ petition.

Writ petition being WPA (H) 46 of 2021 is, accordingly, dismissed.

(Suvra Ghosh, J.)

(Tapabrata Chakraborty, J.)