

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2086 OF 2021

Mrs. Yasmin Jabbar Shaikh

...Petitioner

Versus

Mr. Jabbar Sattar Shaikh & Ors.

...Respondents

...

Ms. Anchal Lalla i/by. Lalla & Lalla for Petitioner.

Mrs. S.D. Shinde, APP for State.

Mr. Ashfaque Shaikh for Respondent No. 1 to 3.

Petitioner and Respondent No. 1 present.

...

CORAM : S. S. SHINDE &
N. J. JAMADAR, JJ.

DATE : 20th AUGUST, 2021.
[IN CHAMBER]

P.C.:

1. This petition is preferred for a writ of habeas corpus to secure the presence and custody of Rahil and Umera, the children of the petitioner.

2. The substance of the petition is that the Respondent No. 1- Mr. Jabbar Shaikh who is the husband of petitioner surreptitiously took away the children on the pretext of giving them chocolate and illegally detained them at Malegaon. The Respondent No. 1 has allegedly solemnized marriage with one Ms. Hamida Qureshi, without consent and knowledge of the petitioner. The

marital discord seems to have led to dispute over the custody of children and multiple proceedings, including this petition for habeas corpus.

3. Ms. Anchal Lalla, the learned counsel for the petitioner and Mr. Ashfaq Shaikh, the learned counsel for Respondent No. 1 to 3 make a joint statement that, in the intervening period, with the intervention of elders and well wishers, the petitioner and respondents have amicably resolved the dispute and consent terms have been executed by and between petitioner and respondents. The parties have agreed that the custody of Rahil and Umera would remain with the petitioner. The consent terms are tendered before the Court.

4. The Petitioner- Mrs. Yasmin Shaikh and Respondent No. 1 Mr. Jabbar Shaikh appeared before the Court along with Rahil and Umera. We have interacted with the petitioner and Respondent No. 1 and children, in the chamber. The Petitioner and Respondent No. 1 admit the contents of consent terms and their signatures thereon. They specifically state that they have executed the consent terms voluntarily and there is no coercion or duress.

5. The children are also willing to stay with the Petitioner.

6. Para A to E of the consent terms read as under:-

A) That the Respondent No. 1 pursuant to these Consent Terms shall handover the Physical Custody of both Rahil & Umera to the Petitioner in the Court premises today itself and the Petitioner shall have permanent and uninterrupted custody of these Two Children forever and at all times hereinafter. The Respondents have undertaken to this Hon'ble Court that they shall not have any relations nor will they make any effort to establish any contact in any manner with these Two Children at all times hereinafter.

B) That the Petitioner after the Physical Custody of these Two Children is handed over to her, shall waive all her claims made against the Respondents in the Application for Domestic Violence filed against them and pending before 60th Court, Kurla. The Petitioner has further undertaken to Withdraw this Petition Bearing No. 133/DW/2019 by filing appropriate Application through her Advocate at the earliest given opportunity and for which the presence of the Respondents would not be necessary.

C) That the Petitioner & Respondents have specifically agreed that they shall not interfere in the personal life of each other at all times hereinafter and that the Petitioner would have the Final Decision as regards the day to day activities, Schooling, Education, Upbringing Etc of both Rahil & Umera and that her decision in that regard would be final and the same shall not be called into Question by the Respondents at any time hereinafter.

D) That the Petitioner has specifically waives her Rights to claim Maintenance for herself and her Two Children, Rental

Accommodation, Etc as prayed in the Domestic Violence Application referred to hereinabove.

E) That both parties have agreed that they shall not file any case, Suit, proceeding, Appeal, Application, Petition Etc against each other as regards Custody of the Two Children, Maintenance Etc and all Claims, Counter claims, Allegations etc made against each other in any proceedings adopted by the parties against One another shall automatically stand Withdrawn on execution of these Consent Terms.

7. We have perused the material on record. It appears that the marital discord, which has its genesis in the alleged second marriage of Respondent No. 1, seems to have been amicably resolved. The Petitioner and Respondent No. 1 have decided to resolve the issue of custody of minor children as well. They have agreed that the custody of children will remain with the Petitioner-mother. Having regard to the age of Rahil (12) and Umera (8), their welfare appears to be more secured in the custody of petitioner. The children also seem to be happy in the custody of the Petitioner. The resolution of the dispute as regards the custody of children will effectively put an end to the entire matrimonial dispute as the Petitioner undertakes to withdraw the application filed before the learned Magistrate bearing No. 133/DW/2019 under the provisions of Protection of Women from Domestic Violence Act, 2005. Since the dispute is resolved, in its entirety, we deem it appropriate to

quash and set aside the proceedings of Petition No. 133/DW/2019 pending on the file of Metropolitan Magistrate 60th Court, Kurla.

8. For the foregoing reasons, the petition stands allowed in the following terms.

ORDER

1. The custody of children Rahil and Umera, entrusted by Respondent No. 1-Mr. Jabbar Sattar Shaikh to the Petitioner, before the Court, shall remain with the petitioner in accordance with the consent terms which shall form part and parcel of this order.
2. The proceedings in Case No. 133/DW/2019, under Protection of Women from Domestic Violence Act, 2005, pending on the file of learned Metropolitan Magistrate 60th Court, Kurla, stand quashed and set aside.
3. The writ petition stands disposed of.
4. Parties to act upon an authenticated copy of this order.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)