

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.**

CRIMINAL WRIT PETITION NO. 281 OF 2019

Smt. Jyoti @ Priyadarshini Rahul Kumar

Vs.

State of Maharashtra and ors

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

None for the petitioner.

Shri N.R.Patil, APP for respondent no.1

Shri R.M.Daga, Advocate for Respondent Nos. 2 and 4

**CORAM :- SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.**

DATED :- 03.02.2021

Nobody is present for the petitioner.

Heard Shri R.M.Daga, learned counsel for Respondent Nos. 2 & 4 and Shri N.R.Patil, learned APP for Respondent No.1.

Today, it is orally informed that during pendency of this petition, respondent No.3 - Jibach Prasad Rai, the grand-father of the child, has died. The statement so made upon instructions by Shri R.M.Daga, learned counsel, is accepted. This criminal petition, therefore, abates against respondent No.3.

Shri R.M.Daga, learned counsel for Respondent Nos. 2 & 4 has pointed out to us that an objection as to the maintainability of this petition has been taken on several occasions in the past, but due to non responsive attitude of the petitioner and the learned counsel, the same could not be addressed before this Court earlier. He has invited our attention to the orders passed by this Court on

15.07.2019 and 25.07.2019. These orders noted one material fact and it is of the retention of the custody of the child named Rayan by respondent No.2, which has been authorized by the Court of Judicial Magistrate, Nagpur, when it passed an order on 05.03.2019.

The copy of this order dated 05.03.2019 has been filed along with the petition by the petitioner herself. It shows that the petitioner no.2, who is power of attorney holder, had moved an application for grant of interim maintenance and custody of the child vide Misc. Criminal Application No. 1244/2018.

After haring the application on merits, the learned Magistrate partly allowed the application and so far as the issue of custody was concerned, the final order passed in the matter shows that it was not granted to the petitioner and what was granted to the petitioner was only visitation rights in respect of the child and that was also only once in a month on every second Sunday for the whole day at the residence of the petitioner. The relevant portion of the operative part of the order reads thus -

3. The applicant No.2 shall be entitled to the visitation right of child once in a month on every second Sunday for whole day at her present resident.

So, it is clear that the retention of the custody of the child by respondent No.2 is neither illegal nor unauthorized and if this is so, this petition seeking writ of Habeas Corpus is not at all maintainable. We do not understand as to why the petitioner has been ill advised in this matter to take such a step of filing a writ petition seeking issuance of writ of Habeas Corpus.

Be that as it may, the fact remains that this petition is not maintainable. The writ petition is, therefore, dismissed.

JUDGE

JUDGE

Rvjalit