

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRWP-880-2018

Date of decision: December 03, 2021

Meenu Gupta

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Raja Bahadur Singh Jain, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

Mr. Sanjiv Gupta, Advocate
for respondent No.7.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for issuance of a writ in the nature of Habeas Corpus for releasing detinue Riyansh Gupta, son of petitioner-Meenu Gupta and respondent No.7-Rajender Gupta, who is stated to have been in the illegal custody of his father-respondent No.7.

Brief facts of the case are that the petitioner was married to respondent No.7 on 2.3.2002 at Gohana and a female child, namely, Riya Gupta and a male child, namely, Riyansh Gupta were born. At the time of filing of the petition in 2018, their respective age was 15 and 09 years. It is submitted on behalf of the petitioner that about 18 months ago, prior to filing of the petition, i.e. around April, 2017, the parties had a matrimonial dispute

and respondent No.7 has filed a divorce petition by giving wrong and incorrect facts. The petitioner filed an application under Section 24 of the Hindu Marriage Act, seeking interim maintenance. Some maintenance was granted. Thereafter, respondent No.7 did not pursue the same and it was dismissed for non-prosecution.

It is further submitted by counsel for the petitioner that the petitioner is residing with her father and brother at Mohali. On 15.10.2018 when father of the petitioner had gone to drop Riyansh Gupta at Shemrock School, Sector 69, Mohali, respondent No.7 with one unknown person came and forcibly took away Riyansh Gupta with him. In this regard, father of the complainant has given a complaint in Police Station Mataur, SAS Nagar, Mohali and, later on, FIR No. 208 dated 16.10.2019 under Section 365, 341, 506 IPC, at Police Station Mataur, District Mohali was registered against him.

Counsel for the petitioner has further submitted that, later on, respondent No.7 filed a petition under Sections 7/8 of the Guardian and Wards Act for appointing him as a guardian of minor Riyansh Gupta and again incorrect facts have been given. The petitioner is contesting the same by giving details of the school record of Riyansh Gupta. It is stated that since the respondent No.7 has taken illegal custody of Riyansh Gupta, the petition be allowed and the custody be restored back to the petitioner-mother.

Counsel for the petitioner has relied upon **Mandeep Kaur Vs. State of Punjab and others**, wherein this Court has held that the writ of *habeas corpus* is not liable to be dismissed on the ground that the custody of

the minor child is with one of the parents or the availability of alternative remedy of filing the petition under the Hindu Minority and Guardianship Act.

In the said case, the child was aged about 3½ years and was in the custody of the father. This Court, while allowing the petition, directed the father to hand over the custody of the minor daughter to her mother with a further direction that the Guardian/Family Court shall decide the question of custody of the minor daughter uninfluenced by the observations made by this Court and considering the welfare and best of interest of the minor child. It was also directed that till the decision of the custody petition by the competent Court, the father is entitled to meet the minor child on every Sunday for two hours or make video call at a given time.

Counsel for the petitioner has further relied upon 1993(2) RCR (Criminal) 5, **Chandrakala Menon Vs. Capt. Vipin Gupta**, where the Hon'ble Supreme Court has held that while deciding the question of custody of a minor child, after examining every possible angle, only the interest and welfare of the minor child should be considered. In the said case, the custody of the minor girl child aged about 07 years was handed over to the mother.

Reliance has also been placed upon a judgment dated 25.1.008 passed by this Court in CRWP-543-2008 titled **Gippy Arora Vs. State of Punjab and others**, wherein this Court, while entertaining the *habeas corpus* petition filed by the mother for taking the custody of 11 months old child from custody of her husband was allowed observing that the principal consideration for the Court is to ascertain whether the welfare of the child required the

custody should be changed as the welfare of the child is the paramount consideration for the Court.

Learned counsel for respondent No.7 has also relied upon 1993(2) RCR (Criminal) 5, **Chandrakala Menon's case** (supra) to submit that respondent No.7 has been unnecessarily dragged into criminal litigation leading at the instance of his father-in-law, though he is in legally custody of his son Riyansh Gupta, who is presently age about 13 years. Reliance has also been placed on 2007 (1) RCR (Criminal) 990, **Sehnaz @ Santosh Gupta Vs. State of Punjab and another**, wherein it has been held that the mother or the natural parents cannot be held guilty of offence of kidnapping of his/her own child.

Counsel for respondent No.7 has also relied upon 2005(2) RCR (Civil) 578, **Rajesh K. Gupta Vs. Ram Gopal Agarwala and others**, wherein the Hon'ble Supreme Court has held that the paramount consideration is the welfare of the child and not the legal rights of either of the parents.

Counsel for respondent No.7 has thus, submitted that respondent No.7 being the father is properly taking care of both the children. Counsel has further submitted that the custody of the daughter Riya Gupta throughout remained with respondent No.7 and after the matrimonial dispute with respondent No.7 was taken care of her education as she was brought up in a boarding school at Dehradun and she has attained the age of 18 years and is

pursuing her higher studies for which the respondent No.7 is bearing all the expenses.

Counsel has further submitted that at no point of time, the petitioner sought the custody of the daughter which shows that she was not interested in taking the custody of her minor daughter when the present petition was filed and respondent No.7 is being unnecessarily harassed by registering an FIR against him so as to extort money.

The counsel has further submitted that in pursuance to the directions given by this Court, the petitioner has appeared before the Mediation and Conciliation Centre of this Court along with both the children Riya Gupta and Riyansh Gupta, where the petitioner met both of them and petitioner represented that there is a possibility of an amicable settlement, however, later on, no settlement could be arrived at.

Counsel for respondent No.7 has further submitted that the petitioner has even filed a petition under Sections 7 and 8 under the Guardian and Wards Act, 1890 for declaring him as a guardian of the minor child and the same was pending before the District Judge, exercising the power of Guardian Judge, Panchkula. However, later on, the same was dismissed as withdrawn.

A separate reply by way of petition of Assistant Commissioner of Police, Kalka is on record. However, the contesting parties are the petitioner and respondent No.7.

After hearing counsel for the parties and considering the long pendency of this case, which was filed in October, 2018 and a period of three years has elapsed and in the intervening period the petitioner had met both the children before the Mediation and Conciliation Centre of this Court, I find that considering the fact that the daughter of the parties Riya Gupta, presently aged above 18 years who throughout stayed with her father-respondent No.7, who is properly pursuing her education in a good institution as well as since the time of the filing of the present petition, the respondent No.7 is also pursuing the proper education of the detinue-minor son Riyansh Gupta, presently aged about 13 years, I deem it appropriate not to handover interim custody of Riyansh Gupta to respondent No.7 after 03 years of filing of petition and dispose of the petition with the following directions :-

- (a) It will be open for the petitioner as well as respondent No.7 to file a fresh petition before the concerned Judge of competent jurisdiction for the custody of Riyansh Gupta, presently aged about 13 years.
- (b) The Guardian Court is directed to dispose of the petition, preferably within a period of one year from today
- (c) On an application to be moved by the petitioner-Meenu Gupta, the Guardian Judge will make necessary arrangements for meeting the petitioner with the minor

child Riyansh Gupta once in a month at a place to be agreed by both the parties.

- (d) The Guardian Judge will ensure that the none of the parties would put unnecessary pressure on the minor child so that he may not mentally disturbed in any manner.
- (e) The Guardian Judge/Family Court shall decide the question of custody of minor child uninfluenced by the observation given by this Court by taking into the consideration the welfare being paramount consideration of the minor son Riyansh Gupta after assessing the financial capability of both the parents who can take care of the education, upbringing and future of the son.

In view of the above observations, the present petition stands disposed of.

December 03, 2021
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(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No