

CRWP-8628-2021 (O&M)

Through video conference
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

CRWP-8628-2021 (O&M).
Decided on: November 1, 2021.

Gurpreet Singh Dhillon

.. Petitioner

VERSUS

State of Punjab and others

.. Respondents

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

**PRESENT Mr.Siddharth Gupta, Advocate,
for the petitioner.**

JASGURPREET SINGH PURI, J. (ORAL)

CRM-W-1342-2021

Prayer in the present application moved under Section
482 Cr.P.C. is for placing on record Annexures P-5 to P-10.

For the reasons recorded in the application, the same is
allowed. Accompanying Annexures P-5 to P-10 are permitted to be taken on
record subject to all just exceptions.

Main Case

The present petition has been filed under Article 226/227 of the Constitution of India, seeking a writ in the nature of *habeas corpus* for search and release of detainee namely Tejwant Kaur wife of Mukhtiar Singh from the illegal and forcible custody of respondent Nos.5 to 7.

Learned counsel for the petitioner has submitted that the petitioner is serving as junior engineer in the Punjab Agricultural University, Ludhiana and is a married man having two children. The father of the petitioner namely Mukhtiar Singh who is respondent No.6 has retired and mother of the petitioner namely Tejwant Kaur who is the alleged detainee and is 85 years of age has also retired. There is a dispute between the petitioner and his brother Avtar Singh (respondent No.5) and father of the petitioner is also supporting the brother of the petitioner. He submitted that various litigations are also pending between the parties and the details of the same have been mentioned in para 3 of the petition and the relevant portion is reproduced as under:-

(i) “3 separate petitions under Section 23 of Maintenance and Welfare of Parents and Senior Citizens Act, 2007, filed by respondent No.5 against the petitioner before the Maintenance Tribunal for cancellation of transfer of ownership deeds executed in favour of the petitioner in view of the family settlement and partition arrived at between the petitioner and the respondents No.5 and 6. Respondent No.5 is also seeking maintenance from the

petitioner;

(ii)Petitioner had filed a civil suit for permanent injunction dated 12.10.2020 against respondents No.5 and 7 pending in the Court of Civil Judge (Senior Divison) Bathinda;

(iii)petitioner had also filed a suit for recovery of damages on account of harassmment and humiliation, loss of reputation and loss of mental and physical health against the private respondents at Bathinda;

(iv)Petition filed by the petitioner in the Court of SDM for not sanctioning the mutation in favour of respondent No.5 qua the land transferred by the respondent No.6 in favour of respondent No.5;

(v)One more defamation case filed by the petitioner against the private respondents; and

(vi)petitioner had also filed a petition in the Court of Principal Judge, Family Court, Ludhiana, for appointment of legal/court guardian in respect of his mother (detenue) regarding her movable and immovable properties.”

Learned counsel for the petitioner has submitted that mother of the petitioner at present is mentally infirm due to old age ailments as well as due to her separation from the petitioner and the petitioner has

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great love and affection for his mother. During the course of arguments, while being confronted with the query raised by this Court as to how a petition for *habeas corpus* would be maintainable when the mother of the petitioner along with her husband is living with her another son, learned counsel for the petitioner has stated that since she is living against her wish, therefore, factual position be ascertained by getting her statement recorded before the learned Judicial Magistrate as to where she wants to live.

I have heard the learned counsel for the petitioner.

Present is a case which is arising not only from a very unfortunate situation but even the prayers made by the petitioner are painful and would rather prick human conscience. A perusal of aforesaid reproduction showing number of litigations between the petitioner and his brother and also Annexures P-5 to P-10 would show that the petitioner has numerous litigations with his brother (respondent No.5) and father (respondent No.6). Some of these cases pertain to civil suits for permanent injunction and some for recovery of damages. Three petitions pertain to Section 23 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007, filed by the father of the petitioner praying for setting aside the different sale deeds etc. and one case pending before the Principal Judge, Family Court, Ludhiana, is for appointment of legal/court guardian in respect of the movable and immovable properties of the mother of the petitioner. The aforesaid facts and circumstances *ex facie* suggest that there are number of litigations between the petitioner and respondent Nos.5 and 6 regarding huge property and one case even pertains to seeking appointment

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of legal/court guardian regarding movable and immovable properties of mother of the petitioner. The petitioner has filed the present petition seeking writ in the nature of *habeas corpus* for getting his mother released. However, the mother is living along with her husband (respondent No.6) i.e. the father and respondent No.5 i.e. the brother of the petitioner and therefore, the same cannot be termed as an illegal custody. Therefore, the writ in the nature of *habeas corpus* cannot be issued in this regard particularly in view of the aforesaid factual position where the parties are litigating for their property rights. The prayer of the petitioner for recording the statement of his mother who is 85 years old before the learned Judicial Magistrate to know her wish as to where she wants to live, is not only unsustainable and insensitive but also seems to be ill-motivated. Due to property disputes, the petitioner wants her mother who is aged 85 years to appear before the learned Judicial Magistrate and record her statement as to where she wants to live although she is already living along with her husband and another son. The provisions of Article 226 of the Constitution of India cannot be invoked for such kind of prayers made by the petitioner. Although it is a fit case for imposing costs upon the petitioner for filing such a frivolous petition but this Court taking a lenient view is restraining itself from imposing any costs upon the petitioner. Accordingly, the present petition being devoid of any merits is hereby dismissed.

November 1, 2021.

(JASGURPREET SINGH PURI)

raj arora

JUDGE

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No