

11.07.2022
Court No. 19
Item no.365
CP

W.P.A. No. 2841 of 2022

Shatabdi Kundu
Vs.
The State of West Bengal & ors.

Ms. Devipriya Mitra
Ms. Sangeeta Roy
Ms. Monalisa Maity
...for the petitioner.

Mr. Shibaji Kumar Das
...for the respondent nos. 4 to 6.

Mr. Ansar Mondal
Mr. S. Bhattacharya
....for the State.

The petitioner alleges that the police authorities have failed and neglected to take steps on the basis of the complaint filed by the petitioner. The petitioner is unable to take custody of her minor daughter who has been allegedly, wrongfully restrained by the respondent nos. 4 to 6. The respondent Nos. 4 and 6 are the parents of the petitioner and the respondent No. 5 is her sister.

It is the specific contention of the petitioner that in the decree for divorce on mutual consent, dated April 5, 2021, it had been specifically ordered that the child would be in the custody of the mother.

The child continued to live with the grandparents. The grandparents have now refused to allow the petitioner to take back the child.

The decree for divorce does indicate that the petitioner was given custody. The petitioner prays for a direction upon the police to recover the child and register an FIR against the respondent Nos. 4 to 6. Such prayer is opposed by the respondent Nos. 4 to 6.

A Division Bench of this court had disposed of an application for grant of Habeas Corpus being WPA (H) 46 of 2021, by holding as follows:

“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.”

The Division Bench did not accept the allegation that the child was illegally detained by the respondents Nos. 4 to 6. The petitioner had filed the said application against her parents.

It is further submitted that an Act VIII case is pending at the instance of the father of the child

against the grandparents, before the appropriate forum.

Under such circumstances, no order can be passed in this writ petition. It is not a matter in which police interference is called for. When the allegation of wrongful restraint levelled against the respondent nos. 4 to 6, has been rejected by the Hon'ble Division Bench, further directions upon the police, would not be proper.

Remedy of the petitioner would be to apply under the appropriate law before the appropriate forum.

The court does not find that this is a case of inaction by the police authorities.

The writ petition is disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)