

WPA (H) 31 of 2022

**(Nimai Ghosh & Ors. Vs. The State of
West Bengal & Ors.)**

**Mr. Partha Ghosh
Mr. Amal Kumar Datta
Ms. Simran Sureka
Mr. Debashis Das**

..... For the petitioners

**Mr. Debabrata Chatterjee
Mr. Simanta Kabir**

..... For the respondent

Mr. Ghosh, learned advocate appearing for the petitioners submits that the petitioner no.3 married the private respondent no.6 on 13th December, 2013 and they were blessed with a male child on 5th April, 2017. The respondent no.6 and her minor male child went missing on and from 21st February, 2022. A complaint to that effect was lodged by the petitioner no.1, who is the father of the respondent no.6, on 22nd February, 2022. A further representation was submitted to the respondent no.4 on 15th March, 2022. However, the police authorities did not take appropriate steps to recover the respondent no.6 and her minor male child. Aggrieved thereby, the petitioners have approached this Court.

He submits that from a reliable source, the petitioner no.1 came to learn that her daughter, being the respondent no.6, was having an extra-marital

relationship. The petitioner nos.1 and 3 thereafter, filed an application under Section 97 of the Code of Criminal Procedure and by an order dated 29th March, 2022, the learned Sub-Divisional Magistrate directed the respondent no.4 to enquire and submit a report. However, no effective steps were taken.

Mr. Ghosh argues that as the private respondent is having an extra-marital relationship, it would not be healthy for the minor male child to grow up in such an atmosphere and as welfare of the child is of paramount consideration, the petitioners are entitled to custody of the child.

Per contra, Mr. Kabir, learned advocate appearing for the State submits that on the basis of the complaint lodged on behalf of the petitioners, an enquiry was conducted and it was found that the private respondent along with her minor male child were residing at B/30/2, Bapuji Nagar, Flat No.3 under the jurisdiction of Jadavpur Police Station. The private respondent was examined and she stated, *inter alia*, that she had willingly left her house along with her minor male child. Let the documents, as produced, be kept on record.

A writ in the nature of *habeas corpus* is a prerogative writ by virtue of which the causes of validity and detention of a person are investigated by a summary procedure. It appears from the records that there is a matrimonial dispute between the petitioner no.3 and the

private respondent. A mutual divorce petition filed by the parties is pending consideration before the competent Court. An application for maintenance under Section 125 of the Code of Criminal Procedure has also been preferred by the respondent no.6. The address where the private respondent and the minor male child are residing, had been ascertained by the police authorities. The minor child, who is presently aged about six years, is in the custody of his mother. The custody issue involves disputed questions of fact and ordinarily the remedy lies under the Hindu Minor and Guardianship Act or the Guardians and Wards Act, as the case may be. In such fact situation and where there is a remedy available under the ordinary law, it would perhaps not be feasible to exercise the power of writ in the nature of *habeas corpus*. In view thereof, no interference is called for in the present case.

Nothing herein shall, however, prevent the petitioners from initiating proceedings before any other Court or forum for seeking relief, according to law.

With the above observations, the present application being WPA (H) 31 of 2022 is disposed of.

There shall, however, be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Raja Basu Chowdhury, J.) (Tapabrata Chakraborty, J.)