

WPA (H) 46 of 2022

(Smt. Shikha Mandal Vs. The State of
West Bengal & Ors.)

Mr. Subrata Basak
Ms. Jayasree Ghosh

..... For the petitioner

Mr. Debabrata Chatterjee
Mr. Simanta Kabir

..... For the State

Mr. Debasish Banerjee
Mr. Ram Krishna Das

..... For the respondent no. 4

The present writ petition has been preferred primarily seeking a writ of *habeas corpus* to produce the petitioner's daughter, namely, Parna Saha (in short, Parna), who is alleged to be in the illegal custody of the respondent no. 4.

Mr. Basak, learned advocate appearing for the petitioner submits that the petitioner married the respondent no. 4 on 26th June, 2007. They were blessed with a daughter on 13th August, 2009. Subsequent thereto, the petitioner was tortured by the respondent no. 4 and as such, she was constrained to leave her matrimonial home along with her daughter in the year 2020. Thereafter, the marriage was dissolved by a decree of mutual divorce passed in Matrimonial Suit No. 121 of 2020. On 24th December, 2021, the petitioner's daughter went to meet with her father and since then she had not

been allowed to return to her mother. A complaint to that effect was also lodged but appropriate steps were not taken by the police authorities. Aggrieved thereby, the petitioner was constrained to prefer the present writ petition.

Drawing our attention to the application for mutual divorce, Mr. Basak submits that the respondent no. 4 had made a specific statement that his daughter will stay with the petitioner. The respondent no. 4 did not comply with such condition and that Parna was not allowed to return to the petitioner.

Mr. Basak further submits that the petitioner admitted her daughter to St. Stephen's School but now she has been shifted by the respondent no.4 to a low grade school and she is not getting proper education. The respondent no. 4 is also not taking proper care of her daughter.

Such contention of Mr. Basak has, however, been disputed by Mr. Banerjee, learned advocate appearing for the respondent no. 4. He submits that the respondent no. 4 is the natural guardian of Parna, who is presently thirteen years of age. The petitioner has re-married and is not competent to the custody of Parna. A custody application claiming visitation rights was filed by the petitioner but thereafter she herself withdrew the same on 3rd June, 2022. Let the documents, as filed by Mr. Banerjee, be kept on record.

Mr. Kabir, learned advocate appearing for the State submits that police authorities have discharged their statutory obligations. The petitioner's daughter is presently residing along with her father. She has also made a statement before the respondent no. 3 that she is voluntarily residing with her father. Let the documents, as produced by Mr. Kabir, be kept on record.

A writ in the nature of *Habeas Corpus* is a prerogative writ by virtue of which the causes and validity of detention of a person are investigated by a summary procedure. In child custody matters, the ordinary remedy lies under the Guardians and Wards Act, 1890. The allegations and counter-allegations need to be determined on the basis of evidence as tendered by the parties in such proceeding. This Court cannot embark upon such detailed enquiry.

We are afraid that exercise of power of writ in the nature of *habeas corpus* would perhaps not be feasible in the fact situation of the present case.

In view thereof, no interference is called for in the present petition and the same is, accordingly, disposed of.

However, nothing in this order shall prevent the petitioner from initiating appropriate proceedings before any other Court or forum seeking relief, according to law.

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.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)