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

**LPA-64-2022
DECIDED ON: 14.03.2022**

HARPREET KAUR

.....APPELLANT

VERSUS

STATE OF PUNJAB AND OTHERS

.....RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. K.S. Bal, Advocate
for the appellant.

SANDEEP MOUDGIL, J.

In the instant intra-court appeal, the appellant has challenged the order dated 06.09.2021 passed by the learned Single Judge vide which the CRWP No.8451 of 2021 was disposed of with a direction to the Police Commissioner, Amritsar to decide the representation filed by the petitioner-appellant, dated 09.08.2021 (Annexure P-1), within a period of eight weeks from the receipt of the copy of the said order.

2. The petitioner-appellant has assailed the order dated 06.09.2021 submitting that the marriage between the appellant and respondent No.4-Sharanjit Singh was solemnized in the year 2010 and the couple was blessed with a son namely Simrat Singh on 19.07.2011. Thereafter, differences started creeping in and the perusal of the case file shows that allegations and counter-allegations have been levelled including demand of divorce by respondent No.4. The petitioner-appellant also alleged maltreatment and cruelty at the hands of respondent No.4 and other members of the in-laws family and was forced to leave the matrimonial home. Faced with the

alleged cruel acts of respondent No.4, the petitioner-appellant started living in her parental house and even respondent No.4 started residing with her. On 01.01.2020, the couple was blessed with a girl child namely Anayaitjot Kaur. It is the case set up by the petitioner-appellant that respondent No.4 still continued the demand for divorce as he wanted to marry a girl of NRI status having a dream to settle abroad.

3. The criminal writ petition was preferred before the learned Single Judge with the allegation that in the month of February, 2021, respondent No.4-Sharanjit Singh forcibly took away both the children from the house of the petitioner-appellant and started living at Ganda Singh Colony, Tarn Taran Road, Amritsar with his parental family. An application was moved before the Commissioner of Police, Amritsar by the petitioner-appellant, wherein the matter was referred to the Women Cell (II), Amritsar and it has been submitted that a compromise was entered into between the parties on 09.06.2021.

4. According to the said settlement, the petitioner-appellant was taken to her matrimonial home though there was no change in the attitude of the private respondents rather insistence for divorce became more furious and even the threat to kill was advanced, as has been alleged by the petitioner-appellant.

5. Since the act of cruelty continued, as submitted by the learned counsel for the petitioner-appellant, she left the matrimonial home on the intervening night of 23/24.06.2021 at about 1:30 a.m. but was not allowed to take along the minor children. The grievance raised by the petitioner-appellant is that the official respondents though recorded her statement on a complaint, dated 09.08.2021 but the police authorities have failed to take

any effective action against the private respondents.

6. Learned counsel for the petitioner-appellant also submits that there is a strong apprehension in the mind that respondent No.4 may take the children abroad and thereafter, the petitioner-appellant will be left with no other recourse.

7. Having heard learned counsel for the petitioner-appellant and perusal of the order dated 06.09.2021 passed by the learned Single Judge clearly reflects that due consideration has been given to the welfare of the children after having interaction with respondent No.4 as well as the children along with the help of learned State counsel. Both the children are with one of the parent i.e. father, who is taking due care and the complaint dated 09.08.2021, before the Police Commissioner, Amritsar is still pending.

8. Learned counsel for the petitioner-appellant has though argued vehemently that atleast the custody of girl child may be handed over to the mother-appellant in view of the age seeing little more than two years, failed to demonstrate and to make out a case of better environment and care than that being provided by the father-respondent No.4. The boy is more than ten years of age and brother and sister both are having company of each other, it would also be not in the interest of either of child to separate from other at this juncture, where they seems prima facie to be living happily with the father. Moreover, the learned Single Judge has after interaction with the parties has recorded in its order that there is a likelihood that the parties might amicably settle their dispute which should be given preference while disposing of the representation made by the petitioner-appellant, which is pending before the authorities.

9. In a case bearing **CRWP No.1423 of 2019 titled as 'Mandeep Kaur vs. State of Punjab'**, decided on 03.11.2020, this Court while exercising the powers in extra-ordinary writ jurisdiction, to issue a writ in the nature of habeas corpus, in cases related to custody of children has held that it is not solely dependent on and does not necessarily follow merely determination of illegality of detention and has to be based on the paramount consideration of welfare of the minor child irrespective of the legal rights of the parents. Para No.15 of the above judgment needs reference, which is reproduced herein below:-

15. In Howarth Vs. Northcott : 152 Conn 460 : 208 A 2nd 540 : 17 ALR 3rd 758 it was observed that in habeas corpus proceedings to determine child custody, the jurisdiction exercised by the Court rests in such cases on its inherent equitable powers and exerts the force of the State, as parens patriae, for the protection of its infant ward, and the very nature and scope of the inquiry and the result sought to be accomplished call for the exercise of the jurisdiction of a court of equity. It was further observed that the employment of the forms of habeas corpus in a child custody case is not for the purpose of testing the legality of a confinement or restraint as contemplated by the ancient common law writ, or by statute, but the primary purpose is to furnish a means by which the court, in the exercise of its judicial discretion, may determine what is best for the welfare of the child, and the decision is reached by a consideration of the equities involved in the welfare of the child, against which the legal rights of no one, including the parents, are allowed to militate. It was also indicated that ordinarily, the basis for issuance of a writ of habeas corpus is an illegal detention; but in the case of such a writ sued out for the detention of a child, the law is concerned not so much with the illegality of the detention as with the welfare of the child.

10. The Apex Court in case titled as **'Dr. Veena Kapoor vs. Varinder Kumar Kapoor'**, AIR 1982 Supreme Court 792, while advertng

to the question of welfare of the minor child, dismissed habeas corpus petition with the observation that in matters concerning the custody of minor children, the paramount consideration is the welfare of the minor and not the legal rights of this or that particular party. Para No.19 of the above judgment needs reference, which is reproduced herein below:-

19. In Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari (SC) 2019 (3) R.C.R. (Civil) 104 :2019 (7) SCC 42 Hon'ble Supreme Court observed as under :-

“19. In child custody matters, the ordinary remedy lies only under the Hindu Minority and Guardianship Act or the Guardians and Wards Act as the case may be. In cases arising out of the proceedings under the Guardians 9 of 19 and Wards Act, the jurisdiction of the court is determined by whether the minor ordinarily resides within the area on which the court exercises such jurisdiction. There are significant differences between the enquiry under the Guardians and Wards Act and the exercise of powers by a writ court which is of summary in nature. What is important is the welfare of the child. In the writ court, rights are determined only on the basis of affidavits. Where the court is of the view that a detailed enquiry is required, the court may decline to exercise the extraordinary jurisdiction and direct the parties to approach the civil court. It is only in exceptional cases, the rights of the parties to the custody of the minor will be determined in exercise of extraordinary jurisdiction on a petition for habeas corpus.”

11. Coming back to the circumstances and material on record in the instant case, the appellant-petitioner has though pressed for custody of children particularly of minor girl child aged about two years but failed to demonstrate the means and resources to provide due care, necessary facilities of atleast minimum and protection, which is to be examined being

paramount consideration for this Court.

12. On the other hand, the respondent-father has not only otherwise by his acts of care advanced to the minor children but also during interaction by the learned Single Judge, exhibited care, love and affection bestowed upon them added by the willingness and desire of children to stay with the father-respondent. The record further indicates that the respondent-father has even gone to the extent of staying at his inlaw's house with his wife-appellant for the sake of saving the matrimonial life as well as to secure the future of minor children but the appellant-wife has gone to various authorities with certain complaints, which lacked any corroborative material on record of this Court. Even otherwise the respondent-father is a biological father of both the minor children and cannot be held to be keeping them in illegal confinement by any stretch of imagination when both the parents are entangled in a matrimonial dispute. The custody of the children cannot be allowed to be score to settle personal egos of parents but welfare of the children is to be kept in mind. The appellant-wife has alleged that respondent-husband is desirous of marrying another NRI lady and wishes to settle abroad but this contention lacks any cogent evidence in any manner whatsoever, which is absolutely a bald and vague allegation.

13. Another aspect in the case to be borne in mind is that the male child is aged around ten years, who was found affectionate towards the girl child, as both brother and sister were enjoying the company and relation of brother and sister as noticed by the learned Single Judge as well, during interaction in the chamber. At this juncture, it would not be in the interest of either of the child to separate them from each other, as desired by the appellant-wife. The very fact also cannot be lost sight that it is after

interaction with the parties duly assisted by their learned respective counsels, the chances of amicable settlement of the dispute are apparent.

14. This Court after examining material on record in the light of the peculiar facts and circumstances involved in the present appeal, is of the considered view that since the representation/complaint made by the appellant-wife is still pending before the authorities, as such there is no patent infirmity or illegality in the order dated 06.09.2021 passed by the learned Single Judge, which is under challenge in the instant appeal.

15. Hence, in view of the discussion made hereinabove and also in the light of the fact that a direction had been issued by the learned Single Judge to decide the representation/complaint filed by the appellant-wife dated 09.08.2021, pending with the Commissioner of Police, Amritsar, within a period of eight weeks on the receipt of the copy of the said order, no interference is warranted inasmuch as the appeal is devoid of any merits and, therefore, the same is dismissed.

(SANDEEP MOUDGIL)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

14.03.2022

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No