

**(123) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRWP-5577-2022

Date of decision : 04.08.2022

ASHWANI KUMAR

... Petitioner

Versus

STATE OF PUNJAB & OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Vikas Bali, Advocate for the petitioner.

Mr. Sidakmeet Singh Sandhu, Asstt. A.G., Punjab.

Mr. Arun Takhi, Advocate for respondent No.5.

JASJIT SINGH BEDI, J. (ORAL)

The present Criminal Writ Petition under Article 226 of the Constitution of India read Section 482 Cr.P.C. is for the issuance of a writ in the nature of Habeas Corpus directing respondent Nos.2 to 4 to get released the detinue namely, Aarybh Kumar son of the present petitioner from the detention of respondent No.5 (mother of the alleged detinue) immediately on the ground of medical emergency as the son of the petitioner is suffering from low platelet count leading to his deteriorating health and the petitioner desires that his son be got treated from PGIMER, Chandigarh at the earliest.

2. The brief facts of the case as emerging from the petition are that the marriage between the petitioner and respondent No.5 was solemnized on 16.05.2013 at Mahasabha Bhawan, Mandir Marg, New Delhi-110001 according to Hindu religious rites and ceremonies. The marriage between the petitioner and respondent No.5 still subsists.

3. After the marriage, the petitioner and respondent No.5 lived and cohabited together as husband and wife at Delhi and two children Aarybh Kumar (DoB 05.09.2017-alleged detinue) and Divyansh Kumar

(DoB 26.06.2019) were born from the loins of respondent No.5 who are currently in the care and custody of respondent No.5.

4. Due to the temperamental differences between the petitioner and respondent No.5, both are now living separately. The respondent No.5 is a Head Constable posted at CRPF, Jalandhar and is working in the office of respondent No.4 and whereas, the petitioner is a Senior Business Intelligence Engineer at Incubit Global Business Services, Nodia and for the last 03 years, the petitioner is working from home.

5. As per the petitioner, on 01.04.2021, the petitioner had to go to Mohali in connection with his job and when he returned on 12.05.2021, the security staff at the gate did not allow him to enter into the CRPF Campus. He tried to talk to the respondent No.5 but she refused to talk to him. Thereafter, he also spoke to Incharge, Control Room, CRPF Campus in the office of respondent No.4 but was not allowed to enter into the CRPF Campus at the behest of the respondent No.5.

6. As per the petitioner, since then, the minor children including the alleged detainee were in the illegal custody of the respondent No.5 and he is not being allowed to meet and see the minor children. Meanwhile, he came to know that the elder child namely, Aarybh Kumar was seriously ill and requires specialised treatment. He requested the respondent No.5 to allow him to get the minor child Aarybh Kumar treatment from PGI, Chandigarh or some other specialised hospital at his own expenses. However, the respondent No.5 refused to accept the same.

7. As per the petitioner, he received information that the minor son Aarybh was suffering from Hemoglobin (low platelets) and was seriously ill but the respondent No.5 was not getting proper treatment for the minor child. A copy of the medical report showing the low platelets of the alleged detainee was appended as Annexure P-1.

8. The petitioner being the natural father was desirous of getting the minor child treated from PGIMER, Chandigarh or some other

specialised hospital at Chandigarh or Mohali in order to get proper and effective treatment for the minor child.

9. The respondent No.5-wife of the petitioner has filed her written statement dated 13.07.2022. As per the said written statement, the petitioner had suppressed material facts from this Court. In fact, he had filed the present petition after he had already approached the Principal Judge, Family Court, Jalandhar by way of filing of an application under Sections 7 and 25 of the Guardianship and Wards Act, 1890 for appointing the petitioner as a guardian of the minor sons namely, Aarybh Kumar and Divyansh Kumar on 31.05.2022 along with an application for custody of Aarybh Kumar under the garb of getting him treatment from PGIMER, Chandigarh or some other hospital. It is her contention that the litigants who attempt to pollute the stream of justice are not entitled to any relief, interim or final. Reliance is placed on the decision in **Kishore Samrite's case (supra) Versus State of U.P., 2012(4) R.C.R. (Criminal) 775**. In the said application notice is said to have been issued to the answering respondent and the case is listed for hearing on 07.09.2022. It is further mentioned in the reply that Aarybh Kumar is in the legal and lawful custody of the answering respondent, who is the mother and is getting regular treatment from PGIMER, Chandigarh for his low platelet counts. In fact, he has shown marked improvement in his health condition, which is borne out from his latest reports (Annexure R5/3 and R5/4) (colly). Right from his birth, the answering respondent mother has been taking care of the child who is now 04 years old and in fact, it was the petitioner who did not bother about his well-being. She has further stated in her reply that she is well placed being an employee of the CRPF and has resources to meet the daily needs of the child and in fact, the petitioner is not even paying maintenance for the children. In fact, the present petition had been filed because the petitioner had not got any interim relief from the Principal Judge, Family Court, Jalandhar.

While referring to the conduct of the petitioner, it is stated that while the answering respondent was admitted at Civil Hospital,

Hoshiarpur on 26.06.2019 being pregnant with their second child Divyansh Kumar, the petitioner and his mother came to the hospital to meet the answering respondent and thereafter taking advantage of her hospitalization; picked up the minor son Aarybh Kumar from the house of her brother on 27.06.2019 and brought him to the Police Station, Model Town, Hoshiarpur to inform that he would take the child along with them. However, as the child was being forcibly taken from the custody of the answering respondent without her consent, she informed the police and accordingly, the petitioner was not given the custody and the minor child was sent with the brother of the answering respondent- Sukhwinder Singh. Reference is made to Annexures R5/3 and R5/4.

While submitting her reply on merits, she has admitted that the petitioner is a Senior Business Intelligence Engineer at Incubit Global Services, Noida and has for the last three years been working from home.

10. This matter had come up for hearing on 07.06.2022, when the following order was passed:-

“Learned counsel for the petitioner, inter-alia, contends that the minor son of the petitioner named Aarybh Kumar is, presently, under the care and custody of his mother, i.e respondent No.5 and the petitioner only wants that his above-named son, who is having precariously low count of the platelets, should be treated at some super speciality hospital.

Notice of motion.

Mr. M.S. Nagra, learned Assistant Advocate General, Punjab, who has appeared on behalf of respondents No.1 to 3 in this case in pursuance of the copies of the instant petition having been sent to the respondent-State in advance, accepts the notice and he seeks time to get proper and complete instructions in the present matter from the quarter concerned and if deemed necessary, then to file the reply also.

Adjourned to 10.06.2022.

Let notices to respondents No.4 and 5 be issued for the date fixed through ordinary process, email or any other electronic mode. Dasti as well.”

A perusal of the said order would reveal that the petitioner prayer was that he wishes to get his son treated at some super-speciality hospital on account of his low platelet count. Thereafter, the matter was adjourned from time to time and has been taken up for final adjudication today.

11. The learned counsel for the petitioner submits that he only wants the welfare of the child to be taken care off and as per the pleadings in the present petition and information which he has gathered, their minor son Aarybh Kumar, who is presently in the custody of respondent No.5-mother is not being given appropriate treatment. It is on this count that he has filed the present petition. Effectively, the petitioner has reiterated the contents of the petition as also the interim order dated 07.06.2022. On a query from this Court as to why it was not disclosed to this Court in the petition that he had already approached the Guardianship Court, no satisfactory answer has been provided.

12. The learned counsel for respondent No.5-mother while relying upon the affidavit dated 13.07.2022 submits that the conduct of the petitioner itself does not entitle him to any relief. The petitioner has not disclosed in the petition that he had already availed his alternative and efficacious remedy by approaching the Guardianship and Wards Court with an identical prayer which he has made in the present petition. He further contends that the child is being properly taken care of by the mother and by no stretch of imagination can it be said that the father would be in a better position to look after the child, keeping in view the social and financial status of the answering respondent-mother, who is employee of the CRPF. He contends that the laboratory reports themselves would show that the condition of the minor child is improving and therefore the present petition is liable to be dismissed.

13. I have the learned counsel for the parties at length.

14. In the present case, firstly, the conduct of the petitioner itself does not entitle him to the grant of any relief. He has quite apparently

not disclosed in the petition that he had already availed his alternative remedy in accordance with law. In fact in para 09 of the present petition, he has made the following averment:-

“9. That the petitioner has no other efficacious remedy except to approach this Hon'ble Court for the appropriate direction and relief.”

Thus, it is apparent that there is a deliberate attempt to deceive and mislead the Court.

15. The Hon'ble Supreme Court in the case of **Kishore Samrite's** case (supra), held as under:-

“29. Now, we shall deal with the question whether both or any of the petitioners in Civil Writ Petition Nos. 111/2011 and 125/2011 are guilty of suppression of material facts, not approaching the Court with clean hands, and thereby abusing the process of the Court. Before we dwell upon the facts and circumstances of the case in hand, let us refer to some case laws which would help us in dealing with the present situation with greater precision. The cases of abuse of the process of court and such allied matters have been arising before the Courts consistently. This Court has had many occasions where it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of the process of court. We may recapitulate and state some of the principles. It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of cases. These are:

(i) Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the Courts, initiated proceedings without full disclosure of facts and came to the courts with ‘unclean hands’. Courts have held that such litigants are neither

entitled to be heard on the merits of the case nor entitled to any relief.

(ii) The people, who approach the Court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.

(iii) The obligation to approach the Court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.

(iv) Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have over-shadowed the old ethos of litigative values for small gains.

(v) A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.

(vi) The Court must ensure that its process is not abused and in order to prevent abuse of the process the court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the Court would be duty bound to impose heavy costs.

(vii) Wherever a public interest is invoked, the Court must examine the petition carefully to ensure that there is genuine public interest involved. The stream of justice should not be allowed to be polluted by unscrupulous litigants.

(vii) The Court, especially the Supreme Court, has to maintain strictest vigilance over the abuse of the

process of court and ordinarily meddlesome bystanders should not be granted “visa”. Many societal pollutants create new problems of unredressed grievances and the Court should endure to take cases where the justice of the lis well-justifies it.

[Refer :Dalip Singh v. State of U.P. & Ors. (2010) 2 SCC 114; Amar Singh v. Union of India & Ors. 2011(5) R.C.R. (Civil) 386: (2011) 7 SCC 69 and State of Uttaranchal v Balwant Singh Chaufal & Ors. 2010(1) R.C.R. (Civil) 842: 2010(1) R.A.J. 372: 2010(1) S.C.T. 607: (2010) 3 SCC 402].

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32. With the passage of time, it has been realised that people used to feel proud to tell the truth in the Courts, irrespective of the consequences but that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that dishonesty and any attempt to

surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs.

33. The party not approaching the Court with clean hands would be liable to be non-suited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot claim relief, especially under [Article 136](#) of the Constitution. While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of such information must also be disclosed. Totally misconceived petition amounts to abuse of the process of the court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the court. A litigant is bound to make “full and true disclosure of facts”. (Refer :[Tilokchand H.B. Motichand & Ors. v. Munshi & Anr.](#) [1969 (1) SCC 110]; [A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Anr.](#), 2012(3) R.C.R.(Civil) 1: 2012(3) Recent Apex Judgments (R.A.J.) 56: (2012) 6 SCC 430; [Chandra Shashi v. Anil Kumar Verma](#) 1995 (1)R.C.R. (Criminal) 210: (1995) SCC (1) 421; [Abhyudya Sanstha v. Union of India & Ors.](#) 2012 (1) S.C.T. 641: (2011) 6 SCC 145; [State of Madhya Pradesh v. Narmada Bachao Andolan & Anr.](#), 2011(5) R.C.R. (Civil) 397: (2011) 7 SCC 639; [Kalyaneshwari v. Union of India & Anr.](#), 2012(2) R.C.R. (Civil) 626: 2012(2) Recent Apex Judgments (R.A.J.) 242: 2012(2) S.C.T. 551: (2011) 3 SCC 287).

[emphasis supplied]

16. Thus, on account of deliberate suppression of material facts and not approaching the Court with clean hands alone, the present petition cannot be entertained.

17. The past conduct of the petitioner also does not inspire any confidence. Earlier there was an attempt to take away the said minor child Aarybh Kumar when the answering respondent was pregnant with the second child. She was able to thwart the attempts of the petitioner, which is clearly borne out from the affidavits (Annexures R5/3 and R5/4). Therefore, even on this count of his past conduct being suspect, the petitioner is not entitled to any relief from this Court.

18. Lastly and most importantly, what is to be seen in the present case is the mental and physical well-being of the child. The answering respondent No.5 is an employee of the CRPF and as such has the financial capability to get the best possible treatment for the minor child, which is being availed off by her from PGIMER, Chandigarh. She has the necessary resources to meet the daily needs of both their children. Even otherwise, the child is of the age of almost 05 years and at this age, the presence of the mother in his life is of primary importance unless it can be shown that for certain reasons, the mother is unable to take care of the daily needs of the child.

19. The Hon'ble Supreme Court in **Rajeshwari Chandrasekar Ganesh Versus The State of Tamil Nadu and others, Writ Petition (Criminal) No.402 of 2021, decided on July 14, 2022**, held as under.

“115.We would therefore hold that in the case at bar the dominant consideration to which all other considerations must remain subordinate must be the welfare of the child. This is not to say that the question of custody will be determined by weighing the economic circumstances of the contending parties. The matter will not be determined solely on the basis of the physical comfort and material advantages that may be available in the home of one contender or the other. The welfare of the child must be decided on a consideration of these

and all other relevant factors, including the general psychological, spiritual and emotional welfare of the child. It must be the aim of the Court, when resolving disputes between the rival claimants for the custody of a child, to choose the course which will best provide for the healthy growth, development and education of the child so that he or she will be equipped to face the problems of life as a mature adult.”

20. In view of the aforesaid discussion, I find no merit in the present petition and hence, the same is hereby dismissed.

(JASJIT SINGH BEDI)
JUDGE

04.08.2022
JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No