

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

118

CRWP-5931-2022

Decided on :11.07.2022

Gurmohan Singh

. . . Petitioner

Versus

State of Punjab and others

. . . Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

PRESENT: Mr. Lupil Gupta, Advocate
for the petitioner.

Mr. Dhruv Dayal, Sr. DAG, Punjab.

Ms. Ramandeep Kaur, Advocate
for respondents No. 7 to 10.

VIKAS BAHL, J. (Oral)

The present Criminal Writ Petition has been filed under Articles 226/227 of the Constitution of India for issuance of writ in the nature of mandamus in which following prayers have been made:

(i) For issuance of directions to respondents No. 2 and 3 on the allegations to the effect that the respondents No. 4 to 6, who have been stated to be hand in glove with respondents No. 7 to 10 and are stated to have been pressurizing the petitioner to handover the custody of minor son namely Agamjot Singh, aged about 5 years, to respondent No. 7 illegally and forcibly;

(ii) For issuance of directions to respondents No. 2 to 6 that in the even of arrest of the petitioner or any of his family member in any complaint/FIR at the behest of respondents No. 7 to 10, the

petitioner be given 7 days prior notice;

- (iii) For issuance of appropriate direction to the respondent No. 4 to 6 not to harass and humiliate the petitioner at the instance of respondents No. 7 to 10 and not to pressurize the petitioner to handover the custody of minor son namely Agamjot Singh, aged about 7 years to the respondent No. 7.

A perusal of the paperbook would show that the petitioner has filed a civil suit in which the present respondent No. 7, who is the wife of the petitioner, has been made as defendant No. 1 and the SHO, who is respondent No. 5 in the present petition, has been made as defendant no. 5 and Ram Parkash, ASI, who is respondent No. 6 in the present petition has been impleaded as defendant No. 6. The plaint of the said civil suit has been annexed as Annexure P-2. The relevant portion of the said plaint is reproduced hereinbelow:

“Gurmohan Singh (age 31 years) son Gurbhej Singh resident of near Dr. Dhawan Hospital, Mukatsar Road, Mandi Guruhsahal, Tehsil Guruhsahal, Distt Ferozepur.

.....Plaintiff

Versus

1. Kirandeep Kaur wife of Gurmohan Singh at present resident of Village Mohkam Wala, Tehsil and District Ferozepur.

2. Bohar Singh son of Bhag Singh

3. Kikkar Singh son of Bhag Singh

4. Harjinder Kaur wife of Kikkar Singh

All residents of Village Mohkam Wala, Tehsil and District Ferozepur.

5. Station House Officer (S.H.O), Police Station Guruhsahal, Distt. Ferozepur.

6. *Ram Parkash, A.S.I, Police station Guruharsahi, District Ferozepur.*

..Defendants

Civil suit for decree of permanent injunction restraining the defendant no.1 to 4 from taking the custody of minor Agamjot Singh from the legal custody of plaintiff (Natural Guardian), forcibly, illegally, i.e snatching, or in any other coercive methods with the help of defendants no. 5 and 6, further directing the defendant no.1 to withdraw the application if any moved by her to defendant no. 5 for providing the custody of minor, being false and further directing the defendant no. 5 and 6 not to harass the plaintiff and his family members in any manner on the above said false application if any moved by the defendant no.1, on the basis of oral and documentary evidence of all sorts.

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Sir,

The plaintiff humbly submitted as under:

1. *That the marriage of the plaintiff and defendant no. 1 was solemnized on 10/7/2016 according to Sikh rites and the marriage was simple one and only 10/12 persons including the plaintiff and his parents were attend the parental house of the defendant no. 1 as Barati. This marriage was love cum arrange marriage and with the consent of both no gift items were exchanged between the parties to the marriage.*
2. *That after the marriage the plaintiff and defendant no. 1 cohabited with each other and on 9.8.2017 a male child later named Agamjot Singh was born out of the wedlock of the plaintiff and defendant no. 1 being husband and wife. The minor is now residing with the plaintiff and is studying in L.K.G class (C.B.S.E) at G.T.B, School, Guruharsahai.*

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5. *That the defendants have no right to take the custody of the minor Agamjot Singh forcibly and illegally in any manner except in due course of law, but the defendants always threatened the plaintiff to do the said act illegally and forcibly.*

6. *That thereafter on 3.6.2022 the defendants in connivance with each other came to the house of plaintiff at Guruharsahai and tried to take the custody of minor forcibly and illegally from the legal custody of plaintiff for which they legally got no right to do so but their attempt was got foiled due to timely intervention of respectable of the locality at his residential area and while leaving the residential house of the plaintiff they threatened the plaintiff to do the said illegal act in near future, within the territorial jurisdiction of this Hon'ble court. As such this Hon'ble court has got Jurisdiction to try and decide this suit.*

7. *That the suit is valued for the purpose of court fee and jurisdiction to the assess of Rs. 500/- and as such a total court fee of Rs. 50/- has been affixed on the plaint as prescribed under the law.*

8. *That their in no other similar suit on the similar grounds between the same parties has been ever decide nor is pending in any court of competent jurisdiction of law.*

It is, therefore prayed that the decree of permanent injunction restraining the defendant no.1 to 4 from taking the custody of minor Agamjot Singh from the legal custody of plaintiff (Natural Guardian), forcibly, illegally, i.e snatching, or in any other coercive methods with the help of defendants no. 5 and 6, further directing the defendant no.1 to withdraw the application if any moved by her to defendant no. 5 for providing the custody of minor, being false and further directing the

defendant no. 5 and 6 not to harass the plaintiff and his family members in any manner on the above said false application if any moved by the defendant no.1, may kindly be passed in favour of plaintiff and against the defendants, in the interest of justice. Any other relief, which may deem fit by this Hon.ble court may also be granted in favour of the plaintiff and against the defendants, in the interest of justice.

Submitted by.

***Gurmohan Singh son Gurbhej Singh resident of
near Dr. Dhawan Hospital, Mukatsar Road, Mandi
Guruharsahai, Tehsil Guruharsahai, Distt Ferozepur.”***

A perusal of the said plaint would show that permanent injunction has been sought in the said suit for restraining the defendants No. 1 to 4 therein from taking the custody of the minor child, Agamjot Singh, from the legal custody of plaintiff, forcibly, illegally or by any other coercive method. It has also been submitted that the defendants have no right to take the custody of the minor child namely Agamjot Singh forcibly and it has specifically been mentioned that on 03.06.2022, the defendants, in connivance with each other, had gone to the house of the plaintiff at Guruharsahai and had tried to take the custody of the minor child forcibly and illegally. It is, thus, apparent that the gist of the allegations made in the present petition are similar to the ones which have been made in the said suit with the only exception that the petitioner has submitted that after filing of the said suit, a notice dated 09.06.2022 (Annexure P-4) has been issued to the petitioner with respect to the complaint filed by the wife of the

petitioner i.e. respondent No. 7.

On a pointed query raised by this Court, learned counsel for the petitioner has fairly submitted that the said suit was filed on 04.06.2022 and notice was issued in the suit as well as in the application under Order 39 Rule 1 & 2 read with Section 151 CPC for 07.07.2022 and it is on 07.07.2022 that power of attorney was filed on behalf of defendants No. 1 to 4 and the case has been adjourned to 30.08.2022. The said orders have been handed over by learned counsel for the petitioner to the Court which have been taken on record as Mark-A and Mark-B. The relevant portion of the said orders is reproduced hereinbelow:

*“Present. Sh. Jatinder Puggal, Advocate counsel for plaintiff
Suit presented today before me being Vacation Judge
being of urgent nature. An application to entertain the suit
during vacation being of urgent nature also filed and same
stands allowed. Along-with the main suit, the plaintiff has
also moved an application under order 39 rule 1 & 2 CPC
for grant of ad-interim injunction which is supported by an
affidavit.*

*Arguments heard on application Under Order 39,
Rule 1 and 2 read with Section 151 CPC for grant of ad-
interim injunction. After hearing the submissions of the
learned counsel for the plaintiff and examining the
documents placed on record, I am of the considered opinion
that defendants need to be heard before passing any order on
the above said injunction. Hence, notice to defendants of suit
as well as application Under Order 39, Rule 1 and 2 read
with Section 151 CPC be issued for 07.07.2022 on filing of
PF/DM, copy of plaint etc. Dasti summons for the service of
respondent/defendant be given if so desired.*

Now file be put on 07.07.2022 for proper entrustment.

Dated: 04.06.2022

*(Neeraj Kumar Singla), PCS
Vacation Judge/GHS,
(UID No. PB0354)*

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Present: Counsel for plaintiff

Suit received by entrustment. It be registered.

*Sh.Gaurav Monga Adv. filed memo for defs No.1 to 4. To come up on
30.08.22 for filing POA, w/s and reply and notice to remaining
defendants be issued afresh for date fixed.*

Dated:07.07.2022

*(Lovepreet Kaur), PCS
CJD, Guruharsahai
(UID No. PB0641) ”*

Learned counsel for the petitioner has very fairly submitted that there is no ad interim injunction granted in the said case till date. Even a perusal of the said orders would reaffirm the said fact. The question before this Court is that once the petitioner has chosen to file a civil suit in which an injunction is being sought against the contesting respondents in the present case i.e. respondents No. 5 to 7, then whether the present petition under Section 482 Cr.P.C. would be maintainable or not. The answer to the same would be in the negative. The aspect as to whether the custody of the minor child should be with the petitioner or with the respondent No. 7 herein (defendant No. 1 in the civil suit), would be finally adjudicated in the said civil suit and the issue as to whether any attempt has been made by any of the parties to take forcible custody of the said minor child would also be adjudicated therein. Parallel proceedings under Section 482 Cr.P.C., that too at the instance of the petitioner, who has already filed a civil suit, would not

be maintainable. It is apparent that the present petition has been filed since the petitioner was not granted ad interim injunction in the said civil suit and has been filed only to gain some unfair advantage against respondent No. 7. Thus, prayers at serial No. 1 and 3 cannot be considered in view of the pendency of the said civil suit. As far as prayer at serial No. 2 is concerned, granting the same would result in passing a blanket order of stay of arrest in favour of the petitioner even with respect to any complaint/FIR which might be registered in the future, which is not permissible in law. Moreover, no law has been cited by learned counsel for the petitioner in support of the same to show that the said prayer can be granted by this Court.

Accordingly, the present petition, being absolutely misconceived, is dismissed.

(VIKAS BAHL)
JUDGE

July 11th,2022
Mehak

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No