

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

116

LPA-882-2022 (O&M)
Date of decision: 10.10.2022

Annu Verma

..... Appellant

Versus

Lalit Kumar and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ALOK JAIN

Present :- Mr.Harish Bhardwaj, Advocate
for the appellant

ALOK JAIN, J. :

The present Letters Patent Appeal has been preferred against the order dated 29.08.2022 passed by the learned Single Judge, wherein the appellant had sought issuance of a writ of Habeas Corpus with a further direction to release her infant daughter aged 01 years and 06 months, alleging that she has been illegally detained by respondents No.1 and 2 and in alleged connivance of respondent No.3.

Learned Single Judge, after hearing the parties disposed of the writ petition by passing the following order on 29.08.2022:

“Learned counsel for the parties submit that mediation failed.

Learned counsel for respondent No. 3-husband submits that this petition is false and frivolous and has been filed by concealing the material facts.

At this stage, learned counsel for the petitioner submits that vide a communication between the husband and

wife, husband had assured her that he would take the child along with him to Germany.

Given above, this petition is disposed of by directing respondent No. 3- husband to start taking appropriate steps for taking the child with him to Germany. It is clarified that he shall apply for the visa within one year from today.

It is further clarified that in case visa is not granted by the concerned Embassy, then the respondent-husband shall not be blamed for not taking the child along with him.

Liberty reserved to the petitioner to take all legal remedies available with her except filing of habeas corpus again. It is also clarified that the observation regarding respondent-husband shall take steps to get visa of the child shall not be taken by the petitioner for her benefit in any legal proceedings.”

Aggrieved by the aforesaid, the appellant has impugned the order and has prayed that the custody of the minor child be handed over to her till respondent No.3 takes the child to Germany.

Learned counsel for the appellant has argued that the learned Single Judge has fell in error while deciding the writ petition inasmuch as that while granting one year's time to respondent No.3 to take the child to Germany, the Court has not considered the right of the appellant to have the custody of the minor child, as she being the mother and natural guardian of the ward. Learned counsel has further argued that the order of the learned Single Judge can be misused for the reason that in case respondent No.3 applied in the last stage of one year period granted to him and does not fulfill the requirement purposefully, even then the appellant will not be in a position to take any recourse against respondent No.3. Learned counsel for the appellant has further argued that respondent No.3 is likely to

deliberately do omissions in the documents process and in the meanwhile, the minor child is being deprived of the custody and care of the real parents. Learned counsel has vehemently submitted that the child is in illegal custody and as the appellant is natural guardian, she is worried about the utmost welfare. The appellant is an educated working lady employed as an Assistant Professor and hence the learned Single Judge has erred in law and in facts.

We have heard learned counsel for the appellant.

It has come on record that the appellant got married to respondent No.3-Amit Kumar on 13.12.2018 at Sonapat and subsequently she joined the company of her husband in Germany in August 2019. The appellant came back to India on 29.07.2020 and was blessed with a daughter on 04.10.2020. However, disputes arose between the parties and ultimately a compromise was effected on 03.07.2021. In furtherance to the said compromise, the appellant and respondent No.3 filed a joint petition under Section 13-B of the Hindu Marriage Act and the appellant recorded her statement in the first motion on 10.12.2021, wherein it was recorded that “one female child namely Ananya Soni was born out from this wedlock on 04.10.2020 and she is living under the custody of petitioner No.1 therein (husband). The relevant part of the same reads as under:

“We have also decided that the care and custody of above named minor child would remain with petitioner No.1 and petitioner No.2 would not claim for custody in future.”

A letter dated 17.04.2021 has also come on record which was written by the grandfather of respondent No.3 to the father of appellant wherein it was categorically stated that on 11.04.2021, the child who was left by the appellant and her father, at the house of respondent No.3 and

had requested the appellant to keep the six months old child who was dependent on mother's feed at that time, but the appellant did not respond to the said request also. The subsequent compromise and proceedings for mutual divorce and the statement recorded therein go a long way to show that the appellant knowingly and wilfully handed over the custody of the child to the respondents. She was and is well aware about the child and hence the petition for habeas corpus at the first instance was not maintainable. Be that as it may, the learned Single Judge has disposed of the petition and has rightly gone ahead to resolve the matter by keeping in view the interest of the child.

A perusal of the impugned order in fact, demonstrates and records that vide a communication between the “husband and wife”, husband had assured her that he would take the child along with him to Germany. In that backdrop, the learned Single Judge has rightly issued the directions as contained in the order.

It is worthy to note that the petition for Habeas Corpus can only be filed to seek release of a person from any illegal detention. The word '*Habeas Corpus*' is a latin word, which means to 'produce the corpus'. In the instant case, neither the child is in any illegal custody nor detained and the appellant was absolutely clear and well informed that the child is with the family of respondent No.3. Though the petition should have been rendered infructuous but the learned Single Judge has rightly gone ahead to resolve the matter and keeping in view the interest of the child directed respondent No.3 to start taking appropriate steps for taking the child with him to Germany. In fact the said position was admitted by the appellant that respondent No.3 has assured that he would take the child along with him to

Germany.

As regards the argument of the learned counsel for the appellant that the custody of the child should be handed over to the appellant by claiming that she is the mother and natural guardian of the child and entitled to custody even as per law, the said prayer for custody, although can be considered but it is not a fit case whereby the extraordinary jurisdiction of this Court deserves to be exercised and hence the said prayer cannot be acceded to in the present proceedings and the learned Single Judge has rightly granted liberty to the appellant to take all her legal remedies available with her except that the observation regarding the directions to respondent No.3-husband to take steps to get visa of the child, should not be taken by the appellant for her benefit in any legal proceedings. Meaning thereby, the appellant is well within her rights to take appropriate action in accordance with law with the rider as imposed by the learned Single Judge.

We are of the opinion that learned counsel for the appellant has not been able to show any illegality in the order passed by the learned Single Judge and the present appeal deserves to be dismissed. In fact, the appellant had abandoned the child and did not give the statement at the stage of second motion in the divorce proceedings and the reason for the same primarily seems to be non return/fake return of ornaments of gold and diamond which is apparent from the legal notice issued by the counsel for the appellant on 28.01.2022 (Anneuxure P-4).

Therefore, in the totality of the situation, the directions issued to respondent No.3-husband to take necessary steps for applying for visa etc. and taking the child to Germany with him be complied with in its true

letter and spirit.

With the aforesaid observations, having found no illegality in the order passed by the learned Single Judge and the present appeal being devoid of any merit stands dismissed.

In view of the disposal of the main appeal, all the pending miscellaneous applications also stand disposed of as such.

(AUGUSTINE GEORGE MASIH)
JUDGE

(ALOK JAIN)
JUDGE

10.10.2022
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Whether speaking/reasoned :	Yes/No
Whether Reportable :	Yes/No