

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-4189-2023
Date of decision: 20.04.2023

SEELA AND ANOTHERPetitioners

VERSUS

STATE OF PUNJAB AND OTHERSRespondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. Mohd. Salim, Advocate
for the petitioner.

VINOD S. BHARDWAJ, J. (Oral)

The present petition has been filed by Seela, wife of Jora Khan and one Anwar Ali, son of Mohammad Yusuf for seeking directions to the official respondents to take action against private respondents (family members of petitioner No.1) who are alleged to have sold the minor son of the petitioners to some unknown persons.

The petitioners contend that they were in an affair with each other which was opposed to by the parent of petitioner No.1. Accordingly, they absconded from the house and solemnized Nikkah in the year 1996 and a male child was born in 1997. The petitioner No.2 was, however, involved in a criminal case bearing FIR No. 194 dated 26.12.1996 registered under Section 363, 366, 376 of the IPC at Police Station Malerkotla, District Sangrur and he remained in custody in the above said case for a period of nearly 02 years. The petitioner No.2 was eventually acquitted in the said

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case vide judgment dated 16.10.2002. It is alleged that during the pendency of the trial, the brothers & Bhabi of petitioner No.1 had taken her away alongwith the minor son of 02 days. The said child has not been heard of ever since. The petitioner No.1 has expressed an apprehension that the private respondents who are brothers and sister-in-law (Bhabhi) of petitioner No.1 have seemingly sold the male child of the petitioners taking undue benefit of her circumstances.

Even though the allegations leveled are startling at the first instance, however, the petition is deficient on the following primary aspects:

- i) There is no evidence on record to suggest that any Nikkah between the petitioners was ever solemnized;
- ii) There is nothing on record also to suggest that the petitioner No.1 ever conceived;
- iii) No particulars as regards to the birth of the child i.e. the time, the place, the day etc. have been given;
- iv) The representation Annexure P-2 rather shows inherent contradiction. It is stated that she left the matrimonial house in December, 1996 but claims to have been recovered by Police in May, 1996. The same is not a possibility. Further, it also stated that she already was pregnant for 14/15 weeks. By the above timeline, the birth of the child would have taken place in November/December, 1996 itself and not in 1997;
- v) Anwar (Petitioner No.2) was already married to Salma

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(elder sister of petitioner No.1) and there is nothing on record to suggest that his earlier marriage was dissolved. He would thus have all information;

- vi) As per the judgment of acquittal, the petitioners were approached in May, 1997 and she was medico-legally examined on the same day. The general examination did not show any pregnancy and even urine test was conducted for pregnancy. No such report has been referred to or attached with the petition to prima facie show pregnancy of petitioner No.1. The aspect becomes significant especially when the petition is being filed after nearly 26 years of the alleged birth and after 20 years of petitioner No.2 also having been acquitted. There is no reason why the necessary primary evidence, if any, could not be obtained & submitted.
- vii) It seems improbable that if the averments were correct, no effort was made by the petitioners to enquire the whereabouts of the child, who by now would have already attained majority.
- viii) The petitioner No.2 had been granted bail after a custody of 02 years and was also acquitted vide judgment dated 16.10.2022. The present petition is filed only in 2023.

There is no explanation given as to why the petitioners never chose to approach any authority or Court for a period of over 02 decades.

The only representation which is claimed to have been submitted is dated

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16.05.2007 and the essential particulars are absent even in the said representation as well.

Taking into consideration the circumstances as aforesaid, it may not be possible at this juncture to issue any such direction to the official respondents solely on vague and bold statement. The petitioner may, if so advised, take recourse to the appropriate remedies available to him in accordance with law and/or file a fresh petition on the same cause of action but with better and complete particulars giving the above said factual details.

Petition is accordingly disposed of as not pressed at this stage with liberty as aforesaid.

(VINOD S. BHARDWAJ)
JUDGE

APRIL 20, 2023
Vishal Sharma

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