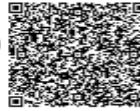


2024:PHHC:106569



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

CRWP No. 494 of 2024
DATE OF DECISION: 28.05.2024

MANVEEN KAUR

....PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Radhey Shyam Sharma, Advocate
for the petitioner.

Mr. Rajiv Verma, DAG, Punjab.

Mr. Kanwal Goyal, Advocate
for respondents No.4 to 6.

SANDEEP MOUDGIL, J

1. RELIEF SOUGHT

The jurisdiction of this Court has been invoked under Article 226 of Constitution of India for issuance of writ in the nature of Habeas Corpus directing respondents No.4 to 6 to produce the minor children Harsheen Kaur and Kanwardeep Singh (daughter and son of the petitioner) and for handing over their custody to petitioner.

2. *FACTS*

Briefly stated the facts giving rise to instant petition are that marriage of petitioner with respondent No.4 was solemnized as per Sikh Rites and Ceremonies. The marriage was consummated and they were blessed with

two children namely Harshee Kaur (daughter) and Kanwardeep Singh (son). Since the day of marriage, the petitioner was being maltreated and harassed by respondents No.4 to 6. It is alleged that on 17.12.2023, when the father and brother of the petitioner reached at the house of respondents No.4 to 6, they violently assaulted the petitioner and her family members, in the presence of police officials, who failed to intervene or report the incident promptly. However, the matter was reported to the police on 20.12.2023 and FIR No. 205, dated 20.12.2023 stood registered in this regard. Hence, the present petition.

3. SUBMISSIONS

ON BEHALF OF PETITIONER

The marriage between the petitioner and respondent No.4-Mandeep Singh was solemnized and the couple was blessed with two children namely Harsheen Kaur and Kanwardeep Singh. The petitioner alleged maltreatment and cruelty at the hands of respondents No.4 to 6 and other members of the in-laws family.

It has been submitted on behalf of counsel for the petitioner that respondents No.4 to 6 are using the minor children as a tool to harass and harm the petitioner, including putting the life of her young son at risk by denying him essential care and nutrition. The petitioner is expressing concern for the well-being and safety of the minor children, who are being denied their motherly care and attention, and is seeking intervention from the authorities to address this situation.

ON BEHALF OF RESPONDENT-STATE

It has been contended on behalf of respondent-State that there is

matrimonial dispute between the parties and FIR No. 205, dated 20.12.2023, under Sections 498-A, 323, 34 IPC stands registered at Police Station City Sri Muktsar Sahib, against the petitioner as well as respondents No.4 to 6, wherein, all the accused are on bail.

ON BEHALF OF RESPONDENTS NO. 4 TO 6

In response to notice of motion, respondents No.4 to 6 appeared and resisted the petition. They have filed reply by raising preliminary submissions *inter alia* on the grounds that petitioner has not approached this Court with clean hands and has not given true facts; that criminal writ petition is not maintainable as other efficacious remedies seeking custody of minor child under the provisions of Guardian and Wards Act 1890 are available to petitioner and further that custody of minor children is permissive one and not illegal and as such, issuance of a writ in the nature of Habeas Corpus is not legally maintainable. On merits, all the allegations raised in the petition have been denied and respondents No.4 to 6 accordingly, prayed for dismissal of instant writ petition.

4. ANALYSIS

Through instant writ petition, petitioner has sought the custody of minor children and contention of learned counsel for the petitioner is that petitioner is the natural guardian of minor children being her mother and as such she is legally entitled to the custody of minor children.

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.

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

Coming back to the circumstances and material on record in the instant case, the petitioner has though pressed for custody of children but has failed to demonstrate to provide due care, necessary facilities of at least minimum and protection being aware of her physical disability of “*stargardt disease*”, which is to be examined being paramount consideration for this Court.

However, it is worth noticing that after the birth of minor

children they are being looked after and taken care by respondents No. 4 to 6, who are biological father and grand parents of the minor children, meaning thereby, the custody of minor children cannot be said to be illegal. There is nothing on record to suggest that minor children are being illegally detained by respondents No.4 to 6 or their custody have been taken away by fraud or force.

Respondents No.4 to 6 has also denied the claim that the minor son has a milk allergy, calling it factually incorrect. In fact, they have stated that the minor son has allergies to Barley, Strawberry and similar foods but not milk. Moreover, the minor son was being taken care by the respondents No.4 to 6 before the petitioner left the matrimonial home due to her disability and have been consistently provided regular medication and care to the minor children since birth, which is essential and ongoing for their well being.

Even otherwise the respondent No.4 is a biological father of both the minor children and cannot be said 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 settle the scores of their personal egos of parents but welfare of the children is to be kept in mind.

In the case of **“Kulwant Kaur vs. The Senior Superintendent of Police”, 1997 PLT 252**, the case of **“Princella Prim v. Bashir Masih”, 1995(1) RCR 672** and the case of **“Kiran Rani vs. Krishan Kumar”; 1995 (1) RCR 430**. These are the cases decided by the single Benches of this Court, and in all these cases, it was observed that in respect of relief for custody of

the child sought by either of parents of the child, the appropriate remedy would be a petition under the Guardians and Wards Act, 1890, and writ jurisdiction under Article 226 of the Constitution of India need not be invoked. Hence, the rationale is that writ jurisdiction can be invoked when there is compelling circumstances and it is necessary in view of the well settled principle of paramount consideration of the welfare of the child.

5. CONCLUSION

Hence this Court is constrained to hold that the minor children are not in unlawful detention of respondents No.4 o 6. added with the fact that custody of the alleged detainee is neither illegal nor forceful, rather is permissive one. Moreover, petitioner has got other efficacious remedy to secure the custody of minor children under the provisions of Guardians and Wards Act, 1890.

In the light of what has been discussed above, this Court does not find any merit in the instant writ petition. Accordingly, instant petition is dismissed being not maintainable.

(SANDEEP MOUDGIL)
JUDGE

28.05.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No