

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

122+271

CRWP-2670-2024 (O&M)
Date of decision: 22.04.2024

Murti Devi and anotherPetitioners

Versus

State of Haryana and othersRespondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. A.S. Mann, Advocate
for the petitioners.

Ms. Trishanjali Sharma, DAG, Haryana.

Mr. Bikram Chaudhary, Advocate
for respondents No.4 and 5 along with
alleged detainee and his mother.

MANJARI NEHRU KAUL, J.

CRM-W-472-2024 and CRM-W-473-2024

For the reasons mentioned in the applications, the same are allowed and written statement on behalf of respondents No.4 and 5 and true copies/photocopies of the annexures are taken on record subject to all just exceptions. Respondents No.4 and 5 are exempted from filing certified copies of the annexures.

CRWP-2670-2024

1. The petitioners have approached this Court by way of the instant petition under Article 226 of the Constitution of India, seeking issuance of a writ of Habeas Corpus directing the official respondents to produce and release detainee, namely Shagun Mehra, aged 08 years and 04 months, grandson of petitioner No.1 and son of petitioner No.2, with immediate effect from illegal custody of respondents No.4 and 5

and to hand over the custody of the detinue to the petitioners.

2. Learned counsel for the petitioners submits that the alleged detinue (minor son of petitioner No.2 and his former wife) is in the illegal custody of his maternal uncle and grandfather i.e. respondents No.4 and 5, rather than the mother; this seemingly is motivated with an intention to extort money from the petitioners as they have been denied even visitation rights. Additionally, it has been submitted that the mother of the alleged detinue and petitioner No.2 were divorced on 09.02.2018, subsequent to which the mother of the alleged detinue re-married and bore two more children from her second marriage. Consequently, given lack of adequate care for the child (alleged detinue) especially since the mother of the child (alleged detinue) is not taking due care of him, his custody be handed over to the petitioners.

3. It has been further argued by learned counsel for the petitioners that a compromise (Annexure P-1) was arrived at between petitioner No.2 and the mother of the alleged detinue that after their divorce they would be living separately and the custody of the alleged detinue would remain with the mother. However, this settlement had been breached following the re-marriage of the mother as now the child was in the illegal custody of the private respondents.

4. Learned counsel for the petitioners has further submitted that no doubt a petition was moved by the petitioners before the learned Additional District and Sessions Judge under Section 25 of the Guardians and Wards Act, 1890, for the custody of the minor child (alleged detinue) (Annexure R-4/2), however, it had been erroneously

dismissed. Learned counsel has also apprised the Court that one petition before the learned Additional District & Sessions Judge, Sangrur (Annexure R-4/1) under Section 26 of the Hindu Marriage Act, 1955 seeking custody of the alleged detainee is pending.

5. Per contra, learned counsel appearing for respondents No.4 and 5 has vehemently refuted the contentions made by learned counsel for the petitioners for keeping the alleged detainee in their illegal custody. It has been submitted that the alleged detainee has been staying with his mother and the private respondents ever since he was a toddler and, after the marriage between his parents was dissolved by a decree of divorce. It has been submitted that no doubt the mother of the alleged detainee has re-married but it cannot be a ground to hand over the custody of the alleged detainee to the petitioners and it is also not a case wherein he has been illegally detained by them. It has been asserted that as per the written settlement (Annexure P-1) which was arrived at between the mother and petitioner No.2 (father of the alleged detainee) it had been mutually settled that the child would continue to remain in the custody of the mother; the alleged detainee was being properly nurtured and being taken care of by not only his mother but also by his grandfather and maternal uncle and is being provided with the best possible education and care. It has been further submitted that in the circumstances, the alleged detainee cannot be said to be in the illegal custody of anyone much less his own mother as she is his natural guardian.

6. I have heard learned counsel for the parties and perused the relevant material on record.

7. The alleged detainee came present in the Court today along with private respondents. This Court interacted with alleged detainee inside the Chamber. The child came across as a mature and sensible child. During this Court's interaction with the child, he appeared very happy and comfortable living with his mother, maternal grandfather and maternal uncle; he categorically stated that he had been living with his mother since his infancy and he was not familiar with the petitioners.

8. Admittedly, the custody of the child (alleged detainee) in the instant case, has been with his mother since the very beginning, who without doubt is the natural guardian of her child; in the circumstances the child cannot be said to have been illegally detained by the private respondents or his mother. Once the alleged detainee has categorically made a statement to the effect that he has not been illegally detained by anyone and he is happily and willingly living with his mother, maternal grandfather and maternal uncle, no such writ in the nature of Habeas Corpus can be issued, as prayed for. Furthermore and pertinently, it needs to be noted that grant of visitation rights as prayed for would not be maintainable by way of the instant petition. Alternate remedies for the said purpose can always be availed of by the petitioners.

9. Accordingly, the instant petition is hereby dismissed.

22.04.2024

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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