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**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**CRWP-12263 of 2023
Date of Decision: 11.01.2024**

RAJVEER SINGH**... Petitioner****Versus****STATE OF HARYANA AND OTHERS****... Respondents****CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.**

Present:- Mr. R.P.S. Jammu, Advocate for
Mr. P.S. Jammu, Advocate for the petitioner.
Ms. Gaganpreet Kaur, DAG, Haryana.

SANJIV BERRY, J. (ORAL)

The instant petition has been preferred by the petitioner under Article 226 of the Constitution of India read with Section 482 Cr.P.C for issuance of a roving Writ in the nature of habeas corpus to release the detinue 'Mamta' wife of the petitioner from the illegal detention of private respondents.

2. In *nutshell*, the brief facts of the case are that petitioner and Mamta-detinue being major, had performed marriage with their sweet will on 12.02.2021 (Annexure P-1) against the wishes of parents. After 20 days of marriage parents of Mamta came to their house and had taken petitioner as well as detinue to her parental house but after that detinue's parents did not allow Mamta to join the society of the petitioner. The petitioner had filed petition under Section 9 of the Hindu Marriage Act, 1955 for restitution of

the Conjugal rights which was allowed vide judgment and decree dated 04.08.2023. Hence the petition.

3. It is, *inter alia* contended by learned counsel for the petitioner that the marriage of the petitioner with the detenue Mamta was solemnized on 12.02.2021 (Annexure P-1) against the wishes of her parents. He contends that after about 20 days of the marriage the parents of Mamta came and assured that they had accepted the marriage and on this pretext took her to the parental house but thereafter they did not allow her to join the society of the petitioner. The petitioner also filed petition under Section 9 of the Hindu Marriage Act, 1955 which was *ex-parte* decreed. He contends that aforesaid Mamta has been wrongfully detained by her parents and as such he prays for issuance of Writ of habeas corpus.

4. On asking of Court, Ms. Gaganpreet Kaur, DAG, Haryana accepts notice on behalf of official respondents and has assailed the submissions made by the learned counsel for the petitioner and argued that the petition is not maintainable especially when the same has been filed after an inordinate delay of more than 2 years and also the fact that the said detenue, being, major has never expressed her desire to join the company of petitioner. She submits that there are other efficacious remedies available to the petitioner and referred to the judgment cited as ***Rakesh Kumar vs. State of Bihar, 2011(16) R.C.R. (Criminal) 579 (DB) Law Finder Doc Id # 427536; Kamal Jangid vs. State of Rajasthan, (DB) Law Finder Doc Id # 793245*** and submits that the instant petition is not maintainable.

5. I have heard the submissions made by learned counsel for the petitioner as well State and also perused the record.

6. After considering the rival contentions and perusing the record, it is observed that as per his own case the petitioner and said Mamta had contracted marriage on 12.02.2021 in temple against the wishes of her parents and in this regard document (Annexure P-1) has been produced. It is further the case of the petitioner that after about 20 days of said marriage the parents of Mamta had come to them and on the pretext that they have accepted the marriage, had taken Mamta to their house but thereafter did not allow her to join his company. As per the petitioner, he had filed a petition under Section 9 of the Hindu Marriage Act for restitution of the conjugal rights which was *ex-parte* decreed vide judgment dated 04.08.2023. A perusal of this judgment would reveal that the petitioner himself has alleged in the petition that “the respondent (i.e. Mamta) had refused to join the company of the petitioner”. Even despite service in that petition, said Mamta had not appeared in Court and as such proceeded against *ex-parte*. Admittedly the said Mamta is major and of sound mind, therefore, her not appearing in the said petition or not joining the company of the petitioner shows willful act on her part in doing so. Further it is not out of place to mention here that the alleged marriage of the petitioner with Mamta was admittedly against the wishes of her parents wayback in the year 2021 and as per the case of the petitioner they stayed for about 20 days when the parents of Mamta had taken her to her parental house on the pretext of accepting the marriage. It is evident from the copy of judgment dated 04.08.2023 passed by learned Principal Judge, Family Court, Sirsa that the petitioner himself alleged that the aforesaid Mamta (i.e. respondent therein) had refused to join company of the petitioner. Furthermore the service of Mamta was duly

effected, in that case she could have appeared in the Court, had she been willing to join the company of the petitioner but she chose otherwise. The aforesaid Mamta being major and of sound disposing mind, there is nothing on record that there had been any intention on her part to join the society of the petitioner nor any such communication has been placed on record from the said Mamta to the petitioner during this period since 2021.

7. In the light of aforementioned circumstances, it is pertinent to mention here that as has been held in ***Rakesh Kumar's case (supra)*** that in a petition for issuance of writ of habeas corpus by husband for getting his wife released from alleged illegal confinement of her parents, petitioner has more than one remedy available including filing of the criminal case for illegal confinement or wrongful confinement under Section 339, 340 and 341 IPC as well as petition under Section 97 and 98 of Cr.P.C, besides filing of petition under Section 9 of the Hindu Marriage Act. In view of the availability of these efficacious remedies to the petitioner, the petition for issuance of habeas corpus has been found to be not maintainable.

8. Similarly in ***Kamal Jangid's case (Supra)*** it has been held that habeas corpus petition filed by the husband praying the authorities to be directed to produce his wife alleged to have been illegally detained by her parents, the remedy lies with the petitioner to approach the concerned Magistrate having jurisdiction where wife is living by filing an application under Section 98 Cr.P.C.

9. The law laid down in the aforesaid judgments squarely applies to the facts and circumstances of the present case. No doubt the petitioner had availed the remedy of the petition under Section 9 of the Hindu

Marriage Act, however perusal of the judgment would reveal that it has been the case of the petitioner himself that his wife Mamta has flatly refused to join his company and even despite her due service, she did not choose to appear in the said petition, nor she conveyed her willingness to join the company of the petitioner. Once said Mamta is found to be major and in a sound disposing mind, it is her own wish and desire whether or not to join the company of the petitioner and she cannot be allowed to be suppressed by issuance of writ of habeas corpus, thereby compelling her as per the wish of the petitioner. Even, despite that if the petitioner presumed said Mamta is being compelled by her parents to live apart from the petitioner, he could have availed the other efficacious alternative remedies in filing of the proceedings under Sections 339, 340 and 341 IPC before the Court having the jurisdiction or could have availed the remedy under Section 97 and 98 Cr.P.C.

10. It will not be out of place to mention here that the Hon'ble Apex Court in case ***Union of India v. Yumnam Anand M. alias Bocha alias Kora alias Suraj and another (2007) 10 SCC 190*** explains the nature of Writ of Habeas Corpus by observing that though it is Writ of right, but it is not a Writ of course and the applicant must show a *prima facie* case qua the unlawful detention. It has further been held in ***Dushyanht Somal v. Sushma Somal (1981) 2 SCC 277*** that a writ of habeas corpus should not be issued as a matter of course but clear grounds must be made out for issuance of such writ.

11. In a similarly, situated case in ***Seeta Devi v. Mata Pher (Allahabad): 1998 CriLJ 645(Law finder doc ID # 95619)***, it has been held

by referring to the judgment of Hon’ble Apex court cited as *Mohd. Ikram Hussain v. State of U.P., 1964 AIR (Supreme Court) 1625 (Law Finder doc ID # 111035)*, that a writ of habeas corpus should not be issued as a matter of course at the instance of a husband against the parents or other close relatives of the wife and this extraordinary remedy should be confined to exceptional cases and ordinarily the husband should peruse the remedy provided by Section 97 Cr.P.C. or the remedy of restitution of conjugal rights and the writ for habeas corpus was dismissed.

12. Considering the availability of other efficacious alternative remedy to the petitioner and also the legal proposition discussed above, it is observed that the present petition, wherein the petitioner has even failed to show any *prima facie* case regarding the said Mamta, a major of sound disposing mind, being kept in illegal detention by her parents, certainly no case is made out in his favour for grant of extraordinary relief of issuance of writ of habeas corpus in the present case.

13. As a consequent, finding no merit in the case being made out for issuance of writ of habeas corpus, the present petition is hereby dismissed.

(SANJIV BERRY)
JUDGE

11.01.2024

Gyan	i)	Whether speaking/reasoned?	Yes
	ii)	Whether reportable?	Yes