



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

117

CRWP-1439-2025

Date of decision: 13.02.2025

Rimpy

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Vikkrant K. Vij, Advocate for the petitioner.

MANJARI NEHRU KAUL, J.

1. The petitioner has filed the instant petition under Article 226 of the Constitution of India for issuance of a writ in the nature of Habeas Corpus for directing respondents No.2 and 3 to search and produce the detainee, namely Kushal, aged about 7 years, son of the petitioner, before the Court, by releasing him from illegal custody of respondents No.4 to 8.

2. Learned counsel appearing on behalf of the petitioner submits that the petitioner is the biological mother of the alleged detainee (her minor son), who is allegedly in the illegal custody of respondents No.4 to 8. It is contended that since the inception of the petitioner's marriage, the behaviour of respondents No.4 to 8 (her in-laws family) has been hostile towards her. The respondents are alleged to have persistently demanded dowry from the petitioner and her family.

3. Furthermore, it is submitted that respondent No.4, who is the husband of the petitioner and father of the alleged detainee, is an



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alcoholic and had subjected the petitioner to physical abuse under the influence of alcohol. Learned counsel further argues that the respondents have prevented the petitioner from meeting her minor son i.e. alleged detainee, for the past six months and have been instilling feelings of animosity in the child against his own mother.

4. I have heard learned counsel for the petitioner and perused the relevant material on record.

5. Before delving into the merits of the case, it is imperative to examine the scope of the writ of Habeas Corpus under Article 226 of the Constitution of India in matters concerning child custody. The writ of Habeas Corpus is an extraordinary and prerogative remedy that is not to be invoked as a substitute for regular legal remedies unless such remedies are either unavailable or ineffective.

6. Ordinarily, disputes regarding the custody of minors fall within the domains of personal laws governing the guardianship, such as the Hindu Minority and Guardianship Act, 1956 or the Guardians and Wards Act, 1890. The writ jurisdiction of this Court under Article 226 of the Constitution of India is limited in such matters and can be exercised only when it is demonstrative that the custody of the minor is illegal and without legal authority.

7. Hon'ble the Supreme Court in ***Nirmala Vs. Kulwant Singh and others : 2024 SCC OnLine SC 758***, has reiterated that the writ of Habeas Corpus in child custody matters is maintainable only when it is established that the child is being detained unlawfully by a person who is not entitled to his legal custody. Hon'ble the Supreme Court further



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observed that the scope of inquiry in a writ of Habeas Corpus is summary in nature, whereas the proceedings under the Guardians and Wards Act, 1890 entail a detailed inquiry into the welfare of the child. In instances where a thorough investigation into the custody rights is required, the appropriate recourse is to approach the competent Civil Court rather than invoke the extraordinary writ jurisdiction of the High Court.

8. In the present case, it is undisputed that the dispute between the petitioner and her husband i.e. respondent No.4 arises out of a matrimonial discord. During the course of arguments, it has been alleged that respondent No.4 is an alcoholic and had subjected the petitioner to domestic violence. Additionally, the petitioner has already initiated the proceedings under Section 13 of the Hindu Marriage Act, 1955, which are currently pending adjudication before the competent Court.

9. It needs to be emphasized that the father is the natural guardian of a minor under Section 6 of the Hindu Minority and Guardianship Act, 1956, unless it is shown that his custody is illegal or detrimental to the welfare of the child. In the present case, the petitioner has neither demonstrated that the custody of the minor child with respondent No.4 is illegal nor has she shown any exceptional circumstances warranting the issuance of a writ of Habeas Corpus. The mere fact that the petitioner is unable to meet the alleged detinue for a prolonged period does not render the custody of the father illegal in the eyes of the law.

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10. Furthermore, since an alternative and efficacious remedy is available to the petitioner under the Guardians and Wards Act, 1890, she has the liberty to seek custody of the child through appropriate legal proceedings before the competent Family Court. The exercise of the writ jurisdiction in such circumstances would not be justified.

11. In view of the facts and circumstances as enumerated hereinabove, this Court finds no valid ground to entertain the present petition under Article 226 of the Constitution of India. The custody of the minor child with respondent No.4, being his natural guardian, cannot be deemed illegal merely because the petitioner is deprived of the access to her child. The petitioner has an adequate legal remedy available under law, which she is at liberty to pursue. No ground is, therefore, made out to issue a writ of Habeas Corpus.

12. Dismissed.

13.02.2025

(MANJARI NEHRU KAUL)
JUDGE

Vinay

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