

*** THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
AND
THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA**

+ WRIT PETITION No.36437 of 2025

% Dated: 24.06.2026

Between:

.....Petitioner

And

The State of Andhra Pradesh and others

....Respondents

! Counsel for the petitioner: Sri V.Ravindhar

^ Counsel for the Respondents 1 to 3: Sri J.Krishna Praneeth,
Assistant Government Pleader

Counsel for Respondent No.4: Sri Narasimha Rao Gudiseva

< GIST :

> HEAD NOTE :

? Cases referred:

¹ 2019 (7) SCC 42

² (2024) 9 SCC 382

³ 2024 Supreme (SC) 411

⁴ W.P.No.13079 of 2024 dated 13.12.2024

⁵ 2007 Supreme (SC) 304

⁶ 2017(5)ALD 145 (SC)

⁷ (1956) 1 All ER 341 : (1956) 1 QB 702

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
AND
THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA
WRIT PETITION No.36437 of 2025

Between:

.....Petitioner

And
The State of Andhra Pradesh and others

.....Respondents

DATE OF JUDGMENT: **24.06.2026**

Submitted for approval:

- | | |
|--|--------|
| 1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be
Marked to Law Reporters/Journals. | Yes/No |
| 3. Whether Their Lordship wishes
to see the fair copy of the Judgment? | Yes/No |

RAVI NATH TILHARI, J

SUBHENDU SAMANTA, J

APHC010712042025



**IN THE HIGH COURT OF ANDHRA
PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3562]

WEDNESDAY, THE 24th DAY OF JUNE 2026

PRESENT

**THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA
WRIT PETITION NO: 36437/2025**

Between:

1.

...PETITIONER

AND

1. THE STATE OF AP, REP. BY ITS PRINCIPAL SECRETARY,
HOME DEPARTMENT, SECRETARIAT BUILDINGS,
VELAGAPUDI, AMARAVATI, GUNTUR DISTRICT - 522237.
2. THE COMMISSIONER OF POLICE, , VIJAYAWADA,
GOVERNORPET, VIJAYAWADA, NTR DISTRICT, ANDHRA
PRADESH - 520002.
3. THE SHO, PENAMALURU POLICE STATION, KANURU,
PENAMALURU, KRISHNA DISTRICT - 521139
- 4.

...RESPONDENT(S):

Counsel for the Petitioner:

1.V.RAVINDHAR

Counsel for the Respondent(S):

1.NARASIMHA RAO GUDISEVA

2.THE ADVOCATE GENERAL

The Court made the following:

Date of reserved for orders : -----
 Date of pronouncement : 24-06-2026
 Date of uploading : 07-07-2026

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA

WRIT PETITION No.36437 of 2025

ORDER: *(per Hon'ble Sri Justice Ravi Nath Tilhari)*

Heard Sri V.Ravindhar, learned counsel for the petitioner, Sri J.Krishna Praneeth, learned Assistant Government Pleader attached to the office of the learned Advocate General, appearing for the respondent Nos.1 to 3 and Sri Narasimha Rao Gudiseva, learned counsel for respondent No.4.

2. This writ of Habeas Corpus under Article 226 of the Constitution of India has been filed by the petitioner-father. The respondent No.4 is the mother of the minor son, who is aged about six years. The son is with the mother, 4th respondent.

3. The petitioner filed F.C.O.P.No.207 of 2025 in the Court of the Judge, Additional Family Court-cum-XIV Additional District & Sessions Judge, Vijayawada, under Section 25 of the Guardians

and Wards Act, 1890 (in short 'the Act, 1890'), to order restoration of the custody of the minor son in his favour by directing the respondent No.4-mother, to handover the custody of the minor to the petitioner- father. F.C.O.P.No.207 of 2025 was allowed by judgment dated 05.06.2025 by the Court of the Judge, Additional Family Court-cum-XIV Additional District & Sessions Judge, Vijayawada, appointing the petitioner-father as a guardian to the ward (child) and the respondent No.4-mother was directed to handover the custody of minor within a period of 60 days from the date of the order. The operative part of the order dated 05.06.2025 reads as under:

"In the result, the petition is allowed by appointing the petitioner-father as a guardian to the ward/child and the Respondent/Mother is directed to handover the custody of minor child viz., Ogirala Narasimha Sakthidhar to the petitioner/father within 60 days from the date of order. No costs."

4. The present petition for a writ of Habeas Corpus has been filed based on the order in F.C.O.P.No.207 of 2025, on the ground that in view of that order, the writ petitioner is entitled to the custody of the minor son and that, after the order, the custody of the child with the mother has become illegal. So the child is in an illegal detention of respondent No.4-mother.

5. Learned counsel for the writ petitioner submits that consequently, the writ petition for writ of Habeas Corpus is maintainable for direction to restore custody pursuant to the order dated 05.06.2025 in petitioner's favour. He placed reliance in the case of ***Tejaswini Gaud and others v. Shekhar Jagdish Prasad Tewari***¹, submitting further that after the order dated 05.06.2025, there is no other remedy open to the petitioner to secure the custody of the minor son, nor the remedy by way of execution.

6. Sri Narasimha Rao Gudiseva, learned counsel for respondent No.4-mother submits that the order dated 05.06.2025 passed in F.C.O.P. is an ex parte order. He submits that the address of the respondent No.4-mother as shown in the F.C.OP is not the correct address. The respondent No.4-mother is not residing at that address but resides at Bangalore. The address of respondent No.4-mother mentioned in F.C.O.P is the address of the petitioner himself. He refers to Ex.P3(Page No.33 of the writ petition). The said document (Ex.P3) is on the subject of complaint filed by the petitioner against respondent No.4 for the alleged unlawful removal of custody of the minor son, in violation of the court's order for custody. In the said document(Ex.P3), the petitioner has given his

¹ 2019 (7) SCC 42

address as **“Ogirala Venkata Sai Sunil Manohar, S/o Ogirala Seshu Kumar, 8-78/4, near Saibaba Temple, Srinivasa Nagar, Opp.Priya Foods, Poranki, Vijayawada – 521137”** and the same address i.e. the address for the petitioner, was given as the address of the present respondent No.4 in the F.C.O.P. So, there was no notice of the F.C.O.P to respondent No.4-mother and an ex parte order dated 05.06.2025 for custody was passed.

7. Learned counsel for respondent No.4 further submits that the respondent No.4-mother has filed I.A.Nos.26 and 25 of 2026 before the learned Additional Family Court-cum-XIV Additional District & Sessions Judge, Vijayawada for setting aside the ex parte order of custody dated 05.06.2025 and for condonation of delay respectively, which are pending for consideration before the said Court. An averment to the above effect has been made in para No.14 of the counter-affidavit of respondent No.4.

8. Learned counsel for respondent No.4 further submits that in the same way the petitioner also obtained an ex parte decree of divorce against the respondent No.4 without notice furnishing the wrong address in F.C.O.P.No.201 of 2025 (i.e. the same address as given in F.C.O.P.No.207 of 2025 vide order of the same date 05.06.2025 from the same Court.

9. Learned counsel for respondent No.4 further submits that Section 43 of the Guardians and Wards Act, 1890 provides for orders for regulating conduct of proceedings on guardians and enforcement of those orders. The petitioner has got statutory remedy and so, the writ of Habeas Corpus is not maintainable nor entertainable. He has placed reliance in the cases of ***Somprabha Rana and others v. State of Madhya Pradesh and others***², ***Nirmala v. Kulwant Singh & Ors.***³, ***Nukala Madhusudhana Rao v. the State of Andhra Pradesh and others***⁴ and ***A.V.Papayya Sastry & Others v. Government of A.P. & others***⁵

10. In reply submission, learned counsel for the petitioner submits that the applications, I.A.Nos.25 and 26 of 2025 aforesaid were filed almost six months back and till date, no orders have been passed on those applications. He reiterated that, in view of the judgment of the Hon'ble Apex Court in ***Tejaswini Gaud*** (*supra*), a writ of Habeas Corpus is the remedy for securing custody of the minor child in terms of the order of custody dated 05.06.2025 passed in G.W.O.P which deserves to be issued.

² (2024) 9 SCC 382

³ 2024 Supreme (SC) 411

⁴ W.P.No.13079 of 2024 dated 13.12.2024

⁵ 2007 Supreme (SC) 304

11. We have considered the aforesaid submissions and perused the material on record.

12. The point for consideration is :

“Whether by way of the present writ of Habeas Corpus, the order of custody dated 05.06.2025 passed in F.C.O.P.No.207 of 2025 can be directed to be implemented or enforced?”

13. So far as the custody order and its enforcement by way of writ of Habeas Corpus is concerned, in ***Tejaswini Gaud (supra)***, the Hon’ble Apex Court held that Habeas Corpus proceedings is not to justify or examine the legality of the custody. Habeas Corpus proceedings is a medium through which the custody of child is addressed to the discretion of the Court. Habeas Corpus is a prerogative writ, which is an extraordinary remedy and the writ is issued where in the circumstances of the particular case, ordinary remedy provided by the law is either not available or is ineffective otherwise a writ will not be issued. It was held that in child custody matter, the writ of Habeas Corpus is maintainable, where it is proved that the detention of the minor child by a parent or others was illegal and without any authority of law.

14. Learned counsel for the petitioner placed much emphasis on aforesaid para No.19 of the judgment, submitting that the remedy

of execution is not available and after the order dated 05.06.2025 of custody to the petitioner, the custody of the son with the respondent No.4-mother becomes illegal and the detention illegal.

15. Para 19 of **Tejaswini Gaud** (*supra*) reads as under:

*“19. Habeas corpus proceedings is not to justify or examine the legality of the custody. Habeas corpus proceedings is a medium through which the custody of the child is addressed to the discretion of the Court. Habeas corpus is a prerogative writ which is an extraordinary remedy and the writ is issued where in the circumstances of the particular case, ordinary remedy provided by the law is either not available or is ineffective; otherwise a writ will not be issued. In child custody matters, the power of the High Court in granting the writ is qualified only in cases where the detention of a minor by a person who is not entitled to his legal custody. In view of the pronouncement on the issue in question by the Supreme Court and the High Courts, in our view, **in child custody matters, the writ of habeas corpus is maintainable where it is proved that the detention of a minor child by a parent or others was illegal and without any authority of law.**”*

16. In **Nithya Anand Raghavan v. State of NCT of Delhi and another**⁶, the Hon’ble Apex Court held that the High Court while dealing with the petition for issuance of a writ of habeas corpus concerning a minor child, in a given case, may direct return of the child or decline to change the custody of the child keeping in mind all the attending facts and circumstances including the settled legal position. The decision of the Court, in each case, must depend on the totality of the facts and circumstances of the case

⁶ 2017(5)ALD 145 (SC)

brought before it whilst considering the welfare of the child which is of paramount consideration. The remedy of writ of habeas corpus cannot be used for mere enforcement of the directions given by the court against a person within its jurisdiction and convert that jurisdiction into that of an executing court. Recourse can be taken to such other remedy as may be permissible in law for enforcement of the order.

17. In **Nithya Anand Raghavan** (supra), the Hon'ble Apex Court further held that in a Habeas Corpus petition, the High Court must examine at the threshold whether the minor is in lawful or unlawful custody of another person. For considering that issue, if that another person was none other than the natural guardian of the minor being the biological mother and once that fact was ascertained, it could be presumed that the custody of the minor with his/her mother was lawful. In such a case, only in exceptionable situation, the custody of the minor may be ordered to be taken away from the mother for being given to any other person including the husband (father of the child), in exercise of the writ jurisdiction. Instead, the other parent could be asked to resort to a substantive remedy prescribed for getting the custody of the child.

18. Para Nos.29 and 30 of **Nithya Anand Raghavan** (supra)

deserve reproduction which as under:

*“29. The High Court while dealing with the petition for issuance of a writ of habeas corpus concerning a minor child, in a given case, may direct return of the child or decline to change the custody of the child keeping in mind all the attending facts and circumstances including the settled legal position [referred to above](#). Once again, we may hasten to add that the decision of the Court, in each case, must depend on the totality of the facts and circumstances of the case brought before it whilst considering the welfare of the child which is of paramount consideration. The order of the foreign Court must yield to the welfare of the child. **Further, the remedy of writ of habeas corpus cannot be used for mere enforcement of the directions given by the foreign court against a person within its jurisdiction and convert that jurisdiction into that of an executing court.** Indubitably, the writ petitioner can take recourse to such other remedy as may be permissible in law for enforcement of the order passed by the foreign Court or to 16 113 (2004) Delhi Law Time 823 resort to any other proceedings as may be permissible in law before the Indian Court for the custody of the child, if so advised.*

*30. In a habeas corpus petition as aforesaid, the High Court must examine at the threshold whether the minor is in lawful or unlawful custody of another person (private respondent named in the writ petition). For considering that issue, in a case such as the present one, it is enough to note that **the private respondent was none other than the natural guardian of the minor being her biological mother. Once that fact is ascertained, it can be presumed that the custody of the minor with his/her mother is lawful. In such a case, only in exceptionable situation, the custody of the minor (girl child) may be ordered to be taken away from her mother for being given to any other person including the husband (father of the child), in exercise of writ jurisdiction.** Instead, the other parent can be asked to resort to a substantive prescribed remedy for getting custody of the child.”*

19. In **Somprabha Rana** (supra), the Hon'ble Apex Court summarized the propositions of law on the point of direction for custody of the minor in a petition for Habeas Corpus under Article 226 of the Constitution of India in Para No.9 which is reproduced as under:

“9. After having perused various decisions of this Court, the broad propositions of settled law on the point can be summarised as follows:
9.1. Writ of Habeas corpus is a prerogative writ. It is an extraordinary remedy. It is a discretionary remedy;
*9.2. **The High Court always has the discretion not to exercise the writ jurisdiction depending upon the facts of the case. It all depends on the facts of individual cases;***
9.3. Even if the High Court, in a petition of Habeas Corpus, finds that custody of the child by the respondents was illegal, in a given case, the High Court can decline to exercise jurisdiction under [Article 226](#) of the Constitution of India if the High Court is of the view that at the stage at which the Habeas Corpus was sought, it will not be in the welfare and interests of the minor to disturb his/her custody; and
9.4. As far as the decision regarding custody of the minor children is concerned, the only paramount consideration is the welfare of the minor. The parties' rights cannot be allowed to override the child's welfare. This principle also applies to a petition seeking Habeas Corpus concerning a minor.”

20. In **Nirmala** (supra), the Hon'ble Apex Court held that no hard and fast rule can be laid down insofar as the maintainability of a habeas corpus petition in the matters of custody of a minor child is concerned and further that as to whether the writ court should exercise its extraordinary jurisdiction or not will depend on the facts and circumstances of each case.

21. Learned counsel for the respondent No.4 placed reliance in **A.V. Papayya** (supra), to contend that the order dated 04.05.2025 was obtained by fraud and it is a nullity and non est in the eye of law. So, a writ of Habeas Corpus cannot be issued to implement the order dated 04.05.2025. In **A.V. Papayya Sastry** (supra), the Hon'ble Apex Court held in paras 22 to 26 as under:

"22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Such a judgment, decree or order by the first Court or by the final Court has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings.

23. In the leading case of Lazarus Estates Ltd. v. Beasley⁷, Lord Denning observed:

"No judgment of a court, no order of a Minister, can be allowed to stand, if it has been obtained by fraud."

24. In Duchess of Kingstone, Smith's Leading Cases, 13th Edn., p.644, explaining the nature of fraud, de Grey, C.J. stated that though a judgment would be res judicata and not impeachable from within, it might be impeachable from without. In other words, though it is not permissible to show that the court was 'mistaken', it might be shown that it was 'misled'. There is an essential distinction between mistake and trickery. The clear implication of the distinction is that an action to set aside a judgment cannot be brought on the ground that it has been decided wrongly, namely, that on the merits, the decision was one which should not have been rendered, but it can be set aside, if the court was imposed upon or tricked into giving the judgment

25. It has been said; Fraud and justice never dwell together (fraus et jus nunquam cohabitant); or fraud and deceit ought to benefit none (fraus et dolus nemini patrocinari debent).

26. Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even most solemn proceedings stand vitiated if they are

⁷ (1956) 1 All ER 341 : (1956) 1 QB 702 : (1956) 2 WLR 502,

actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. The principle of 'finality of litigation' cannot be stretched to the extent of an absurdity that it can be utilized as an engine of oppression by dishonest and fraudulent litigants."

22. In the facts of the present case, the writ of Habeas Corpus deserves not to be issued based on the order dated 05.06.2025. That very order has been obtained by not furnishing correct address of the respondent No.4 resulting into an order of custody in favour of petitioner behind the back of the respondent No.4. We say so for the following reasons born from the record before us:

(i) In F.C.O.P.No.201 of 2025 for divorce filed by the writ petitioner the address of the respondent No.4 as mentioned is as follows:

(ii) In F.C.O.P.No.207 of 2025 for appointment of the guardianship and custody, also the address of the 4th respondent was mentioned as follows:

(iii) The above address is of the petitioner which is evident from the petitioner's letter on the subject 'complaint' (Annexure-P3 at page 39).

(iv) In F.C.O.P.No.201 of 2025 filed by the petitioner for divorce under Section 13(1)(ia)(ib) of Hindu Marriage Act, his case, inter alia, as per para 4 of the judgment dated 05.06.2025 granting divorce (P4), is that "the respondent left from the matrimonial home on 15.04.2022 with bag without intimation to the petitioner and stayed at her parents' house" and further that "the respondent openly proclaimed that she will not attend the petitioner".

(v) Para 4 of the judgment dated 05.06.2025 in F.C.O.P.No.201 of 2025 reads as under:

*"4. It is further submitted that the petitioner tried to convince the respondent and requested her to change the attitude and thereby to lead happy and harmonious marital life and all the efforts made by the petitioner were proved futile and all subsequent dates the respondent behaved as dutiful wife and on **15.04.2022 the respondent left from the matrimonial home along with her bag without any intimation to the petitioner and stayed at her parents house.** After knowing the same the petitioner went to her parents house, but the respondent and her family members admonished the petitioner with foul and filthy language and the respondent*

openly proclaimed that she will not join with the petitioner at any cost and also the petitioner vexed with the attitude of the respondent and decided to dissolve the marriage between them. Hence, the petitioner is constrained to file this petition for granting degree of divorce by dissolving their marriage between them on the ground of cruelty, desertion.”

(vi) So, in view thereof the parental address of the respondent No.4 must also have been mentioned in F.C.O.P No.207 of 2025, which was not done neither in F.C.O.P.No.201 of 2025 nor in F.C.O.P.No.207 of 2025.

(vii) In the ‘final legal notice dated 23.12.2025’ (P-2 page 29 to 32), given by the writ petitioner’s counsel to the 4th respondent, after the judgments in F.C.O.P.Nos.201 of 2025 and F.C.O.P.Nos.207 of 2025, the addresses of the respondent No.4 are disclosed as under:

“To.

(viii) The 4th respondent's addresses at Bangalore in Karnataka mentioned in P2; were not given in F.C.O.P.No.201 of 2025 nor in F.C.O.P.No.207 of 2025.

(ix) The petitioner on the face of the record had shown his address as of respondent No.4 and against his name showed a different address.

23. Thus, an ex parte decree in both the cases were obtained against the respondent No.4 by the writ petitioner.

24. The basis of the writ petition is an ex parte order against respondent No.4. It is so evident from the order itself. The respondent No.4-mother has already applied for setting aside that order of custody and the application is pending. So, at this stage, the order of dated 05.06.2025 has not attained finality. From the material on record, we are of the considered view that not only the order of custody is an ex parte order but without notice to the respondent No.4.

25. We are satisfied that the address mentioned is not the address of respondent No.4-mother, on which respondent No.4 could be served, as disclosed in the counter-affidavit but is the

same as disclosed in the petitions/applications filed by the father (at page Nos.33 to 39) on the subject of the complaint.

26. We make it clear that we are not making any final observation with respect to the correct address of respondent No.4-mother, but certainly prima facie on the own pleading of the petitioner in F.C.O.P.No.201 of 2025 for divorce para No.4 of the plaint the address of respondent No.4 i.e. her parental address, must also have been mentioned to disclose the correct facts and for due service on her in F.C.O.P.No.207 of 2025 in the Court of the Judge, Additional Family Court-cum-XIV Additional District & Sessions Judge, Vijayawada, as well, which was not done.

27. The order dated 04.06.2025 is behind the back of respondent No.4 and ex parte without notice. An application for setting aside the order dated 04.06.2025 being pending before the court concerned, a writ of Habeas Corpus cannot be issued based on the order dated 04.06.2025.

28. Section 43 of the Guardians and Wards Act, 1890, reads as under:

“43. Orders for regulating conduct or proceedings of guardians, and enforcement of those orders .

(1) The Court may, on the application of any person interested or of its own motion, make an order regulating the conduct or proceedings of any guardian appointed or declared by the Court.

(2) Where there are more guardians than one of a ward and they are unable to agree upon a question affecting his welfare, any of them may apply to the Court for its direction, and the Court may make such order respecting the matter in difference as it thinks fit.

(3) Except where it appears that the object of making an order under sub-section (1) or sub-section (2) would be defeated by the delay, the Court shall, before making the order, direct notice of the application therefor or of the intention of the Court to make it, as the case may be, to be given, in a case under sub-section (1), to the guardian or, in a case under sub-section (2), to the guardian who has not made the application.

(4) In case of disobedience to an order made under sub-section (1) or sub-section (2), the order may be enforced in the same manner as an injunction granted under section 492 or section 493 of the [Code of Civil Procedure, 1882 (14 of 1882)] [Now see Order 32, Rule 1 and 2, Civil Procedure Code, 1908(5 of 1908).] in a case under sub-section (1), as if the ward were the plaintiff and the guardian were the defendant, or, in a case under sub-section (2), as if the guardian who made the application were the plaintiff and the other guardian were the defendant.

(5) Except in a case under sub-section (2), nothing in this section shall apply to a Collector who is, as such, a guardian.”

29. Section 43 of the Act, 1890 thus provides for the remedy for enforcement in case of disobedience of the order of custody. So it cannot be said that statute does not provide for remedy for enforcement.

30. Thus considered, we are not inclined to entertain this writ of Habeas Corpus. The Writ Petition is dismissed. No order as to costs.

As a sequel, interlocutory applications pending if any, shall stand closed.

RAVI NATH TILHARI, J

SUBHENDU SAMANTA, J

Date: 24.06.2026
Pab/GK

Whether the order is:

Speaking		Reasoned	☒
Reportable	☒	Non-reportable	

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA

WRIT PETITION No.36437 of 2025

DATE: 24.06.2026

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