

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

**WEDNESDAY, THE TWENTIETH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY THREE**

PRESENT

**THE HONOURABLE SRI JUSTICE K.LAKSHMAN
AND
THE HONOURABLE SMT JUSTICE K. SUJANA**

WRIT PETITION NO: 23230 OF 2023

Between:

...PETITIONER

AND

1. State of Telangana, Represented by its Principal Secretary, Home Department, T.S Secretariat buildings, Hyderabad.
2. The Commissioner of Police, Rachakonda Commissionerate
3. Commissioner of Police, Hyderabad.
4. Assistant Commissioner of Police, Vanasthalipuram, Rachakonda Commissionerate
5. Assistant Commissioner of Police, Malkajiri, Rachakonda Commissionerate.
6. Inspector of Police, Malkajiri Police Station, Medchal-Malkajiri District.
7. Inspector of Police, Vanasthalipuram Police Station, Rangareddy District
8. Inspector of Police, Lalaguda Police Station.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, Order, or Direction more particularly one in the nature of WRIT OF HABEAS CORPUS, to declare the action of Respondent No.9 in unlawfully detaining the daughter of Petitioner, Baby

years and questioning the action of Respondent No. 2 to 8 in not tracing the whereabouts of the daughter of Petitioner as illegal, arbitrary, unconstitutional and consequently direct the Respondent No. 2 to 8 to produce the daughter of Petitioner Baby aged 7 years before this Hon'ble Court and set her free.

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondent No. 2 to 8 to immediately produce the daughter of the petitioner aged 7 years before this Honorable Court.

**Counsel for the Petitioner: MR. V. RAGHUNATH REPRESENTING FOR
M/S. TEKURU SWETCHA**

**Counsel for the Respondent No.1 to 8: SPECIAL GP REPRESENTING FOR
ADDITIONAL ADVOCATE GENERAL**

Counsel for the Respondent No.9: SRI SRINIVAS POLAVARAPU

The Court made the following: ORDER

HON'BLE SRI JUSTICE K. LAKSHMAN

AND

HON'BLE SMT. JUSTICE K. SUJANA

WRIT PETITION No.23230 OF 2023

ORDER: (Per Hon'ble Sri Justice K. Lakshman)

Heard Mr. V.Raghunath, learned senior counsel representing Ms.Tekuru Swetcha, learned counsel for the petitioner, learned Special Government Pleader representing learned Addl. Advocate General and Sri Srinivas Polavarapu, learned counsel appearing for 9th respondent.

2. This writ petition is filed to declare action of 9th respondent in unlawfully detaining the minor girl by name daughter of the petitioner, aged 7 years and actions of respondents 2 to 8 in not tracing whereabouts of the minor girl as illegal and consequently direct them to produce the minor girl before this Court.

Facts of the case:-

3. Marriage of the petitioner with 9th respondent was performed on 18.12.2014. It is an arranged marriage. They blessed with a baby girl on 19.10.2015 and baby boy on 21.06.2021. Thereafter, disputes arose between them. The petitioner

and 9th respondent narrated the said disputes in writ affidavit, counter affidavit and reply affidavit. Referring the said disputes in detail are not required to decide the present writ petition. However, the petitioner had lodged a complaint against 9th respondent and his family members with P.S. Malkajgiri, Rachakonda Commissionerate, who in turn, registered a case in Cr.No.241 of 2023 for the offences punishable under Sections 498-A and 406 of IPC and Sections 3 and 4 of Dowry Prohibition Act. Investigation is pending in the said crime.

4. It is also relevant to note that 9th respondent filed a petition vide FCOP No.375 of 2023 before the Family Court, Medchal Malkajgiri District, against the petitioner herein for dissolution of marriage. The same is pending.

5. According to the petitioner, 9th respondent abducted the minor girl namely _____ and she is in illegal custody of 9th respondent. Whereas, according to the 9th respondent, a panchayat was held before the elders, wherein maternal uncle of the petitioner and her relatives were also participated in the said negotiations on 01.04.2022. The elders advised 9th respondent to hand over his son who was only 9 months old to the petitioner and keep the minor girl with him. Minor girl was is not interested to go with her mother. Even

now, she is not interested to go with the mother. It is also specific contention of the 9th respondent that the petitioner and 9th respondent attended counseling from 30.04.2022 to 04.06.2022. According to the petitioner, 9th respondent also made serious allegations against the petitioner herein and her father. On 05.07.2023 the petitioner along with her father and other relatives trespassed the house of 9th respondent and threatened to kill his mother and sister-in-law. In proof of the same, he has filed photographs.

6. Whereas, according to the petitioner, 9th respondent used to leave for work at 8.30 A.M. and return only at 7.P.M. Nobody is there to take care of the minor child and he is trying to give custody of the minor child to his brother by name _____ as they are issueless. Thus, according to the petitioner, 9th respondent abducted the minor child illegally.

7. The aforesaid facts would reveal that there are serious disputes between the petitioner and 9th respondent. 9th respondent is a private employee. There are strained relations between them. The aforesaid crime registered against 9th respondent on the complaint lodged by the petitioner and FCOP filed by 9th respondent are pending between them.

8. According to the learned Special Govt.Pleader, the investigation in the aforesaid crime is pending. The parties have to approach competent Court seeking custody of the minor child.

Findings of the Court:-

9. This is a writ of Habeas Corpus. The proceedings in writ of Habeas Corpus are summary in nature. In the present writ petition, we have to consider as to whether the minor child is in illegal custody of 9th respondent as alleged by the petitioner. Welfare of the child is paramount consideration while deciding this writ petition.

10. **The Apex Court in Lahari Sakhamuri Vs. Sobhan Kodali¹** considered the following as the crucial factors which have to be kept in mind by the Courts for gauging the welfare of the children equally for the parents:-

1. Maturity and judgment,
2. Mental stability,
3. Ability to provide access to schools,
4. Moral character,
5. Ability to provide continuing involvement in the community,

¹ (2019) 7 SCC 311

6. Financial sufficiency and last but not the least the factors involving relationship with the child, as opposed to characteristics of the parents as an individual.

11. In **Ruchi Majoo Vs. Sanjeev Majoo**², the Apex Court held that nothing prevents the High Court from embarking upon a detailed enquiry in cases where the welfare of a minor is in question, which is the paramount consideration for the Court while exercising its *parens patriae* jurisdiction. A High Court may, therefore, invoke its extraordinary jurisdiction to determine the validity of the detention, in cases that fall within its jurisdiction and may also issue orders as to custody of the minor depending upon how the court views the rival claims, if any, to such custody.

12. In **Tejaswini Gaud vs Shekhar Jagdish Prasad Tewari**³, the Apex Court held that the court while deciding the child custody cases is not bound by the mere legal right of the parent or guardian. Though the provisions of the special statutes govern the rights of the parents or guardians, but the welfare of the minor is the supreme consideration in cases concerning custody of the minor child. The

² (2011) 6 SCC 479

³ (2019) 7 SCC 42

paramount consideration for the court ought to be child interest and welfare of the child.

13. In **Kamla Devi v. State of H.P.**⁴, it was held that in deciding a difficult and complex question as to the custody of a minor, a court of law should keep in mind the relevant statutes and the rights flowing therefrom. But such cases cannot be decided solely by interpreting legal provisions. It is a human problem and is required to be solved with human statutes nor by strict rules of evidence or procedure not by precedents. In selecting proper guardian of an minor, the paramount consideration should be the welfare and well being of the child. In selecting a guardian, the Court is exercising *parens patriae* jurisdiction and is expected, may bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above, physical comforts, moral and ethical values cannot be ignored. They are equally, even more important, essential and indispensable considerations.

⁴ AIR 1987 HP 34

14. In **Gaurav Nagpal vs Sumedha Nagpal**⁵, the Apex Court as follows:-

The dominant matter for the consideration of the court is the welfare of the child. But the welfare of the child is not to be measured by money only nor merely physical comfort. The word "welfare must be taken in its widest sense. The moral or religious welfare of the child must be considered as well as its physical well being. Nor can the tie of affection be disregarded.

15. Habeas Corpus proceedings are not to justify or examine the legality of the custody. The Habeas corpus proceedings is a medium through which custody of child is addressed to the discretion of the Court. Habeas Corpus is a prerogative writ which is an extra ordinary remedy and the writ is issued in the circumstances of a particular case where ordinary remedy provided by the law is either invaluable or is ineffective, otherwise a writ will not be issued in child custody matters. The power of High Court in granting writ is qualified only in cases where the detention of minor is to a person who is not entitled to his legal custody. In view of the same, in child custody matters, writ of Habeas Corpus is maintainable where it is approved that the detention of a minor child or parents and others is illegal without any authority of law.

⁵ (2009) 1 SCC 42

16. In the aforesaid cases, the Apex Court has taken a view that the High Court may invoke extra ordinary jurisdiction to determine the legality of the detention. The High Court has to decide the Habeas Corpus petition by conducting summary proceedings basing on the affidavits filed by the parties. The High Court has to examine each case basing on its own facts and circumstances on case to case basis. Finally High Court has to decide whether the custody is lawful or not.

17. In the light of the aforesaid principles laid down by the Apex Court, coming to the case on hand, as discussed supra, there are serious disputes between the petitioner and 9th respondent. The aforesaid crime and FCOP are pending. Admittedly, girl child is aged 7 years. It is a tender age. She is a female child. We have to consider the welfare of the child. It is a tender age. She needs care and protection of the mother. However, boy is also with the petitioner. Elders cannot decide that the minor boy should be with the mother and girl child should be with the father. In the custody matters, welfare of the minor child is the paramount consideration. 9th respondent is a private employee. There is no mention in the entire counter as to who is taking care of minor child if custody is given to the 9th respondent, whereas, the petitioner herein, being Homemaker,

is taking care of the girl child. Therefore, we are of the considered view that it is just and necessary to give custody of the minor child to her mother, the petitioner.

18. In view of the aforesaid discussion, this writ petition is disposed of holding that :-

- i. 9th respondent is directed to hand over the minor child by name
aged 7 years, to the petitioner herein within
one week from today.
- ii. Liberty is granted to the 9th respondent to file appropriate application in terms of Section 24 of the Guardians and Wards Act, seeking to declare him as a guardian, appropriate application seeking custody and visitation rights etc., of the minor child before the competent jurisdictional Family Court which will have the benefit of interacting with the parties and minor child and consider the entire material on record, other relevant factors on the subject matter.
- iii. Liberty is also granted to the parties to raise all the contentions and grounds raised in the present writ petition before the Court

below and it is for the said Court to consider the same and pass appropriate orders in accordance with law.

Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

SD/- P. PADMANABHA REDDY
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Principal Secretary, Home Department, T.S Secretariat buildings, State of Telangana, Hyderabad.
2. Commissioner of Police, Rachakonda Commissionerate
3. Commissioner of Police, Hyderabad.
4. Assistant Commissioner of Police, Vanasthalipuram, Rachakonda Commissionerate
5. Assistant Commissioner of Police, Malkajgiri, Rachakonda Commissionerate.
6. Inspector of Police, Malkajiri Police Station, Medchal-Malkajgiri District.
7. Inspector of Police, Vanasthalipuram Police Station, Rangareddy District
8. Inspector of Police, Lalaguda Police Station
9. One CC to M/s. Tekuru Swetcha, Advocate [OPUC]
10. Two CCs to GP for Home, High Court for the State of Telangana, at Hyderabad [OUT]
11. Two CCs to The Additional Advocate General of India, High Court for the State of Telangana, at Hyderabad [OUT]
12. Two CD Copies

T J
GJP



HIGH COURT

C C TODAY

DATED:20/09/2023

ORDER

WP.No.23230 of 2023



DISPOSING OF THE WRIT PETITION
WITHOUT COSTS.

16 VLV
21/9/23