
(2020) 08 MP CK 0263

In the Madhya Pradesh High Court

Case No : Writ Petition No. 10986 Of 2020

Ajay Singh Parihar

APPELLANT

Vs

State Of M.P. And others

RESPONDENT

Date of Decision : 06-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2020) 08 MP CK 0263

Hon'ble Judges : G. S. Ahluwalia, J

Bench : Single Bench

Advocate : N.S. Kirar, M.P.S. Raghuvanshi

Final Decision : Dismissed

Judgement

This petition under Article 226 of the Constitution of India has been filed in the nature of habeas corpus on the allegation that respondent no. 6, who is the father-in-law of the petitioner, has taken away his two minor children to Indore, and the respondent no.5, who is the wife of the petitioner is also residing with respondent no. 6 at Indore. It is further submitted that in spite of the complaint made to the police, no action has been taken and, accordingly, this petition has been filed.

Heard the learned counsel for the petitioner.

It is the case of the petitioner that the respondent no. 5 is the legally-wedded wife of the petitioner. She is residing separately from the petitioner. She filed an application before CWC, Shivpuri and, accordingly, by order dated 18.09.2019, the proceedings were closed in the light of the consensus arrived at between the petitioner and the respondent no. 5 and it was agreed that the petitioner and the respondent no. 5 shall reside together for the welfare of the children. It was also mentioned in the said order that the mother of the petitioner shall also stay with them. However, it is submitted that the respondent no. 5 has not respected her words and is not residing with the petitioner. It is submitted that in spite of the

directions given by the CWC, the respondent no. 6 who is the maternal grandfather of the Children has forcibly taken the children with him. It is further submitted that respondent no. 5 was residing in Gwalior and for the benefit of the respondent no. 5, the petitioner had purchased a flat in Gwalior, however, the respondent no. 5 has let out that flat and is also residing in Indore along with the respondent no. 6.

Heard the learned Counsel of the petitioner on the question of maintainability of this petition.

In the entire writ petition, there is not a single whisper to the effect that the welfare of the children is not safe in the hands of the respondent no. 5.

The Supreme Court in the case of Tejaswini Gaud and others Vs. Shekhar Jagdish Prasad Tewari and others reported in (2019) 7 SCC 42 held that a writ petition in the nature of habeas corpus for the custody of minor child is maintainable where detention by a parent or others is illegal or without any authority of law. Paragraphs 14 and 19 of the judgment passed in the case of Tejaswini Singh (supra) read as under:-

"14. Writ of habeas corpus is a prerogative process for securing the liberty of the subject by affording an effective means of immediate release from an illegal or improper detention. The writ also extends its influence to restore the custody of a minor to his guardian when wrongfully deprived of it. The detention of a minor by a person who is not entitled to his legal custody is treated as equivalent to illegal detention for the purpose of granting writ, directing custody of the minor child. For restoration of the custody of a minor from a person who according to the personal law, is not his legal or natural guardian, in appropriate cases, the writ court has jurisdiction.

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."

If the pleadings are considered in the light of the aforementioned judgment, then it is clear that the basic averment of the welfare of the children is missing.

Accordingly, this Court is of the considered opinion that the petitioner has failed to bring his case within the four corners of the limited scope of petition under

Article 226 of the Constitution of India for the custody of the child.

In the child matters, ordinary remedy lies in the Hindu Minority and Guardianship Act or the Guardians and Wards Act. Therefore, the petitioner can avail the alternative remedy under the Hindu Minority or Guardianship Act or Guardians and Wards Act.

Since at present, the children are with the respondent no. 5 who is the real mother of the children, therefore, it cannot be said that children are in the illegal custody of the respondent no. 5.

Accordingly, this petition fails and is hereby dismissed.