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**(2008) 08 RAJ CK 0052**  
**In the Rajasthan High Court**

Basanti Devi

APPELLANT

Vs

State and Others

RESPONDENT

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**Date of Decision :** 07-08-2008

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 174

**Citation :** (2009) 2 RLW 938

**Hon'ble Judges :** P.C. Tatia, J;C.M. Totla, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

Prakash Tatia, J.—Heard learned Counsel for the petitioner.

2. The petitioner has submitted this habeas corpus petition alleging that her son is in the custody of her father-in-law i.e., in custody of grand-father of the child. After narrating the facts, which we shall be referring in detail herein below, she pleaded that respondent-grand-gather of the child be directed to produce the petitioner's son before this Court and custody of the child may be handed over to the petitioner.

3. Facts leading to this petition are as under:

As per the facts stated in this habeas corpus petition after marriage of the petitioner with Niranjn Singh on 2nd Dec, 2003, her husband Niranjn Singh committed suicide on 22nd Oct., 2007. On the basis of suicide note, the case u/s 174 Cr.P.C. was registered. According to the petitioner, thereafter, on 23rd Nov., 2007 she gave a registered notice to her father-in-law Madhav Singh and demanded custody of her son Raja @ Jeet Singh. The petitioner also demanded return of goods, whicti according to her, were her dowry articles. She also demanded maintenance from her father-in-law. After this registered notice of the petitioner dated 23rd Nov., 2007, the petitioner's father-in-law lodged FIR u/s 306 Cr.P.C. against the petitioner. The petitioner also submitted an application u/ s 91 Cr.P.C. on 1st Dec., 2007 and got a search warrant issued for her son Raja

@ Jeet Singh. In the said proceedings notices were issued to the petitioner's father-in-law and after hearing both the parties, the learned Executive Magistrate ADM, Udaipur rejected the petitioner's application filed u/s 91 Cr.P.C. The petitioner challenged the order of the ADM, Udaipur dated 22nd Dec, 2007 by preferring revision before the Sessions Court, Udaipur, that too, was rejected. Then the petitioner also lodged FIR on 2nd April, 2008 against her father-in-law for committing offence u/s 498A and 406 IPC.

In spite of having so many litigations between the parties that too all of criminal nature, the petitioner states that she visited her father-in-law's house on 30th April, 2008 with the shown interest that she wanted to meet with her son. The petitioner's father-in-law did not appreciate petitioner's act and he lodged criminal complaint u/s 151, 106 and 107 Cr.P.C. against the petitioner. According to the petitioner, she was arrested and was kept in custody for 24 hours in jail. Now the petitioner has submitted this habeas corpus petition on 1st August, 2008 alleging that custody of her son with her father-in-law, who is grand father of the child corpus, is illegal and she is entitled for custody of her son Raja @ Jeet Singh.

4. We are constrained to observe that Habeas Corpus petitions have become the tool in the hands of the parties for seeking custody of child or girl from the custody of other person who also may have some legal right for the custody of the child or the girl. The habeas corpus petition is entertained by the courts of law taking into account a very liberal view because of the reason that in any civilized society the safety, custody and freedom of child or family is respected highest. The object behind habeas corpus petition was to give protection to those persons whose liberty has been denied and they have been wrongfully confined and illegally detained. The habeas corpus petitions are entertained to see that no harm be caused to the person for whom there is reasonable apprehension of suffering harm, may it be even from legal guardian of the corpus. As stated above, the object and underlying principle for exercising jurisdiction in a habeas corpus petition is to give courts immediate help for safety of the corpus obviously, otherwise by the time the Informant will seek relief from other authority or Police or from Executive Magistrate under the provisions of Cr.P.C or from Civil Court, the harm may be caused to the corpus.

5. The habit of approaching the court by way of habeas corpus petition and by not availing the remedy under the general law like under the provisions of Guardian and Wards Act, 1890 is in increasing trend. The courts are regularly granting appropriate relief to the parties about the custody of children under the provisions of Guardian and Wards Act, 1890 yet the parties are advised to directly approach the High Court for the same relief which well can be obtained from civil court. It appears that since in the habeas corpus petitions orders of the court are executed through police, therefore, this proceeding is being preferred in matrimonial and children's custody matters so that applicant-petitioner who is normally a relative, may have to see police standing outside his house which

may fulfill some oblique motive of the applicant. In matrimonial disputes the worst sufferer is the child who himself has no, say as the welfare of the child is required to be adjudged by the courts in the matter of serious disputes and the child himself cannot have understanding to take a decision. This situation of the child is normally projected with serious allegations so that one can get the custody of the child by condemning other person as well as by avoiding trial for issues. We may observe here that we are not living in a society where children are ill treated by the relatives, if the children are in their custody because of unfortunate situation and the children when are not in the custody of their mother or father. Neither the family members of those persons in whose custody the children is, will permit and allow ill treatment to the children nor their relatives will allow. Isolated cases of ill treatment to the children cannot become the example for holding or presuming that even maternal-father, maternal-uncle, grand-father or grandmother will ill treat the children so as to call for immediate and urgent intervention of the court by exercising jurisdiction under habeas corpus writ petition.

6. Present case also has some important facts, which we may recapitulate. The petitioner's husband died by committing suicide on 22nd Oct., 2007 i.e., before four years from the time of marriage with the petitioner as marriage was solemnized on 2nd Dec., 2003. The petitioner within one month on 23rd Nov., 2007, gave notice to her father-in-law and sought custody of her son Raja @ Jeet Singh and demanded her Istri Dhan (dowry articles) and also demanded maintenance. On 29th Nov., 2007, the petitioner's father-in-law lodged FIR u/s 306 IPC against the petitioner" then petitioner lodged FIR u/s 498A and Section 406 IPC on 2nd April, 2008. Before that the petitioner submitted a petition u/s 91 Cr.P.C. on 1st Dec, 2007. All above started within a period of less than two months time from the death of petitioner's husband i.e., between 22nd Oct., 2007 to 23rd Nov., 2007. The petitioner's application u/s 91 Cr.P.C was dismissed on 22nd Dec, 2007 and her revision petition against the order dated 22nd Dec, 2007 was dismissed by the Sessions Court, Udaipur vide order dated 12th June, 2008. The petitioner's contention is that during this period, when her petition for custody of child u/s 91 Cr.P.C. was rejected and revision petition was pending before the court of Sessions Judge, Udaipur, she visited her father-in-law house on 30th April, 2008 for the reasons best known to her but shown reason to meet with her son. The petitioner already approached the court for the custody of her child and her father-in-law was resisting her efforts in the court and her father-in-law was contesting the petition u/s 91 Cr.P.C. and got the petitioner's petition u/s 91 Cr.P.C. rejected and when revision petition was pending, she thought that she would be allowed by her father-in-law readily and easily to enter into house of her father-in-law. Be it as it may be, as could have happened (not necessarily) that petitioner's father-in-law submitted a criminal complaint u/s 151, 106 and 107 Cr.P.C against the petitioner and according to the petitioner she remained behind bars for 24 hours. After all above and after dismissal of her petition u/s 91 Cr.P.C. By revisional court, the allegation is that

the custody of the child is with the child's grand-father-respondent No. 3 is illegal. The facts speak themselves. Looking to the totality of the facts of the case, it appears that it is a case of desperate effort for custody of child, which could have been very well sought from the civil court under the provisions of the Guardian and Wards Act, 1890. It will be relevant to mention here that in between daughter-in-law and father-in-law and in the matter for custody of small child of three years only criminal cases and intervention of police were found appropriate in place of availing remedy through civil court.

7. The remedy is yet available to the petitioner where the civil court may look into all the aspects of the matter objectively to save the future of the child uninfluenced by all the criminal cases initiated by one party or other party because the paramount consideration of the courts shall always be in favour of the welfare of the child irrespective of the action taken by the parties, who are not minor and who are of the age of understanding.

8. With these observations the writ petition of the petitioner is dismissed with liberty to the petitioner to avail appropriate remedy under the Guardian and Wards Act, 1890 or in other manner.