
(2009) 02 AHC CK 0132

In the Allahabad High Court

Case No : Civil Miscellaneous Habeas Corpus W.P. No. 52691 of 2008

Kanak Khandelwal (Minor) and another

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 19-02-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 02 AHC CK 0132

Hon'ble Judges : S.K.Jain, J

Final Decision : Dismissed

Judgement

S.K. Jain, J.—Petitioners Kanak Khandelwal (minor) and Shyam Sundar Khandelwal filed this Habeas Corpus Writ Petition for issuance of a writ order or direction in the nature of mandamus directing the respondents to produce the corpus of petitioner No. 1 Kanak Khandelwal who is in illegal custody of respondent Nos. 2 to 7.

2. Present petition has been preferred on the ground that Tie daughter of Suresh Chand Khandelwal, respondent No. 2 was married with Ravi Khandelwal son of petitioner No. 2 on 4.3.2003. After the marriage Ravi Khandelwal and daughter of Suresh Chand Khandelwal lived happily and petitioner No. 1 Kanak Khandelwal was born out of the wedlock on 2.3.2004. Petitioner No. 2 admitted petitioner No. 1 in Euro Kids Play School Radhapuram, National Highway 2, Mathura, Kanak is still studying. It is alleged that in the night of 20/21.6.2008 some unknown persons had committed murder of the mother of petitioner No. 1, Kanak. Ravi Khandelwal the father of petitioner No. 1, lodged a F.I.R. at P.S. Highway, District Mathura about the occurrence, which was registered as case crime No. 268 of 2008 against unknown persons. After the occurrence, the Media had taken interview of respondent Nos. 2 to 7, who stated before the Media that they had no complaint against the husband and his family members. They have never tortured the daughter of respondent No. 2, who was married to Ravi Khandelwal. It is further alleged that the wife of Ravi Khandelwal was cremated with the

mutual consent of the parties. Respondent No. 2, his wife Smt. Shyam Lata Khandelwal respondent No. 3, Pawan Khandelwal respondent No. 4 son of respondent No. 2, Rachna Khandelwal wife of Pawan Khandelwal respondent No. 5, Pankaj Khandelwal son of Suresh Khandelwal respondent No. 6 and Sonu Khandelwal respondent No. 7 forcibly took away petitioner No. 1 after cremation. Petitioner No. 2 being real grand father of petitioner No. 1 is entitled to the custody of petitioner No. 1. Notices were issued to the respondents to produce petitioner No. 1 before this Court on 16.2.2009.

3. Counter affidavit has been filed. As per the counter affidavit the case of the respondents is that daughter of respondent No. 2 was married to Ravi Khandelwal on 4.3.2003. Ravi Khandelwal tortured his wife for demand of cash and car etc. During investigation statement of petitioner No. 1 was recorded in the case registered on the basis of the report lodged by Ravi Khandelwal regarding murder of his wife. Petitioner No. 1 in his statement under section 164 Cr.P.C. has specifically stated that on the day of occurrence, Ravi Khandelwal accompanied by one boy came to the house. The boy accompanying Ravi Khandelwal tied the hands of petitioner No. 1 with a Chunni, locked the gate of the house and his father committed the murder of his mother by throttling. It has further been contended that petitioner No. 1 is living with his Nana and Nani as per his own free Will. Ravi Khandelwal is confined in jail in the murder of his wife, the mother of petitioner No. 1.

4. Statement of petitioner No. 1 Kanak was recorded before this Court, who has deposed that he is living with his Nana and Nani and receiving education in Adarsh Vidya Mandir. He was not forcibly taken by his Nana and Nani. He wants to stay with them. He further stated that if he goes with his Dada and Dadi, they would kill him in the manner they killed his mother.

5. Learned Counsel for the petitioner has contended that petitioner No. 1 is under the influence of his Nana and Nani. Petitioner No. 2 is real grand father who has retired from the Bank services and if the child is left in his company, he would happily go with petitioner No. 2. However, at the time of hearing petitioner No. 2 was not present in Court. A request was made that the child be put in some Hotel at Allahabad, so that petitioner No. 2 may come and meet him on the next date of hearing.

6. Per contra learned Counsel for the respondents pleaded that it is clear from the facts and circumstances of the case that petitioner No. 1 is only the witness of the murder of his own mother. As per his statement the murder was committed by his father. He is happily living with his Nana and Nani and his receiving education. If the custody of child is handed over to petitioner No. 2 who is father of the accused Ravi Khandelwal, the accused of the murder of his wife, the evidence can be destroyed either by eliminating the child or by tutoring him. There is nothing on record to suggest that petitioner No. 1 is in illegal custody of the respondents.

I have given my thoughtful consideration to the submissions made by the learned Counsel for the parties.

7. From the facts and circumstances of the case, it appears that petitioner No. 1 is the only witness of murder of his mother, which is alleged to have been committed by the father of petitioner No. 1. He has already deposed under section 164 Cr.P.C. against his father and on the basis of his statement the father of petitioner No. 1 has been detained in custody. If the child is handed over to his grand father i.e. the father of Ravi Khandelwal, the possibility that the evidence in the case shall be destroyed cannot be over ruled. It has also born out from the facts and circumstances of the case that the child has not been illegally detained and he is happily living with his Nana and Nani. I do not find it fit to hand over the custody of the child to petitioner No. 2, the grand father of petitioner No. 1.

The writ petition is devoid of merit and is liable to be dismissed.

The petition is dismissed accordingly.