

(1997) 01 AHC CK 0100

In the Allahabad High Court

Case No : Habeas Corpus Writ Petition No. 23225 of 1996

Master Manveer Khera

APPELLANT

Vs

Manjeet Singh Khera alias Makhan Singh and others,

RESPONDENT

Date of Decision : 09-01-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1997 All 217

Hon'ble Judges : G.S.N. Tripathi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. Smt. Gurpriya Khera, the mother of the minor child Master Manveer Khera has filed this petition praying for a writ in the nature of Habeas Corpus directing respondents No. 1 to 3 to produce the petitioner before the Court and hand over the custody of the child to the mother, Smt. Gurpriya Khera.

2. Admittedly, Smt. Gurpriya Khera was married to late Lt. Mandeep Singh Khera (Indian Navy) on 6-10-90. The child Master Manveer Khera was born out of this union on 17-11-91. On 3-2-96, in a car accident, the husband of Smt. Gurpriya died and she also received injuries. The child Master Manveer Khera was taken up by respondents No. 1 to 3, who are the in-laws of Smt. Gurpriya Khera. It is said that Smt. Gurpriya Khera also received multiple fractures in that car accident and she fell unconscious. She was initially admitted to a Hospital at Rajali. From there, she was shifted to the Military Hospital, Madras and from there, she was discharged on 15-3-96 and brought to Chandigarh by her father and ever since she has been residing there. Without caring for the injured Smt. Gurpriya, the respondents took away the child Master Manveer Khera on 7-2-19% from the hospital and brought him to Shahjahanpur (U.P.) and ever since the child is residing with respondents 1 to 3. Smt. Gurpriya made repeated efforts to have the custody of the child. But she has failed.

3. She is about 26 years" old and educated upto B.A. She belongs to a good family of status. Her father is a retired Army Officer and her mother is a Co-ordinator in Guru Nanak Public School, Chandigarh. Smt. Gurpriya Khera is in a very sound financial position and can take after the betterment of the child and can bring conducive atmosphere, which may be helpful in the future development of his. personality. She is a legal guardian also, whereas, respondents 1 to 3 are not, during her life time. In the meantime, it is said that the respondents are prosecuting a divorce petition, allegedly filed by the husband of Smt. Gurpriya in the Court of Shahjahanpur even after his death. This is wrong. Her husband never filed a divorce petition against her. They have been leading peaceful and conductively happy married life.

4. She has heard that respondents No. 1 to 3 are likely to escape to Canada, where the brother of respondent No. 1 resides. The petitioner has sent a written request on 5-6-96 to the Canadian High Commission and the American Embassy so that they may not be allowed to take away her child. Under these circumstances, she has alleged that she can watch the interest of the minor in a better manner.

5. In the counter affidavit, the respondent No. 1 has alleged that even during the life time of late Lt. Mandeep Singh Khera, the husband of Smt. Gurpriya, there was serious differences between the husband and wife and the respondents were looking after the child. The husband was compelled to file a divorce suit in the Court at Shahjahanpur against Smt. Gurpriya Khera. Allegedly she admitted the claim (which has been denied by her). It has been alleged that the grandfather of the child is a retired officer. He was posted as a Senior Manager, BHEL and got a large package of retirement benefits. He has agricultural land in Punjab as well as Shahjahanpur. He has a shop at Poona. Smt. Gurpriya's father is a retired territorial Army Officer. Her mother is a school teacher. Smt. Gurpriya is not in a perfect mental state having no love and affection for the child. This way the best interest of the child can be served only while remaining with respondents.

6. It is not disputed that the child is residing with respondents. After the death of her husband, Smt. Gurpriya has received a large package of retirement benefits (death dues) and is in a sound financial position. This does not mean that the respondents" financial position is not sound.

7. Under these circumstances, the Court has to weigh the contention of the parties in order to ensure the best possible care and welfare of the child.

8. There is a well-known scriptural jewel (Hindi matter)

It means that bad sons are born infrequently although, but bad mother is yet to be born.

9. In this case, it is not disputed that Smt.--Gurpriya has no adversarial interest with the child. It is also not disputed that she is a graduate and young lady of 26 years and has not remarried. So from all considerations, she is the best protector

of the minors" interest.

10. There is another jewel of invaluable nature. (Hindi matter)

The mother, father and friends are natural well-wishers of a person. Others think of the welfare of the person only when they have some ulterior benefits to gain. This way, mother being the natural guardian of me child, has the best claim upon him. Even according to Hindu Law, in the list of Guardians, the mother comes only after the father.

11. Myattention has been invited to a Division Bench Ruling of this Court in the case of Vinayak Goyal v. Prem Prakash 1981 All LJ 752. In para 11, it has been held as follows :--

"In the case of a minor, his detention would be treated as illegal and unlawful if he is detained by any person against the wishes of the guardian (in this case Gurpriya) who is entitled in law to have his custody.....

In the instant case holding back of the child by his grandfather and grandmother amounted to illegal and unlawful detention and as such, the petitioner was entitled to a writ of mandamus"

12. In paragraph 14, it was also observed as follows :--

".....The law is well settled that the writ of habeas corpus would be maintainable for the custody of a child despite the alternative remedy of filing an application under the Guardians and Wards Act."

Therefore, the contention of Sri Asthana is not sound that since the petitions under the Guardians and Wards as well as Hindu Marriage Act (Divorce petition) are pending in the Shahjahanpur court, this Court should permit a decision on facts by those courts.

13. In para 18, it was observed as follows:--

".....In the instant case, there is nothing to doubt that well being, education and happiness of the petitioner-minor lies in selecting his mother over grandfather and grand-mother. The child is 8 years of age. Mother's protection for such a child is indispensable. There cannot be any other protection which will be equal in measure and substance to that of the mother in such circumstances."

That was a case similar to one before me. As the learned counsel Sri Asthana could not show me that the law has changed after this judgment, either by this High Court or by the Hon"ble Supreme Court, therefore, this has to be treated as a final position of law in the present case.

14. The primary consideration, is, always, admittedly, in such cases, to see as to whether best interest of the child can be protected, by the petitioner or the respondents. The respondents are aged over 60 years and onward. They do not possess that much agility as Smt. Gurpriya can She is a young lady. She can toil with the child for his betterment. She can devote more time to the child. She can

educate him and also look after him in a better position, as she is, admittedly, a very educated lady. Her mother is also a teacher whereas, the respondents are old people. They cannot devote that much of time towards the child. May, after few years they shall themselves need protection and care from others.

15. It is not disputed that best possible educational facilities are available in Chandigarh, whereas such facilities cannot be even dreamt of at Shahjahanpur, either in the city or in the rural areas where the respondents have farm and other properties. Hence from this point of view, the study atmosphere of the child at Chandigarh will be more conducive towards the betterment of the child than that of his residence at Shahjahanpur under the care of the respondents. This does not mean that I want to say that respondents have no love and affection of the child. They have all the love and affection for him. But in degree as well as in quality, it cannot be equated with that of Smt. Gurpriya. Therefore, from this norm also, Smt. Gurpriya stands in a better position to have the custody of the child.

16. After receipt of the post-retirement/death package, Smt. Gurpriya's financial position is very sound. Even her parents are in a better position to help her as and when she needs their protection. So, it cannot be said that on financial consideration, she stands in a weaker position than that of the respondents. Rather, I find that Smt. Gurpriya is in a much better position than respondents to look after the welfare of the child. The pendency of the proceedings in Shahjahanpur Court, cannot mean that Smt. Gurpriya is in any way less competent to look after the child's welfare.

17. Every person must have some solace in life. A young lady gets much solace in the company of her husband and child similarly, the child gets solace as well as protection and care under the custody of his mother. By God's grace or otherwise, Smt. Gurpriya has turned into a widow due to untimely death of her husband in an accident. So she has no solace or love from her husband now. Then the only solace available to her is her child. If he too is taken away from her, she will be compelled to live a life of desertion and life long agony and the attainment of motherhood is the best contribution a lady makes towards the society as well as the nation and in further educating him looking after him and making him a better citizen, she plays a determined, positive role. These are not disputed things. Therefore, even in the interest of justice to the society as well as Smt. Gurpriya herself, apart from the interest of the child, I find that there cannot be any better heaven for the child on earth than the lap of his mother under whose benign guardianship, he will be able to become a better citizen of the nation.

18. I do not find that there is anything on the record to prove that Smt. Gurpriya is, in any way, disqualified or less qualified to look after the child's welfare.

19. Taking all the facts into consideration, I find that Smt. Gurpriya is entitled to the custody of the child.

20. Master Manveer Khera, the child, has been brought by the respondents and is present in court. Although, the child does not want to go with his mother as he has been living with the respondents only for nearly a year. During this period, he has not been able to meet his mother. He is a minor of about 5 years age. He has no knowledge about his welfare himself. Simply because he does not want to go with his mother Smt. Gurpriya Khera, the Court shall not deprive Smt. Gurpriya Khera of her legal rights as well as pious duties towards her child. Hence disinclination of the child himself to go with his mother Smt. Gurpriya Khera, will not be a factor to be counted while determining this petition.

21. Thus the petition is allowed with costs. It is ordered that the respondents shall hand over the child to Smt. Gurpriya, his mother, immediately and she shall be entitled to, take away the child at her residential place at Chandigarh. If need be, S.S.P. Allahabad is directed to provide adequate protection to the mother Smt. Gurpriya for carriage of the child by her upto Chandigarh.

22. Sri Ramendra Asthana, learned counsel prays for permission to file an appeal before the Hon"ble Supreme Court.

23. His oral prayer is allowed.

24. Petition allowed.