
(2010) 08 KL CK 0120

In the High Court Of Kerala

Case No : Writ Petition (Criminal) No. 327 of 2010 (S)

Mumthas Suhra Beevi

APPELLANT

Vs

Commissioner of Police and Others

RESPONDENT

Date of Decision : 19-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 08 KL CK 0120

Hon'ble Judges : R. Basant, J;M.C. Hari Rani, J

Bench : Division Bench

Advocate : G. Sudheer, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

R. Basant, J.—The petitioner has come to this Court with this petition for issue of a writ of habeas corpus to search for, trace and produce her minor daughter Hussain Aminath Shaba, holder of Passport No. G 0314546 issued by the Republic of Maldives. The child was born on 1/8/2003. The petitioner was married to a Mali citizen who is now no more. The marriage took place in the year 2000 and the minor child Hussain Aminath Shaba was the second child of the spouses. According to the petitioner, the alleged detainee was residing with the mother of the petitioner at Thiruvananthapuram. The petitioner was with her husband at Mali and used to shuttle between Mali and Thiruvananthapuram. The child continued to be with the mother of the petitioner. According to the petitioner, the child is illegally detained and confined by respondents 3 to 6 who are none other than the maternal uncle of the petitioner, his wife, her sister and the father of the 4th respondent. The petitioner came to this Court with the grievance that her minor child is being illegally detained by respondents 3 to 6.

2. This petition was filed on 11/8/10. It was admitted on 12/8/10 and the matter was posted to this date for appearance of the respondents.

3. Today, when the case is called, the petitioner is present. Respondents 3 and 4

are present. The petitioner is represented by her counsel. For respondents 3 to 6, a Counsel has appeared. The alleged detenue child has been produced before this Court by respondents 3 and 4.

4. Respondents 3 and 4 have an altogether different story to advance. According to them, the child was given over to them by the petitioner. Ever since its birth in 2003, the child was residing with respondents 3 and 4. The child was attending the school at Nedumangad near the house of respondents 3 and 4. Respondents 3 and 4 were practically looking after the child. It is incorrect to say that respondents 3 to 6 had illegally removed the child on 30/7/10.

5. Respondents 3 and 4 and their Counsel submit that already O.P.(G&W) No. 976/10 has been filed by respondents 3 and 4 before the Family Court, Nedumangad, to claim custody of the child. I.A. No. 1870/10 has also been filed by respondents 3 and 4 claiming interim directions. The court by order dated 11/8/10 has directed the petitioner herein and others not to remove the minor child by use of force from the custody of respondents 3 and 4. The case now stands posted to 30/8/10. That O.P.(G&W) No. 976/10 was filed as early as on 5/8/10. This writ petition has been filed on 11/8/10 with oblique motive. The attempt is to somehow snatch away the child by prevailing upon this Court to invoke the jurisdiction under Article 226 of the Constitution to issue of a writ of habeas corpus. There is no element of illegal detention or custody. At worst, there is only a dispute regarding the guardianship and custody of the minor child. That dispute has to be resolved by the Family Court in appropriate proceedings already initiated before such court as O.P.(G&W) No. 976/10. In these circumstances, it is prayed that this petition may now be dismissed holding that the parties must make their submissions before the Family Court and seek appropriate orders.

6. We have considered all the relevant inputs. We find merit in the submission, which is not seriously disputed, at the moment, that the child has been attending her school at Nedumangad in the first standard and now in the second standard. The child is now studying in that school, it is submitted. The parties have contrary claims as to whether the minor child was actually entrusted by the petitioner to respondents 3 and 4 or not. There is also a dispute between the parties about the circumstances under which the minor child came into custody of the petitioner to facilitate obtaining a Visa and passport.

7. Having considered all the relevant inputs, we are certainly of the opinion that the parties must await orders of the Family Court. We are not persuaded to agree that there are any elements of illegal detention or confinement in the continuance of the minor child in the custody of respondents 3 and 4.

8. The Learned Counsel for the petitioner submits that as per the passport and Visa, the minor child is allowed to reside only with its mother. The Learned Counsel for the petitioner further submits that certain official formalities have to be performed immediately. The child who happens to be a foreign national has to

be registered before the Commissioner of Police. The child has to be taken immediately to Delhi to High Commissioner of Maldives for certain formalities. In these circumstances, it is prayed that, at least, interim custody may be given to the petitioner. The petitioner shall undertake to produce the child before the Family Court on 30/8/10 to which date the case is now posted.

9. We have considered all the relevant inputs. Having considered all the relevant circumstances, we are certainly of the opinion that there is absolutely no justification in the prayer to invoke the powers under Article 226 of the Constitution and issue a writ of habeas corpus. But, we agree with the Learned Counsel for the respondents that the parties must await and abide by the orders of the Family Court. There is need for emergent orders regarding custody/interim custody. We need only mention that we expect the parties to make all the relevant submissions before the Family Court and produce all relevant materials to enable the Family Court to pass appropriate final/interim/ad interim orders.

10. We are satisfied that appropriate directions can be issued which shall facilitate issue of prompt and appropriate orders by the Family Court by advancing the hearing of O.P. (G&W) No. 976/10 and I.A. No. 1870/10.

11. In the result:

(a) This writ petition is dismissed.

(b) It is directed that both parties shall appear before the Family Court at 10 a.m. on 21/8/10. The child shall be produced before the Family Court on that day by respondents 3 and 4. A copy of this judgment shall be issued to both sides. It shall be open to them to produce a copy of this judgment before the Family Court. Both parties may file appropriate petitions or counter statements before the Family Court on 21/8/10. The Family Court shall consider the contentions as also the materials produced in support of the contentions and proceed to pass appropriate orders as expeditiously thereafter as possible - at any rate, prior to 31/8/10. We may hasten to observe that we have not intended to express any opinion on the acceptability of the rival claims for guardianship, custody and interim custody of the minor child and it shall be for the Family Court to pass appropriate orders on merits untrammelled by any other observations in this judgment.