
(2006) 09 P&H CK 0081
In the Punjab And Haryana At Chandigarh

Neelam Rani

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 08-09-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482
Hindu Minority and Guardianship Act, 1956 — Section 6
Penal Code, 1860 (IPC) — Section 305, 34

Citation : (2007) 147 PLR 826 : (2007) 3 RCR(Civil) 664

Hon'ble Judges : Tej Pratap Singh Mann, J

Bench : Single Bench

Judgement

T.P.S. Mann, J.—The petitioner was married, with Sunil Kumar, son of Kitab Singh respondent No. 2 and Savitri respondent No. 3 on 10.11.2002, From the wedlock, two children were born, namely, a daughter Samiksha, who is now three years of age and a son, namely, Parteek, now aged one and a quarter years. Unfortunately on 30.11.2005, Sunil Kumar, husband of the petitioner died. At that moment of time, the, petitioner was present in her parents house in Karnal. On learning about the death of her husband, the petitioner allegedly reached her matrimonial home, where her husband was hurriedly cremated. It has further been alleged that the petitioner stayed in the matrimonial home from 1.12.2005 up till 11.12.2005 and her two children were snatched from her.

2. Later on, the police and other family members of Sunil Kumar, lodged F.I.R. No. 203, dated 4.5.2006 against the petitioner u/s 305/34 I.P.C. on the basis of a suicide note, said to have been recovered during the enquiry. On the other hand, the petitioner started alleging that her husband Sunil Kumar had been done to death by respondent Nos. 2 to 5. She went to the Police Station many a time to get an F.I.R. registered but no action was taken. Finally, she has filed a petition under Section.482.CrP.C. in this Court, which is now pending for 29.9.2006. She has also filed a petition for seeking quashing of F.I.R. No. 203. The same is also pending for 29.9.2006.

3. The present petition has been filed by the petitioner for seeking the custody of her two minor children, namely Samiksha and Parteek. Notice of the same was given to the respondents. In response thereto reply has been filed by respondent No. 2 i.e. Kitab Singh, as well as by respondent No. 1 i.e. State of Haryana.

4. The question, whether Sunil Kumar was killed or committed suicide is not the subject matter in the present case, but will be decided in the separate petitions which have been filed in this Court, one by Neelam Rani petitioner and the other by Kitab Singh respondent No. 2. As mentioned above, both these petitions are now pending for 29.9.2006.

5. The question to be considered in the present case is as to whether the two minor children of Neelam Rani petitioner and Sunil Kumar deceased shall continue to live with their paternal grand parents or should their custody be restored to the petitioner, who is their real mother. Though, it is not disputed that the question of custody of the children can be well adjudicated upon by taking recourse under the Guardians and Wards Act, but keeping in view the young ages of the two children, this Court feels it appropriate to determine such a question by taking up the present petition filed by the petitioner under Article 226 of the Constitution for issuance a writ in the nature of Habeas Corpus.

6. As per Section 6 of the Hindu Minority and Guardianship Act, the natural guardian of a Hindu minor is the father and after him, the mother. Further that where the minor has not completed the age of five years, the custody of such a minor ordinarily shall be with the mother.

7. Sunil Kumar, father of the two children is no more. Under these circumstances, the mother of the children is their natural guardian, more so, when the two children are less than five years of age. While Samiksha is now aged three years, Parteek, the other child, is one and a quarter years of age.

In preference to the mother, who is natural guardian, the grand-parents may not have a legal right for getting the custody of the children. The paramount consideration would be welfare of the two children. Though Samiksha is now a grown up child of three years, yet Parteek, who has just celebrated his first birthday has to stay in the lap of his mother. It is the mother, who can take care to the daily needs of such a minor child.

8. In view of the above, the present petition is accepted and the custody of the two minor children, namely, Samiksha and Parteek is ordered to be handed over by respondent No. 2 to the petitioner. The present petition is disposed of in terms of the order above.

9. Respondent Nos. 2 and 3 are also not strangers to the two children, whose custody has now been handed over in the Court to the petitioner. They have also looked after both the children for the last nine months. they have expressed a wish that they may be granted visitation rights so that they may meet the two children off and on and shower their blessings on them. To this reasonable

demand of private respondents, there cannot be any justified objection. Accordingly, it is ordered that respondent Nos. 2 and 3 who are grand-parents of the two children can visit them on 2nd Sunday of every calendar month between 11.00 A.M. to 2.00 P.M. at the house of the petitioner. In case the said respondents come across a situation where they find that the children are being neglected or not being properly looked after by the petitioner, they may move the Court for taking their custody. In such a situation, the order passed by this Court while granting custody of the two children to the petitioner will not come in the way. Further, the petitioner is directed to keep the custody of the two children with her and not give it to any of her near relatives.