

(2022) 09 P&H CK 0070

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 7146 Of 2022

Rajni Begum

APPELLANT

Vs

State Of Punjab And Others

RESPONDENT

Date of Decision : 16-09-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 125

Citation : (2022) 09 P&H CK 0070

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Advocate : Abhivadya Sood, H.S. Sitta, Ish Puneet Singh

Final Decision : Allowed

Judgement

Anoop Chitkara J

1. Seeking custody of her child, the mother has come up before this Court by filing a criminal writ petition in the nature of habeas corpus.

2. The undisputed facts are that the petitioner-Rajni Begum had married respondent No.4-Syed Imamul Hossain on 23.06.2017 under Muslim personal laws. From the wedlock, a girl child was born to the couple on 17.08.2021. A marital discord arose between the parties, and subsequently, a petition under section 125 CrPC was filed before the concerned Magistrate and also a suit for dissolution before the Family Court, which referred the matter for mediation at its mediation center.

3. The Petitioner has alleged that after one such mediation proceeding, on 20.07.2022, respondent No.4 snatched their child and ran away.

4. In the counter affidavit filed by respondent No.4-father of the child, he states that during the mediation proceedings on 20.07.2022, the petitioner-Rajni had expressed her inability to continue custody of the daughter because she wanted to lead a professional life and enter into the world of glamour and herself handed

over minor child custody to her father. Thus, at her own will and volition, the petitioner handed over the girl child to respondent No.4, and there is no question of illegal detention.

5. During proceedings before this Court, the parties were again sent to this court's media-tion centre to resolve their disputes amicably. However, respondent No.4 did not appear, and the mediation proceedings failed.

6. I have gone through the petition supported by the petitioner's affidavit and the affida-vit filed by respondent No.4. The State has also assisted the Court appropriately.

7. According to the petitioner-Rajni, the child's father-Syed, Imamul Hossain, had forcibly snatched the child after mediation, and she had immediately swung into action and had raised the alarm and tried to catch respondent No.4, but he absconded. After that, she im-mediately filed a complaint (Annexure P-3) to the concerned SSP. The Deputy Superintendent of Police, District Patiala, has filed a status report through an affidavit dated 08.08.2022. It has been mentioned that the petitioner had filed an application to Child Development Pro-ject Officer Patiala about snatching her child, and the said application was forwarded to the police. In para 5 of the status report, it has been mentioned that the inquiry reveals that re-spondent No.4 took away the minor child on false pretexts.

8. After that, the police tried to contact respondent No.4, but his phone was switched off. Even the airport authorities were informed on 21.07.2021 to nab respondent No.4. Later on, the police found that respondent No.4 had reached West Bengal and was residing there along with the child.

9. A perusal of the inquiry reveals that on the immediate reaction of the petitioner after her child was snatched, the police had tried contacting and apprehending respondent no 4. This leaves no room to accept the stand of respondent No.4 that the petitioner had herself handed over the child. Thus,the petitioner's stand is incorrect, false, and blatant lie on the affidavit.

10. The petitioner's stand is not only substantiated by her immediate response but also by the State's inquiry and conduct of respondent No.4-husband of the petitioner, who failed to join the mediation proceedings.

11. Given above, the petitioner makes out a case for issuance of the writ of habeas-corpus for release of her daughter Rehana. The SSP, Patiala, is to make immediate arrangements to send the petitioner-Rajni and two police officials, without delay, to the place of current resi-dence of the child. The concerned Superintendent(s) of Police, where the child is kept are directed to provide adequate security and police force to take custody of the child from re-spondent No.4 and hand over the same to the petitioner. Respondent No.4 is directed through his counsel to cooperate in returning the child and not create any obstructions. If he does so, it might be treated as contempt of this Court.

12. After getting custody of the child, petitioner Rajni shall be escorted back by

the said police officers. It is for the Superintendent of Police to decide whether such police officials will be in civil clothes or official uniforms. All the expenditure which shall be incurred in travelling to and fro, along with food etc., including that of the petitioner and the detained child, shall be provided for by the State and approved by the concerned competent authority later on.

There would be no need for a certified copy of this order for furnishing bonds, and any Advocate for the Convict can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

An authenticated copy of this order will be handed over to the petitioner who is present in the Court.

The petition is allowed to the extent mentioned above. Pending applications, if any, stand disposed of.