
(2008) 11 GAU CK 0057
In the Gauhati High Court

Rinju Hazarika

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 05-11-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 5 GLR 748

Hon'ble Judges : Jasti Chelameswar, C.J; Anima Hazarika, J

Bench : Division Bench

Judgement

Anima Hazarika, J.—Heard Mr. K.P. Sarma, learned senior Counsel assisted by Mr. H. Das, advocate appearing for the petitioner. Also heard Mrs. B. Goyal, learned State counsel appearing for respondent Nos. 1 to 3.

2. The petitioner herein has knocked the door of the court invoking power under Article 226 of the Constitution seeking a writ in the nature of Habeas Corpus for a direction to the respondents, more particularly respondent No. 4 to produce Miss Debismita Bhuyan before this Court and to declare her detention as illegal and unlawful, with a further prayer for issuing a writ of Mandamus, directing the respondent No. 4 to give custody of the child to the petitioner.

3. The brief facts leading to the case in a nutshell is summarized as follows:

The petitioner is an employee of the Public Works Department and has been serving as Khalasi in the office of the Assistant Executive Engineer, PWD (Roads), under city Sub-Division No. 1, Guwahati since 22.6.1994. The petitioner came in contact with one Sri Gopal Krishna Bhuyan of village-Borobhuyan, District-Sonitpur who promised to marry her and under compelling circumstances she lived with him from July 1996 to July 1997 at Redcross Road, Guwahati and out of their conjugal life she gave birth to a female child on 7.7.1998 in the Gauhati Medical College and Hospital, Guwahati who has been named as Debismita Bhuyan. Immediately after birth of the said daughter, Sri Gopal Krishna Bhuyan deserted both the petitioner and the new born baby and left for some unknown

place without any information to the petitioner. Thereafter, the petitioner has come to know that he married two different women in two different places. As a result, the petitioner had to live with her newborn baby at her parental house at Chatia, Tezpur.

After some days, the petitioner alone had to come from her parents' house at Chatia to Guwahati and started living in a women's hostel at Nizarapar, Guwahati to resume her duties in the above-mentioned PWD. Office, keeping her daughter in her parents' house with her grand-mother at Chatia. The petitioner used to go to Chatia on every Sundays and holidays to look after her daughter and bear all expenditure incurred for looking after her child. During those days Sri Gopal Krishna Bhuyan never enquired about the petitioner and her daughter nor paid any money for their maintenance.

4. In the year 2002 when the daughter of the petitioner, became four years old, she brought her daughter to Guwahati from Chatia and started living in a rented house at Nizarapar, got her admitted in Nizarapar L.P. School in Nursery standard and thereafter transferred her to Holy Child School at Guwahati where she was admitted in the K.G. Class. While the petitioner was living with her daughter at Nizarapar and her daughter was reading in Class-I, one Sri Kamal Sarma, teacher of Nizarapar L.P. School proposed the petitioner for marriage with an assurance to look after her and also to maintain her daughter. Subsequently the petitioner accepted the above proposal and on 8.10.2003, the marriage of the petitioner with Sri Kamal Sarma was socially solemnized at Sukleswar Temple in Guwahati. Thereafter, the petitioner with her husband started their conjugal life as wife and husband at Guwahati alongwith her daughter Miss Debismita Bhuyan. The petitioner was very much happy with the married life as well as satisfied with the behaviour, love, care and responsibility taken by her husband towards her daughter. Her husband also opened some insurance policies for welfare of her daughter. After about two years of conjugal life, the petitioner gave birth to a male child, namely Raktim Kamal on 17.6.2005 and even after the delivery the petitioner was in a position to look after both her daughter and newborn baby properly.

5. One Sri Ranjan Hazarika, own brother of the petitioner, who resides in a rented house at Nizarapar, Chandmari Colony, Guwahati used to frequently visit the petitioner's house and sometime took the daughter of the petitioner to his rented house. On 30.6.2006 when her daughter was waiting at Silpukhuri bus stand at about 12:00 noon after completion of her half yearly examination, another brother of the petitioner Sri Ajit Hazarika took her daughter to his rented house at Nizarapar and kept her in confinement in the house of the landlord Sri Pradip Deka. Next day when the petitioner went to the rented house of her brother she came to know that her daughter had been kept in a locked room under the direction of her brother Sri Ajit Hazarika, Sri Ranjan Hazarika and Smt. Ranju Hazarika (younger sister of the petitioner) along with their landlord Smt. Niru Deka. On being requested by the petitioner to release her daughter, they

used abusive language and threatened to assault her and also did not allow to see her daughter. Having failed to get the custody of her daughter, she lodged an ejahar on 1.7.2006 with the Chandmari Police Station and with the intervention of the officer-in-charge of Chandmari Police Station she could recover her daughter from the custody of her brothers and sister.

6. Subsequently when the petitioner was not keeping well, her brother Sri Ranjan Hazarika came to her house and proposed her to take her daughter to his rented house for few days. Since the petitioner was not keeping well and Sri Ranjan Hazarika being her own brother she did not object to such proposal and allowed her daughter to go with Sri Ranjan Hazarika on 10.7.2006. After recovery, when the petitioner went to the house of her brother Sri Ranjan Hazarika to take back her daughter, the said brother refused to give back her daughter into her custody. When the petitioner requested her brother to give the custody of her daughter on several times, he told her that although she is a mother she has no right to bring up her daughter as she has failed to look after her minor daughter properly after the birth of her new born baby Raktim Kamal. When the petitioner failed to get the custody of her daughter as stated above, she lodged another ejahar with the Chandmari P.S. on 16.8.2007 for recovery of her daughter. However, the O/C, Chandmari P.S. expressed his inability to provide her any relief and asked her to approach the court of law in this regard.

7. Meanwhile, the petitioner came to know that her daughter has attained puberty on 5th May, 2008 and was staying alongwith a maid servant only in the house of her brother, Ranjan Hazarika and there was no other female member by her side at that time though at that time it was necessary for her daughter to stay with her mother, i.e., the petitioner. However, on receiving the said information, the petitioner with the help of the Child Help Line ("CHL") along with their 4 (four) members went to the rented house of Sri Ranjan Hazarika on 8th of May, 2008 and told him that she would like to arrange a function of her daughter's puberty for which she has come to take her daughter. On being given an undertaking in writing that she would return her daughter after two days, her brother allowed her to take her daughter for two days only. Accordingly, after taking her daughter, she arranged a religious function at Durga Mandir, Chandmari Colony Temple on 1.7.2008 when several invitees were present and for which the petitioner had spent about Rs. 45,000 (Rupees forty-five thousand) only. Thereafter the petitioner returned her daughter to her brother on 2.7.2008.

8. The contention of the petitioner is that her daughter Miss Debismita Bhuyan has illegally and unlawfully been detained by her brother Sri Ranjan Hazarika, the respondent No. 4 herein. Sri Hazarika is about 29 years old bachelor, works in a private company having limited income. As such, for providing education and maintenance of her daughter, he had to depend on others. On the other hand the petitioner being a Government servant who works as a Khalasi earns about Rs. 7,027 (Rupees seven thousand twenty-seven) per month and her husband also serves as Assistant Teacher in Nizarapar L.P. School draws a monthly salary of

Rs. 7,526 (Rupees seven thousand five hundred twenty-six) only per month. Hence, they have sufficient means to maintain her daughter. Further the petitioner has got her own house at Guwahati and her husband also loves her daughter very much and he too wants to maintain her as his own daughter. At present, her daughter is studying in Class-V in Holy Child School at Guwahati having attained puberty on 31.5.2008, she and her husband would look after and take care of her daughter in much better way than her brothers. It has also been contended that since her daughter is of tender age, she is not in a position to decide properly in whose custody she should go.

9. After hearing the learned Counsel for the petitioner, a direction was issued to the respondents by this Court vide order dated 12.9.2008, to produce the child, Miss Debismita Bhuyan before this Court on 17.9.2008. Accordingly, on 17.9.2008, the minor girl Miss Debismita Bhuyan was produced before this Court by respondent No. 4 who is the maternal uncle of the minor girl accompanied by her maternal aunt. The petitioner along with her husband also appeared before us. To ascertain the views of the minor without the presence of the parties, we have decided to take up the matter in camera. Accordingly, we took up the matter in camera and interacted with the minor. She specifically told us that she has been living with her maternal uncle since childhood and is very happy there. When we asked her specifically whether she wants to live with her maternal uncle or with her mother, she expressed her desire to live with her maternal uncle. She has also stated that her grand-parents who live in Chatia also come to Guwahati often and they love her very much. She has further stated that after the birth of her brother (step brother), her father (step father) did not take care of her and used to treat her differently, not as before, i.e., before the birth of the baby boy and used to scold her and at times beat her. Hence, she does not want to live with them.

10. From the statements of the minor it is clearly revealed that she was not forcibly taken away from the custody of the mother and also she was not illegally confined by respondent No. 4 depriving the petitioner her lawful custody of the minor as alleged. That being the position the instant petition is infructuous, more so, since the relief prayed for is the issuance of a writ of "Habeas Corpus" (i.e., to produce the body) and the girl has indeed been produced before the court.

11. However, in view of the seriousness of the matter we have decided to interact with the parties present in the court individually in camera. In the interaction with the maternal uncle (respondent No. 4) and maternal aunt they have told us that their niece (the minor girl) is studying in Holy Child School and they have been taking due care and bearing all the expenditure including the school fees, etc. We also had interaction with the mother as well as the step father of the minor girl separately who expressed their desire to take the custody of the child for her welfare by repeating their statements made in the writ petition.

12. On the basis of the interactions held in camera, we are of the firm opinion that the minor girl has strong desire to live with her maternal uncle (respondent

No. 4) as well as her maternal aunt (unmarried) and another maternal uncle at Guwahati. Hence, considering the above material fact as well as the tender age of the minor girl and also taking into consideration the welfare of the minor girl, we are not inclined to disturb her present set-up.

11. However, considering the anxiety of the petitioner, who is the mother of the minor girl, we propose to appoint Smt. Peace Lahkar, Advocate, Gauhati High Court, as amicus curiae before whom or in whose house, the respondent. No. 4 shall produce the minor girl once in every three months, with a prior notice to the petitioner where the petitioner can meet her daughter for two hours in the presence of one of her maternal uncle/aunt without causing any disturbance to the amicus curiae and accordingly Smt. Peace Lahkar is appointed as amicus curiae to the extent and terms indicated above in respect of mother's periodic visit to the minor.

12. This writ petition is disposed of with the above direction. The parties are left to bear their own cost.