
(2013) 05 AHC CK 0199

In the Allahabad High Court

Case No : Criminal Miscellaneous H.C.W.P. No. 11846 of 2013

Saroj Devi and Others

APPELLANT

Vs

State of U.P.Through Its Secretary Home and Others

RESPONDENT

Date of Decision : 13-05-2013

Acts Referred:

Citation : (2013) 99 ALR 98

Hon'ble Judges : Kalimullah Khan, J

Final Decision : Allowed

Judgement

Kalimullah Khan, J.—Heard learned counsel for the petitioner, learned A.G.A. appearing for respondent nos. 4 and 5 and perused the record.

2. This writ of habeas corpus under Article 226 of the Constitution of India has been filed by Smt. Saroj Devi petitioner no.1 with the averments that her marriage was solemnized with respondent no.4 Rajesh Singh on 9.2.2010 and from this wedlock two issues were born. Prithwi Singh petitioner no.2 is aged about 2 years and Priya Singh petitioner no.3 is aged about 5 month. Respondent no.4 and his mother respondent no.5 Smt. Aruna Devi adopted torturing and practicing cruelty upon petitioner no.1 Smt. Saroj Devi in connection with demand of dowry. The relation between the parties interse became strained. The climax is that on fine morning respondent nos.4 and 5 forcibly ousted the petitioner no.1 from their house after snatching aforesaid two minor children from her lap. She was compelled to leave the house of her in laws. She lodged an F.I.R. under section 498A IPC and Dowry Prohibition Act against the respondent nos. 4 and 5 which is pending trial. As a matter of counter blast respondent no.4, the husband of petitioner no.1 filed a criminal complaint case against petitioner no.1 and her entire maternal family under section 452, 323, 504, 506 R/W 34 I.P.C. wherein process under section 204 Cr.P.C. was issued on 15.9.2012. The petitioner visited several time to the house of respondent no.4 to see her minor children but she was not allowed by respondent no.4 and 5 to meet her children. She ran from pillar to post seeking

police intervention and protection but all in vain. Contrary to it respondent no.4 threatened her for dire consequence in case she claims the children.

3. Respondent no.4 and 5 being mother and son have filed no counter affidavit rather in pursuance of the order of this Court they produced both the children in the court and on query by the court they expressed no objection if the children are given to their mother petitioner no.1.

It is known to all concern that immediate welfare of the infants is of prime consideration but being completely innocent and of tender age there was no point in putting any question to them. Both of them had a completely innocent look. None can deny the fact that it is misfortune for the children who have been deprived by the love, affection, care and close contact of their mother, petitioner no.1. Considering their age no one other than the mother petitioner no.1 can bestow extreme affection and warmth love which spontaneously flow from the mother who gave birth to the children. The welfare of these two infants children lies there being handed over to their mother in preference to their father respondent no.4 or grand mother respondent no.5 who cannot be expected to bestow at present or in the years to come that affection and care which the two infant children are entitled to get from their mother.

In the facts and circumstances of the case it is essential and beneficial even for the health of the mother to have her children of these age and feed them her natural milk from her breast which is beneficial to the health of both the corpus as well.

4. It is also in the interest of two infants corpus that their father Rajesh Singh respondent no.4 and their grand mother respondent no.5 Smt. Aruna Devi may have access to see their infants to bestow their love and affection and to know their welfare at intervals.

5. Respondent nos. 4 and 5 are directed to hand over Prithwi Singh petitioner no.2 and Priya Singh petitioner no.3 to the custody of their mother Smt. Saroj Devi petitioner no.1 who is directed to take full care and protection of the children. She is at liberty to seek maintenance for herself and for her children from respondent no.4 in accordance with law. At this stage respondent nos. 4 and 5 have handed over the children (both the corpus) to their mother petitioner no.1 in the court itself. Fact is observed accordingly.

6. Respondent nos. 4 and 5 are restrained from making any kind of interference in the peaceful custody of the children with their mother Saroj Devi petitioner no.1.

7. However, respondent nos. 4 and 5 are given liberty to approach the place where petitioner no.1 presently resides along with her children (corpus) on the 1st Sunday of each calendar month in between 10.00 A.M. to 2.00 P.M. Petitioner no.1 is directed to allow them to see and meet with both the corpus and to play with them if they so desire. In the event of any problem or hurdle in this regard

aggrieved party may apply to this court for a direction or clarification.

8. Writ of habeas corpus stands allowed accordingly. Parties shall bear their own costs.