

(2018) 04 RAJ CK 0006

In the Rajasthan High Court

Case No : Habeas Corpus Petition No. 57 of 2018

Smt. Lalita @APPELLANT@Hash State Of Rajasthan

Date of Decision : 13-04-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 97, 161, 156(3)
Indian Penal Code, 1860 — Section 120B, 323, 342, 363, 406, 498A
Guardians And Wards Act, 1890 — Section 10

Citation : (2018) 04 RAJ CK 0006

Hon'ble Judges : MOHAMMAD RAFIQ, J;GOVERDHAN BARDHAR, J

Bench : Single Bench

Advocate : Biri Singh Sinsinwar, Rajesh??Choudhary, B.N. Sandu, Kesar Singh

Final Decision : Disposed Off

Judgement

Mohammad Rafiq

This habeas corpus petition has been filed by Smt. Lalita in unusual circumstances when she was deprived of custody of her minor son Hemant, aged

5 years. She has alleged that her son is in illegal custody of Respondents No. 4 to 9. Respondent No. 4 to 6 are sisters of her late husband;

Respondent No. 7 and 9 are her her brothers-in-law and Respondent No. 8 is her mother-in-law.

Facts of the case are that the petitioner was married to one Suraj Kumar. Out of their wedlock, two daughters, namely Gori and Pooja aged 9 and 8

years respectively and one son Hemant aged 5 years were born. Certain disputes arose between husband and wife and litigation ensued. But

unfortunately, her husband died on 14.12.2016. Five months after his death, Petitioner's sister-in-law i.e. sister of her late husband, Smt. Beena

wife of Shri Yadram (Respondent No. 4) came to the village of the petitioner and forcibly took away her minor son Hemant, aged 5 years. The

petitioner went to residence of Smt. Beena and requested to permit her to take him with her, but she was driven out of the home. The petitioner filed an application under Section 97 Cr.P.C. before Sub Divisional Magistrate, Deeg, who issued search warrant against Smt. Beena. The police searched house of Smt. Beena, but minor son of the petitioner was not found there. Later, Smt. Beena also appeared before Sub Divisional Magistrate, Deeg and informed that Hemant was with her mother, i.e. grand mother of the child, Smt. Motni wife of Shri Harbhan (Respondent No. 8). Sub Divisional Magistrate, Deeg issued warrants of search against her as well as Pradeep, Surendra, Sandeep etc. However, despite search by the police, Hemant was not found with them as well. So much so that the petitioner had to file a criminal complaint in the Court of Additional Chief Judicial Magistrate, Deeg, which was sent to the Police for investigation under Section 156(3) Cr.P.C. and FIR No. 78/2018 was registered against private respondents for offence under Sections 363, 342 and 120B IPC. As a counter blast to that, Respondent No. 8, Smt. Motni filed an application under Section 10 of the Guardian and Wards Act before the Family Court, Bharatpur for appointing her as guardian of Kumari Gori, Pooja, Pooja and Master Hemant. Mr. B. N. Sandu, learned Additional Advocate General submitted that when husband of the petitioner died, matrimonial dispute was pending between them and the petitioner had filed a dowry case against him by lodging FIR No. 291/2016 for offence under Section 498-A, 406 and 323 IPC. After death of husband of the petitioner, Smt. Beena (Respondent No. 4) along with some persons came to the village of the petitioner and carried away her son Hemant, who is minor and thereafter, did not allow him to return back to the petitioner. Reference is also made to proceedings under Section 97 Cr.P.C. and unsuccessful searches carried out by the police at different places as also lodgement of FIR against the private respondent on the basis of criminal complaint filed by the petitioner and recording of statements of Karan Singh, Durga Prasad by police under Section 161 Cr.P.C. It is contended that Respondent No. 8, Smt. Motni has filed revision petition against search warrants issued by Sub Divisional Magistrate, Deeg under Section 97 Cr.P.C. before the Court of Additional District Judge, Deeg. Smt. Beena wife of Shri Yadram, sister-in-law of the petitioner (Respondent No. 4) and Smt. Motni wife of Shri Harbhan, grand mother of Hemant

(Respondent No. 8) are present in the Court and submit that they have a right of custody of Gori, Pooja and Hemant, who are children of the

deceased and that they have not committed any illegality in retaining custody of minor child Hemant, aged 5 years and present habeas corpus may not

be maintainable.

Master Hemant, aged 5 years, has been produced today in the Court by Mr. Kesar Singh, S.I., Police Station Deeg, Bharatpur.

It is a peculiar human problem where dispute is not between husband and wife as to the custody of children. Admittedly, minor son of the petitioner,

Hemant, aged 5 years was living with his mother, when her husband Suraj died. Even if it is accepted that the petitioner had filed dowry case against

her husband and other family members, that would not furnish any justification for snatching custody of minor son from the petitioner, Hemant, aged 5

years, who is his natural mother. When search warrants issued by Sub Divisional Magistrate, Deeg failed to yield any result and despite police

conducting searches in the houses of private respondents, Hemant was not found, the petitioner had to approach this Court by filing present habeas

corpus petition. Mere pendency of application under Section 10 of the Guardian and Wards Act filed by Respondent No. 8, Smt. Motni, grand mother

to appoint her as guardian of three children of the petitioner thereafter could not be a justification for depriving his mother, i.e. the petitioner of the

custody of her son Hemant. However, it goes without saying that this judgment would not, in any manner, be taken to influence the discretion of the

Family Court, Bharatpur, which would be entitled to take any view of the matter in accordance with law in the welfare of all the three children.

In view of above, present habeas corpus petition is disposed of with direction that to the official respondents to hand over custody of minor son of the

petitioner, Hemant, aged 5 years, to her natural mother, i.e. the petitioner, Smt. Lalita, who is present in the Court. Mr. Kesar Singh, Investigating

Officer, present in the Court, is therefore directed to ensure that custody of Hemant, aged 5 years, is handed over to his mother, Smt. Lalita, i.e. the

petitioner and they be provided security if and when needed.