

(2016) 06 DEL CK 0048
In the Delhi High Court
Case No : W.P.(Crl) 1775 of 2016

Sulekha @ S. Pyarima

APPELLANT

Vs

State NCT of Delhi & Ors.

RESPONDENT

Date of Decision : 01-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2016) 7 ADDelhi 169 : (2016) 157 DRJ 702 : (2016) 3 JCC 1626

Hon'ble Judges : Mr. G.S. Sistani and Ms. Sangita Dhingra Sehgal, JJ.

Bench : Division Bench

Advocate : Mr. Rajesh Kumar Singh, Advocate, Mr. Rahul Mehra, Standing Counsel (Crl.) and Mr. Amrit Singh, Advocate, for the Appellant; Mr. Ravi Kant, Advocate, Ms. Sushma Vij, Chairperson and Ms. Aparna Dwivedi, Member, CWC-IV, Mayur Vihar, Phase I. Edlin Jash, Pro

Final Decision : Disposed Off

Judgement

Mr. G.S. Sistani, J. (Oral) - By the present petition filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure the petitioner seeks a writ of habeas corpus thereby directing respondents to produce her minor child, namely, Sayyad Ashi @ Amma Jaan, whose custody has been illegally handed over to respondent no. 4/NGO pursuant to the order passed by respondent no. 3 on 16.5.2016, before this Court and handover her custody to the petitioner.

2. Pre-lunch, we had taken up this matter and issued directions to the State to produce the minor child before this Court today itself. We had also directed CWC, Mayur Vihar, Phase-I, Delhi, to depute a responsible officer to remain present in Court today. Respondent no. 5 was also directed to remain present in Court.

3. As per the petition, when the minor child was four days" old, her custody and guardianship was given by respondent no. 5 to the petitioner and thereafter an Adoption Deed dated 13.10.2008 was executed, which was duly notarised on

16.10.2008, by which the petitioner adopted the minor child. A copy of the Adoption Deed and photographs of handing over of the minor child have been placed on record. Thereafter the petitioner along with the minor daughter shifted to Andhra Pradesh at her native place.

4. As per the petitioner, in the month of June, 2015, respondent no. 5 made a complaint to Delhi Commission for Women alleging that the petitioner had kidnapped her minor child. Pursuant to the complaint made, the Delhi Commission for Women lodged an FIR under Section 363 of the Indian Penal Code at Police Station Kamla Market against the petitioner. Based on the said complaint, the petitioner and the child were brought to Delhi and they were interrogated. The Police upon verifying the Adoption Deed and Photographs of handing over the custody of the child, cancelled the FIR and a cancellation report was also filed. The petitioner and her minor child were also produced before the CWC, Mayur Vihar, Phase-I, Delhi. After perusal of the Adoption Deed and photographs, and upon being satisfied, CWC passed an order dated 19.10.2015 regarding the custody of the child in favour of the petitioner. A copy of the order dated 19.10.2015 was also supplied to the petitioner.

5. Subsequently, based on a newspaper report published in the Hindustan Times and on having learnt that respondent no. 5 had filed a protest petition before the Metropolitan Magistrate, Tis Hazari Court, Delhi, against cancellation of afore stated FIR, the CWC suo motu again took up the matter and directed the petitioner and her minor child to remain present before them on 16.5.2016. On 16.5.2016, when the petitioner and her minor child appeared before CWC, Mayur Vihar, Phase-I, Delhi, the custody of the minor child was forcibly taken by CWC and handed over to respondent no. 4 in the presence of respondent no.5. Presiding Officer of CWC also snatched the copy of the order dated 19.10.2015, which was previously passed by CWC, from the possession of the petitioner. The copy of the order dated 16.5.2016 was also not provided to the petitioner. In this backdrop the present petition has been filed.

6. Learned counsel for the petitioner submits that the CWC has exceeded its jurisdiction and the order of handing over the custody of the minor child to respondent no.4 is illegal and bad in law, more particularly, in the teeth of the Adoption Deed dated 13.10.2008. Learned counsel further submits that the CWC has failed to take into consideration that the minor child was living with the petitioner since when she was four days" old; the minor child was admitted to the school at Andhra Pradesh, which was attended to by her till her custody was handed over to respondent no. 4; and the child was staying with the family of the petitioner, which comprises of the petitioner and petitioner"s mother in Andhra Pradesh.

7. We have heard learned counsel for the parties, the petitioner, respondent no. 5 and the minor child in the Chamber. Respondent no. 5 submits that she was forced into sex trade on account of her vulnerable condition of having lost her husband and none to support her family. On account of her pitiable condition,

she was also forced to part with the child and made to sign various documents, which were not even explained to her.

8. Pursuant to the directions passed by this Court, Chairperson and Member of CWC-IV, Mayur Vihar, Phase I, are present in Court. An officer from Project Rescue Suraksha Charitable Trust, Suraksha Home, respondent no. 4, is also present in Court.

9. Original file of CWC has also been produced in Court, which is seen and returned. A perusal of the original file shows that the order dated 19.10.2015 was passed by the CWC wherein the CWC took into account the closure report filed by Delhi Police and also examined the Adoption Deed and the photographs, and thereafter handed over the custody of the child to the petitioner.

10. We have also perused the order dated 16.5.2016 and taken into consideration the fact that the child has been removed from the custody of petitioner and housed at respondent no. 4 under the directions of CWC. We find that this act of CWC has caused a traumatic situation for the child as there would be a barrier of language, food and friendly environment, which has been breached.

11. We also find that during the period of seven months when the investigation was being carried out by the CWC, it was considered appropriate by the CWC itself not to remove the child from the custody of petitioner.

12. While respondent no. 5 claims to be forced into sex trade taking into consideration her weak condition of having lost her husband and also forced to part with the child, we find the procedure which has been adopted by CWC to be extremely unusual and dangerous and not in the interest of the child as the investigation carried out by the Police as well as the CWC is in favour of the petitioner and the petitioner, thus, cannot be deprived of the custody of her child without following due process of law.

13. Counsel appearing for respondent no. 5, at this stage, submits that he would seek cancellation of the Adoption Deed dated 13.10.2008, which was signed by respondent no.5 under duress, pressure and without respondent no. 5 being explained the contents thereof, however, he prays that this Court may clarify that as and when such legal remedy is sought the order passed today should not come in the way of respondent no. 5. The petitioner has no objection to this.

14. Mr. Mehra, learned counsel for the State and counsel for respondent no. 5 submit that the petitioner should give an undertaking to the effect that as and when directed she would produce the child before the appropriate forum.

15. Learned counsel for the petitioner, on instructions from the petitioner, submits that in accordance with due process of law and if directed the minor child will be produced by the petitioner before the appropriate court of jurisdiction and the petitioner would also appear and join the proceedings. Petitioner shall be bound by the undertaking given to Court by her counsel.

16. Counsel for the petitioner also informs the Court that the address of the petitioner is the same as mentioned in the present writ petition, which address has also been verified by the Police as the Police officers had visited the said address.

17. Accordingly, the present petition is allowed, leaving all the legal questions open for the parties to be agitated before the appropriate Court of jurisdiction. As agreed and with the consent of the parties, the custody of the minor child is handed over to the petitioner herein from the court itself. It is clarified that as and when respondent no. 5 seeks cancellation of the Adoption Deed dated 13.10.2008, the order passed today would not come in the way of respondent no. 5.

18. Petition stands disposed of.

19. Let a copy of this order be given DASTI under the signature of Court Master to counsel for the parties.