
(1991) 10 RAJ CK 0026

In the Rajasthan High Court

Case No : Habeas Corpus Petition No. 1078 of 1990

Suresh Kumar Sharma

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 28-10-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 1 DMC 457 : (1992) 1 WLC 91 : (1991) WLN 499

Hon'ble Judges : N.L. Tibrewal, J;N.C. Sharma, J

Bench : Division Bench

Advocate : Hari Barath, for the Appellant; R.S. Rathore, for the Respondent

Final Decision : Dismissed

Judgement

N.C. Sharma, J.—This is a petition by Suresh Kumar Sharma under Article 226 of the Constitution of India for release of his son Gopu, who is said to be under illegal detention of his maternal grand-father Nawal Kishore Sharma.

2. The Petitioner's marriage was solemnised on 21st February, 1985 with Usha Sharma, daughter of respondent No. 2 by Hindu rites. By this wedlock, a son Gopu was born on 19th November, 1985. It was on 7th July, 1987 that Smt. Usha Sharma died while she was at the residence of the petitioner. According to the petitioner, Smt. Usha Sharma had committed suicide. The petitioner states that in the year 1987, the respondent No. 2 took Gopu from him under an excuse that he and his maternal grand-mother will take care of the boy. Gopu is in custody of his maternal grand-father respondent No. 2, since then. The petitioner states that he had purchased National Saving Certificates in the name of his wife and his own name of the amount of Rs. 25,000/-and he also purchased one plot in his own name. He also states that he is having a comprehensive business of his own and owns" house and two shops at Jaipur where he is running his business. It is also stated that the child has attained the age of 5 years and he is due to start his study. The petitioner asserts that he is a natural guardian of Gopu and, therefore, respondent No. 2 be directed to

produce Gopu in the Court and the custody of Gopu may be given to him

3. This petition was strenuously opposed by respondent No. 2. According to respondent No. 2, the petitioner is not having any business whatsoever and he has not disclosed as to what business he is carrying on. The petitioner had joined LL B., but he never completed the same. He has also stated that strained relations between the petitioner and his wife had resulted in an unfortunate incident on 7th July, 1987 when Smt. Usha Sharma died and her dead body was found in suspicious circumstances. He states that it was the petitioner who had left Gopu with the respondent No. 2 few days earlier to the death of Smt. Usha Sharma and was being brought up by the respondent No. 2 since then. There are some allegations that the petitioner had treated Smt. Usha Sharma with cruelty and he wanted that she should procure money from her parents. The desire of the petitioner was not fulfilled and this led to the development of strained relations between the husband and the wife resulting in the death of Smt. Usha Sharm on 7th July, 1987. A criminal case was also investigated against the petitioner, but on account of the influence exerted by him on the police authorities, challan was not filed. He states that welfare of the child Is the paramount consideration and that is more secure with respondent No. 2 because he is financially quite sound to bring up and maintain Gopu. It is also stated that the respondent No. 2 out of affection with his daughter late Smt. Usha Sharma had purchased National Saving Certificates for her to the extent of the amount of Rs. 50,000/- in the year 1986. Keeping in view the future of the child aopu, the respondent No. 2 has intimated to the Post and Telegraph Department, arter the death of Smt. Usha Sharma, that the said National Saving Certificates may not be encashed until and unless the matter is finally decided by the Court of law. It is also said that the petitioner has remarried on 21st Jan., 1991 at Jaipur and it was not in the interest of child that he should be kept with the petitioner in the company of step-mother.

4. We have Counsels the learned heard for the parties at length. It is in admitted fact that soon after the marriage Smt. Usha Sharma died within two years and five months of her marriage at the residence at the petitioner. The son Gopu was already left in the custody of respondent No. 2 before the death of Smt. Usha Sharma and since then the child is being brought up by the maternal grand-father. There is nothing to show that the child Gopu is not being properly brought up or cared by his maternal grand-father.

5. The petitioner has not expressed specifically in his petition as to what business he if carrying on. The respondent No. 2, on the other hand, his produced Annex. 3 with the reply to show that his annual income is about Rs. 70,000/-.

6. We need not go into the question in this petition to who is lawful guardian of Gopu. We have only to see as to whether Gopu is under unlawfully detention with respondent No. 2.

7. The above facts clearly leads to the inference that Gopu was left in the

custody of respondent No. 2 as he was maternal grand-father of the child and the relations between the petitioner and his deceased wife had become strained, inasmuch as, Smt. Usha Sharma died soon thereafter on 7th July, 1987. The custody of respondent No. 2 cannot, in these circumstances, be held to be illegal. If the petitioner is claiming custody of Gopu on the basis of his being lawful guardian, he can pursue the remedy under the Guardians and Wards Act, which is the proper Court to grant custody on the basis of guardianship keeping in view the welfare of the child which is always the paramount consideration.

8. In this view of the matter, we do not find any force in this petition. We hereby dismiss the same.

9. Before parting with this order, we may however observe that the respondent No. 2 will allow the petitioner to see and meet Gopu at the residence of respondent No. 5 after the petitioner intimates to the respondent No. 2 about the date and time on which he would like to see and meet the child.