

HIGH COURT OF DELHI**Bench: HON'BLE MR. JUSTICE SURESH KUMAR KAIT, HON'BLE MS. JUSTICE SHALINDER KAUR****Date of decision: 11.12.2023**

W.P.(CRL) 3140/2023 & CrI.M.A.29156/2023

ANIKET JAIN**..... Petitioner****versus****SIMRAN SINGH & ORS.****.... Respondents****Section, Acts, Rules, and Article mentioned in the judgment:**

Article 226 of the Constitution of India

Section 482 of the Criminal Procedure Code (Cr.P.C)

Delhi Land Revenue Act, 1954

Subject: Family Dispute – Custody of a child born out of wedlock – Maintainability of Habeas Corpus petition – Dismissal of the petition with liberty to approach the Family Court – Imposition of cost on petitioner's counsel for wasting public time.**Headnotes:**

Family Dispute – Custody of a child born out of wedlock – Petitioner seeking Habeas Corpus to access child – Marriage between petitioner and respondent No.1 solemnized twice, once as per Hindu customs and later as per Jain customs – Irretrievable breakdown of marriage due to temperamental issues – Petitioner not informed about the child's birth – Previous approach to Gauhati High Court and local authorities – Abuse by respondent No.1 when petitioner requested to visit the child – Court's consideration of the case's maintainability – Dismissal of the petition for not being maintainable, with liberty granted to approach the Family Court – Imposition of cost on petitioner's counsel for wasting public time. [Para 1-6]

Referred Cases:

Yashita Sahu vs. State of Rajasthan & Ors. : (2020) 3 SCC 67

Representing Advocates:

Mr. Somiran Sharma and Mr. Dhruvajit Saikia, Advocates for the Petitioner
Mr. Atul Kharbanda and Mr. Kapil Sethi, Advocates for Respondent No. 1

J U D G M E N T (oral)

1. Vide this writ petition, the petitioner is praying as under:

“A. Issue a writ of Habeas Corpus or any other appropriate writ directing the Respondent No. 1, 2 & 3 to physically produce the child born out of the wedlock between the Petitioner and Respondent No. 1 before this Hon'ble Court for granting access to the petitioner and his family relatives on any fixed date and time convenient to this Hon'ble Court; and/or

- B.* Pass a writ of Habeas Corpus or any other appropriate writ to physically produce the child born out of the wedlock between the Petitioner and Respondent No. 1 before this Hon'ble Court and give limited custody of the baby to the petitioner and his family to perform a ritual of the new born baby as per the Jain customs and traditions at New Delhi; and/or
- C.* Pass a writ of Habeas Corpus or any other appropriate writ to physically produce the child born out of the wedlock between the Petitioner and Respondent No. 1 before this Hon'ble Court and grant visitation right to the petitioner at a regular interval; and /or
- D.* "Issue a writ of Habeas Corpus or any other writ directing Respondent No. 4 and 5 to produce before this Hon'ble Court the child of Respondent No. 1 and petitioner from the custody of the respondent no. 1, 2 and 3."
2. The brief facts of the case are that the marriage of petitioner and respondent No.1 was solemnized on 04.11.2022 in accordance with Hindu customs and traditions at New Delhi and after their marriage, they started living together at Guahati at petitioner's residence. Thereafter, the petitioner and respondent No.1 got married in Tinsukia on 20.11.2022 as per Jain customs and rituals. However, according to the petitioner things between the petitioner and respondent No.1 became sour and their marriage irretrievably broke down on account of temperamental issues of respondent No.1. The petitioner submits that he was not even informed about the birth, gender or health of the child who he believes to have taken birth on or around 10.10.2023. Thereafter, petitioner approached Hon'ble Gauhati High Court vide W.P.(C) 6088/2023 which was disposed of vide order dated 13.10.2023 granting liberty to the petitioner to approach the appropriate authority in New Delhi. Subsequently, on 14.10.2023, the petitioner approached respondent No.4/Deputy Commissioner of Police, South-West District Delhi for seeking police protection and upon his advice, the petitioner made a representation before the SHO, Delhi Cantonment, New Delhi. Following this, the petitioner filed an application seeking police protection for himself to visit the house of respondent No.1 before learned MM, Patiala House Court, New Delhi but the same was withdrawn by the petitioner as it was not maintainable. The petitioner submits that on 17.10.2023, he made a phone call to respondent No.1 and requested her to allow him to visit her in order to see his child, however, respondent No.1 abused him and did not allow him to visit. Aggrieved by this, the present petition has been filed.
3. Learned counsel for the petitioner has relied upon para 21 in the case of **Yashita Sahu vs. State of Rajasthan & Ors. : (2020) 3 SCC 67** whereby the Hon'ble Supreme Court observed as under:

“21. The child is the victim in custody battles. In this fight of egos and increasing acrimonious battles and litigations between two spouses, our experience shows that more often than not, the parents who otherwise love their child, present a picture as if the other spouse is a villain and he or she alone is entitled to the custody of the child. The court must therefore be very wary of what is said by each of the spouses.”

4. Admittedly, the child is with wife of the petitioner- respondent No.1. The present petition is filed under Article 226 of the Constitution of India read with Section 482 Cr.P.C. seeking issuance of Habeas Corpus which is to be filed when a person is in illegal detention. In the present case, petitioner has not placed any order of the Court in his favour. Thus, the child is not illegally detained by respondent No.1 who is mother of the alleged missing child. It seems that the petitioner is not sincere about the custody of the child as he should have filed a petition for the custody and visitation rights of the child before the learned Family Court as per law. The present petition arises out of a family dispute and such type of petitions, are sheer misuse of judicial process and waste of public time.
5. The present petition is accordingly dismissed being not maintainable, however, liberty is granted to the petitioner to approach the learned Family Court as per law.
6. Even though the present petition has already been dismissed, however, Mr. Somiran Sharma, learned counsel for petitioner continued to address irrelevant arguments and despite warning by this Court, he did not leave the Court. Thus, he has wasted precious public time. We depreciate such type of practice and impose a cost of Rs.10,000/- upon him which shall be paid before the learned Registrar General of this Court within two weeks to be recovered under the Delhi Land Revenue Act, 1954.

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