

**(2006) 12 P&H CK 0098**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Writ Petition No. 1130 of 2004

Praveen Kaur

APPELLANT

Vs

Gurmej Singh & Ors.

RESPONDENT

**Date of Decision:** Dec. 6, 2006

**Citation:** (2006) 1 Marr.LJ 8 : (2006) 1 RCR(Civil) 663 : (2006) 2 RCR(Criminal) 280

**Hon'ble Judges:** Surya Kant, J

**Advocate:** Mr. M.S. Rai, Advocate, Mrs. R.K. Thind, Advocate, Mrs. R.K. Nihalsinghwala, Deputy Advocate General, Punjab., Advocates for appearing Parties

**Judgement**

Surya Kant, J. (Oral)

1. Pursuant to the order dated November 14, 2005, affidavit dated 3.12.2005 of Jaspal, Dy. Superintendent of Police, Talwandi Sabo has been filed which is taken on record and perused. This Criminal Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of habeas corpus.

2. According to the petitioner, her male child born on 24.11.2003 was being illegally detained by respondents Nos. 1 to 6. Whereas respondent No. 1 is the husband of the petitioner, respondent No. 2 is brother of respondent No. 1 and respondent No. 3 is former's wife. Respondent No. 4 is motherinlaw of the petitioner, respondent No. 5 is the cousin of petitioner's husband and respondent No. 6 is her sisterinlaw. Marriage between the petitioner and respondent No. 1 was solemnised on 10.3.2003. A male child, Roshan, was born out of the wedlock on 24.11.2003. Unfortunately, the married life between the petitioner and respondent No. 1 went into a rough weather within a short span. As per the allegations made by the petitioner, she was turned out of the matrimonial home on October 14, 2004 and the male child was forcibly snatched from her lap. Respondent No. 1 in his affidavit dated 6.5.2004 took up the plea that the petitioner left the matrimonial home on 18.8.2004 on her own.

3. Notice of motion was issued and with great efforts, service could be effected upon respondents Nos. 1 and 2 through SHO, Police Station Rampura Phool. The names of the remaining respondents were thereafter omitted from the array of respondents on the statement of Learned Counsel for the petitioner. On August 4, 2005, both the parties desired to make efforts to get the unfortunate matrimonial dispute resolved amicably. With the efforts of Learned Counsel for the parties, the dispute was actually resolved when the petitioner expressed her willingness to join her husband's company unconditionally and he too agreed to take her from the Court premises itself. Unfortunately, the efforts, however, proved to be an exercise in futility as according to Learned Counsel for the petitioner, respondent No. 1 husband, while on their way to her matrimonial home, left her at a busstop and from there she could reach at her parents' house with great efforts. This contention, however, is being disputed by learned counsel for respondent No. 1, who on the basis of stand taken by the mother of respondent No. 1, took up a plea that respondent No. 1 is missing and his whereabouts are unknown. According to Learned Counsel for respondent No. 1 the said respondent is working as a truck driver; had gone towards Madhya Pradesh side and has not returned. Having regard to the aforementioned stand taken by respondent No. 1, directions were issued to the Senior Superintendent of Police, Bhatinda on 14.11.2005 to get it enquired from an officer not below the rank of Deputy Superintendent of Police as to whether respondent No. 1 is actually missing and/or he is absconding in order to wriggle out from the consequences, if any, of the pending litigation. Pursuant thereto, an affidavit has been filed by Jaspal, Deputy Superintendent of Police, Talwandi Sabo, a perusal of which clearly indicates that respondent No. 1 is not missing, rather he is deliberately absconding.

4. Coming to the main issue, there is no quarrel between the parties that the male child, Roshan, was born on 24.11.2003. At the time when this petition was filed, he was not even one year old baby. The issue as to whether the petitioner left the matrimonial home on her own accord and/or she was thrown out therefrom, can be gone into by an appropriate forum. The fact, however, remains that a newly born baby, who was hardly 8/9 months old, was deprived of the company and custody of his natural mother. While, it could be quite debatable as to whether the child should remain with the first guardian, namely, his father or the second guardian, namely, his mother, but the said issue also no longer survives for the reason that admittedly respondent No. 1, namely, the father of the child is absconding and/or missing. Factually and physically, the child is not in the custody of respondent No. 1 nor as of now he has been in a position to look after, care and maintain the child. In fact, Learned Counsel for respondent No. 1 fairly concedes that the child is presently being looked after by his grandmother, namely, respondent No. 4.

5. There are, thus, two competing claims regarding the custody of the minor child, Roshan. On one hand is the petitioner mother, namely, the natural guardian. On the other hand, is his grandmother, namely, respondent No. 4. Out of the two, there are

no exceptions either in law or having regard to all the attending circumstances that the petitioner, namely, the mother is undoubtedly in a better position to look after and take care of the two years old or child, namely, Roshan. In law, she is entitled for the custody, Being the natural mother and guardian and in equity her claim is equally justified as she being a able bodied young woman can undoubtedly take care of the child better than respondent No. 4 who is an old woman. For the reasons stated above, this petition is allowed. Respondent No. 1 Gurmej Singh s/o Banta Singh, his mother Smt. Piar Kaur (respondent No. 4) and all other family members whosoever they may be, are directed to hand over the safe custody of minor child Roshan to the petitioner on or before 17.12.2005. Respondents No. 1 and 4 are directed to hand over the custody of the child in the presence of the sarpanch of the Gram Panchayat and one lady member of the Gram Panchayat of village Rampura Phool as well as Deputy Superintendent of Police, Talwandi Sabo who is holding inquiry into the matter in terms of order dated November 14, 2005. Necessary proceeding regarding handing over of the child to the petitioner shall be recorded by the DSP, Talwandi Sabo and will be duly authenticated by the Sarpanch and the lady member of the Gram Panchayat.

6. It is made clear that respondent No. 4, on account of her natural love and affection with her grandson, shall be entitled to visit and meet the child at least twice in a month and no obstruction/hindrance shall be caused by the petitioner in this regard. Let a copy of this order be handed over to Mrs. Nihalsinghwala for its intimation and follow up action by the authorities concerned. Copy of the order be given to the petitioner/her counsel on payment of usual charges.