

Praveen Kaur Vs Gurmej Singh & Ors.

Court: High Court Of Punjab And Haryana At Chandigarh

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.