

THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

AND

THE HON'BLE SRI JUSTICE TARLADA RAJASEKHAR RAO

WRIT PETITION No.142 of 2023

ORDER:- (Per Hon'ble Sri Justice Cheekati Manavendranath Roy)

This Writ Petition for Habeas Corpus is filed seeking direction to the respondent – police officials to produce the minor girl by name Illuri Purnima, who is now in the custody of her mother who is the 5th respondent herein, before the Court and thereafter to set her at liberty and to deliver her custody to the petitioner, who is her father.

Heard learned counsel for the petitioner, learned Government Pleader attached to the office of learned Advocate General, appearing for respondents 1 to 4. Despite service of notice on respondent No.5, none appeared.

The petitioner is the husband of respondent No.5. They were blessed with a female child by name Illuri Purnima, who is a minor girl at present. In view of the fact that disputes arose between the petitioner and the 5th respondent, they have filed a petition for grant of divorce by mutual consent. The said petition was allowed by the learned Senior Civil Judge, Gurazala, in H.M.O.P. No.53 of 2022 and the marriage of the petitioner and the

5th respondent was dissolved by way of granting Decree of divorce on 14.07.2022. It is pleaded in the Writ Petition by the petitioner that thereafter the 5th respondent eloped with another person and his daughter is in the custody of the 5th respondent. It is stated that his daughter has called him over phone in the month of November, 2022, and informed him that she is unable to live with her mother, who is the 5th respondent, and also asked him to take her back and that she expressed her apprehension that her mother would kill her. It is further stated that his efforts made to trace out his daughter were in vain. Therefore, alleging that it is not safe to keep the minor daughter of the petitioner in the custody of the 5th respondent, he has filed the instant Writ Petition for Habeas Corpus seeking direction to the police officials to produce her before the Court and deliver custody of his daughter to the petitioner.

As noticed supra, despite service of notice on the 5th respondent, she did not appear and did not contest this Writ Petition. Learned Government Pleader appearing for respondents 1 to 4, on instructions, would submit that the inquiry made by the police revealed that the said minor child of the petitioner and the 5th respondent, is now safe in the custody of the 5th respondent and she is not in any danger as alleged. He would also submit

that she is also admitted in School and that she is pursuing her studies.

The petitioner, except making a bald assertion in the Writ Petition that he received phone calls from his daughter stating that she is not comfortable with her mother and that she is unable to live with her and that she is apprehending danger to her life, failed to substantiate the said version by producing any material on record. Further, as per the submission now made before this Court by the learned Government Pleader, their inquiry *prima facie* belies the said version of the petitioner. Therefore, when the minor daughter of the petitioner is in the custody of her mother and when it is stated that she is safe in her hands, it cannot be said that the minor child, as contended by the 5th respondent, is in illegal custody so as to entertain this Writ Petition for Habeas Corpus.

If the petitioner intends to have the custody of his child as a father and natural guardian, he has to pursue his lawful remedy by filing an appropriate application claiming her custody before the competent civil Court. In case any such petition is filed by the petitioner in the civil Court, the said Court has to decide the said Petition independently without being swayed away by any of the observations made by us incidentally in this Writ Petition.

Therefore, the Writ Petition is dismissed granting liberty to the petitioner to claim for custody of the child, if he is so advised and entitled, before the competent civil Court. No costs.

As a sequel, miscellaneous applications, if any pending, shall stand closed.

JUSTICE CHEEKATI MANAVENDRANATH ROY

JUSTICE TARLADA RAJASEKHAR RAO

Date: 07.07.2023
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