

Aditya Gaur Vs. State of Haryana and Others

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Court : Punjab and Haryana

Decided On : Aug-21-2013

Appellant : Aditya Gaur

Respondent : State of Haryana and Others

Judgement :

CRWP No.770 o

1. IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH CRWP No.770 of 2013 Date of decision:

21. 8.2013 Aditya Gaur ...Petitioner Versus State of Haryana and others ...Respondents CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN Present: Mr.HS Gill, Senior Advocate with Mr.Abhishek Gupta, Advocate for the petitioner Mr.Ajay Gulati, DAG, Haryana Mr.Atul Lakhanpal, Senior Advocate with Ms.Bably Kumari, Advocate for respondent Nos.2 and 3.

**** Jitendra Chauhan, J.

The present petition in the nature of Habeas Corpus has been filed under Article 226 of the Constitution of India, for release of Udayvir Gaur son of the petitioner from the illegal custody of respondent Nos.2 and 3.

The brief facts of the case emerging from the pleadings of the parties are that from the wedlock of the petitioner and his wife Udichi Kanwar Sharma, (since

deceased).a male child, namely Udayvir Gaur was born on 18.9.2010.

She breathed her last on 19.9.2010.

On the complaint filed by the father of the deceased Udichi, an FIR under Shanker Gauri 2013.09.17 16:18 I attest to the accuracy and integrity of this document High Court Chandigarh CRWP No.770 o

2. Sections 406, 498-A, 34 IPC was lodged.

Since the death of his mother, the child is with the maternal grand parents.

Heard.

The petitioner has already filed a petition under Section 25 of the Guardian and Wards Act, read with Sections 8 and 12 of the Hindu Minority and Guardianship Act, for the custody of the child before the District Judge, Kurukshetra, which is pending adjudication.

The petitioner has already been granted visitation rights on the application moved by him.

The question with regard to the welfare of the child is basically a question of fact requiring investigation and proof.

It cannot be decided merely on the basis of the averments made in the petition, counter affidavit or rejoinder-affidavit.

Determination of the issue with regard to welfare of the minor necessarily involves consideration of oral or documentary evidence or both and, in the absence of any extra- ordinary circumstance it may not be proper for the High Court, in exercise of its jurisdiction under Section 482 of the Code, to decide questions of fact, proof whereof may require evidence.

The present petition is for habeas corpus.

However, as the matter with regard to the custody of the minor child is pending adjudication before the competent Court, this Court is not inclined to go into the

merits of the case.

As such, the same is dismissed.

However, keeping in view the fact that the child, who will shortly compete three years and will soon be going to school, the trial Shanker Gauri 2013.09.17 16:18 I attest to the accuracy and integrity of this document High Court Chandigarh CRWP No.770 o

3. Court shall make every endeavour to expedite and conclude the matter preferably within six months from the date of receipt of the certified copy of this order.

21.8.2013 (JITENDRA CHAUHAN) gsv JUDGE Shanker Gauri 2013.09.17 16:18 I attest to the accuracy and integrity of this document High Court Chandigarh

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