

Court No. - 84

Case :- HABEAS CORPUS WRIT PETITION No. - 283 of 2020

Petitioner :- Soniya And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Sushil Kumar Pandey

Counsel for Respondent :- G.A.

Hon'ble Dr. Yogendra Kumar Srivastava,J.

1. Heard Sri Sushil Kumar Pandey, learned counsel for the petitioners and Sri Arvind Kumar, learned Additional Government Advocate appearing for the State – respondents.

2. The present petition for a writ of habeas corpus has been filed with a prayer to produce the corpus of the petitioner no.1, stated to be under detention.

3. A progress report/affidavit of the Circle Officer, City-I, District Muzaffarnagar was filed by the learned Additional Government Advocate on the previous occasion on 02.02.2021 and on the basis thereof a submission was made that the investigation had revealed that the petitioner no.1 had left her matrimonial home on her own on account of discord with her husband, petitioner no.2, for the reason that he is stated to have entered into another marriage and a child is also stated to have been born out of the wedlock and in view of the same it was contended that the present petition for a writ of habeas corpus would not be entertainable.

4. Learned counsel for the petitioners had prayed for an adjournment in order to address the Court on the aforesaid objection raised by the learned Additional Government Advocate.

5. Today, when the matter is taken up, the learned counsel

appearing for the petitioners though disputing the *factum* of the second marriage has not controverted the fact of the petitioner no.2 being in an extra marital relationship and also that a child was born out of the said relationship. He has also not disputed the fact that the petitioner no.1 (wife) left her matrimonial home on account of the discord with the petitioner no.2 (husband).

6. No other point was urged.

7. The writ of habeas corpus is a prerogative writ and an extraordinary remedy. It is writ of right and not a writ of course and may be granted only on reasonable ground or probable cause being shown, as held in **Mohammad Ikram Hussain v State of U.P. and others**¹ and **Kanu Sanyal v District Magistrate Darjeeling**².

8. The writ of habeas corpus has been held as a *festinum remedium* and accordingly the power would be exercisable in a clear case. The remedy of writ of habeas corpus at the instance of a person seeking to obtain possession of someone whom he claims to be his wife would therefore not be available as a matter of course. The observations made in the decision in **Mohammad Ikram Hussain** (supra) in this regard are as follows:-

"13. Exigence of the writ at the instance of a husband is very rare in English Law, and in India the writ of habeas corpus is probably never used by a husband to regain his wife and the alternative remedy under S. 100 of the Code of Criminal Procedure is always used. Then there is the remedy of civil suit for restitution of conjugal rights. Husbands take recourse to the latter when the detention does not amount to an offence and to the former if it does. In both these remedies all the issues of fact can be tried and the writ of habeas corpus is probably not demanded in similar cases if issues of fact have first to be established. This is because the writ of

1 1964 AIR 1625

2 (1973) 2 SCC 674

habeas corpus is *festinum remedium* and the power can only be exercised in a clear case. It is of course singularly inappropriate in cases where the petitioner is himself charged with a criminal offence in respect of the very person for whose custody he demands the writ.”

9. In view of the other remedies available for the purpose under criminal and civil law, issuance of a writ of habeas corpus at the behest of a husband to regain his wife may not be available as a matter of course and the power in this regard may be exercised only when a clear case is made out.

10. In view of the facts of the present case, the petitioner no.1 having left her matrimonial home on her own on account of a matrimonial discord, the present petition for a writ of habeas corpus at the behest of the petitioner no.2 (husband) would not be entertainable.

11. The petition stands accordingly dismissed.

Order Date :- 10.2.2021
Shahroz

(Dr. Y.K. Srivastava,J.)