

A

RAJIV BHATIA ETC.

v.

GOVERNMENT OF NCT OF DELHI AND ORS.

SEPTEMBER 9, 1999

B

[G.B. PATTANAIK AND U.C. BANERJEE, JJ.]

C

Constitution of India—Art. 226—Habeas Corpus—Writ petition filed by the natural mother praying for production of her child who she alleged was taken away by her in-laws—Counter allegation that the child was given in adoption to in-laws by a proper deed—Held : In a petition for Habeas Corpus, High Court cannot examine the legality of adoption deed—Appellant cannot invoke jurisdiction of two High Courts at the same time on the same matter—However, since child wished to be with natural mother, custody given to her till the question of adoption is settled.

D

One P filed a Habeas Corpus petition before Delhi High Court for production of her daughter who, she alleged, was in the illegal custody of her brother-in-law challenging the deed of adoption based on which the respondents kept the child with them. She had filed a similar petition before the Rajasthan High Court. The Delhi High Court, after examining the legality of the adoption deed, and while finding that there were no infirmities, however held that it did not inspire confidence, that misrepresentation cannot be ruled out, that no ceremonial gift was performed, directed custody of the child to be with the natural mother till civil proceedings were decided. Hence this appeal.

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On behalf of the appellants it was contended that High Court could not examine the legality of the adoption deed; that the mother having already filed a Habeas Corpus Petition in Rajasthan High Court could not file a similar petition in the Delhi High Court; that the natural mother was not illiterate and having signed the adoption deed cannot now go back on it.

G

Dismissing the appeal, the Court

H

HELD : 1. The High Court, in a petition for Habeas Corpus is not entitled to examine the legality of the deed of adoption and then come to the conclusion one way or the other with regard to the custody of the child. The High Court has lost sight of the fact that the petition was one for issuance of Writ of Habeas Corpus and not for custody of child. [284-A-B]

2. In view of the conclusion that the child does not want to talk to adoptive parents, this Court is not inclined to interfere with the directions of the High Court allowing the custody of the child to the natural mother until appropriate decision of competent forum is obtained with regard to the validity of the adoption deed as well as the custody of the child in question. Any observations made by the Delhi High Court in the impugned judgment with regard to the validity of the registered deed of adoption or with regard to the suitability of the custody of the child will not be binding in the pending proceedings. [284-D-E]

3. The mother having filed the petition for Habeas Corpus in Rajasthan High Court, was not entitled to invoke the jurisdiction of the Delhi High Court. That apart the manner in which the High Court of Delhi appears to have issued direction to the SHO concerned to produce the child indicates that the entire episode is by way of stage maneuvering. [284-B-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 922 of 1999 Etc.

From the Judgment and Order dated 11.3.99 of the Delhi High Court in Crl. W.P. No. 128 of 1999.

D.N. Goburdhan, Ms. Pinky Anand and Ms. Geeta Luthra for the Appellants.

Ms. Kamini Jaiswal for the Respondent.

Ms. Binu Tamta for Ms. Sushma Suri for Govt. of Delhi.

The Judgment of the Court was delivered by

PATTANAİK, J. Delay condoned in filing the special leave petition.

Leave granted.

These appeals by grant of special leave are directed against the judgment dated 11.3.99 by the Division Bench of the Delhi High Court in a writ of habeas corpus filed by the natural mother of a young girl, named Akansha. The undisputed facts are that Priyanka had married Amit in April, 1993. Out of their wedlock, two girl children 'Akansha and Jayanti' were born. The husband of Priyanka was a Preventive Officer in the Customs Department of the Government of India. The said Priyanka filed the petition for issuance of

A writ of habeas corpus alleging therein that her daughter, Akansha is in illegal custody of Rajiv, the elder brother of her husband and the said Akansha should be produced in Court and she should be given the custody of the child. Earlier to the filing of the aforesaid petition in Delhi High Court, the said Priyanka had filed an application in a writ of habeas corpus in Rajasthan High Court at Jaipur in which notice had been duly issued and the State of Rajasthan had filed an affidavit stating therein that Akansha and her younger sister, Jayanti had been given in adoption by the natural parents to Rajiv and his wife and a registered deed of adoption has been executed and the children are staying in Bombay with her adoptive parents and as such the High Court of Rajasthan has no jurisdiction to entertain the habeas corpus petition and to issue directions therein. In Delhi High Court, Priyanka had challenged the validity of the deed of adoption said to have been executed by her and her husband, inter-alia on the ground that the said documents were fraudulently got executed and on the statement of her husband, she has signed those papers thinking them to be in relation to some property. Pursuant to the notice issued by the Delhi High Court, the adoptive father appeared and contested the proceedings, inter-alia on the ground that Akansha has been given in adoption by the natural parents by executing a registered adoption deed and from the date of said deed, Akansha is staying with the adoptive parents and the adoptive parents are in lawful custody of the child and consequently the question of issuing a writ of habeas corpus does not arise. By the impugned judgment, the High Court examined the legality of the adoption deed to find out whether the custody of Akansha should be with the natural mother or with the adoptive parents. The High Court came to the conclusion that the deed of adoption does not suffer from any illegality but the said alleged adoption does not inspire confidence. The High Court also came to the conclusion that the possibility of signatures of the natural mother on the adoption deed of Akansha were taken by practicing fraud and misrepresentation, as alleged cannot be ruled out. According to the High Court, prima facie it is not acceptable that the young mother would give in adoption her daughter, aged three years. The High Court also considered the question of performance of ceremonial gift and came to hold that it can be presumed that the ceremonial gift has not been performed. Ultimately, the High Court directed that the custody of the daughter, Akansha shall remain with the natural mother till appropriate Civil Courts in appropriate civil proceedings decide otherwise. It is this direction of the Delhi High Court in a habeas corpus petition which is assailed in these appeals, one filed by the adoptive father, the other filed by Akansha through the adoptive father and the third filed by the natural father.

Ms. Pinky Anand as well as Mr. D.N. Goburdhan, learned counsel assailing the impugned order of the High Court contends that in a petition for habeas corpus, the High Court was not entitled to examine the legality of the adoption deed and come to his own conclusion on mere surmises and conjectures even ignoring the statutory presumption of a registered adoption deed available under Section 16 of the Hindu Adoption and Maintenance Act. According to them, the natural mother having filed a petition for habeas corpus in Rajasthan High Court was not entitled to file a separate application in Delhi High Court which tantamounts to forum haunting and the High Court of Delhi committed gross error in entertaining the said application and passing the impugned direction. According to the learned counsel appearing for the appellants, the natural mother is not an illiterate lady and having signed the deed of adoption knowing contents thereof was not entitled to wriggle out from the same by making frivolous allegations.

Ms. Kamini Jaiswal, learned counsel appearing for the natural mother on the other hand contends that the circumstances under which the mother was deprived of the responsibilities and duties of taking care of her own children shocks the normal conscience and under the circumstances the High Court was justified in issuing the impugned direction.

Before examining the correctness of the rival submissions, we would like to state one fact that in view of the allegations and counter allegations made, we had called upon the natural mother to produce the child in our Chambers to ascertain the views of the child and pursuant to the said direction, the child was produced in our Chambers. Though the child is quite young and is, therefore, not in a position to express any positive view, on questioning her we have got the impression that the child would like to stay with her natural mother and does not want to be with the alleged adoptive parents. This is borne out from the fact that even in our Chambers when the adoptive parents wanted to talk, the child started crying and did not want to talk to them even. Though Mr. D.N. Goburdhan vehemently submitted that this is the result of tutoring but we are not persuaded to accept the said submission. We could gather, by putting questions to the child, in the absence of the natural mother, adoptive parents and the lawyers that Akánsha's natural instinct is to continue with the natural mother.

We have no hesitation to come to the conclusion that the High Court of Delhi in a petition for habeas corpus was not entitled to examine the legality of the deed of adoption and then came to the conclusion one way

- A** or the other with regard to the custody of the child. The High Court has lost sight of the fact that the petition was one for issuance of writ of habeas corpus and not for custody of the child. Then again, Mr. D.N. Goburdhan and Ms Pinky Anand were justified in their submissions that the mother having filed the petition for habeas corpus in Rajasthan High Court, was not entitled to invoke the jurisdiction of the Delhi High Court. That apart in the manner
- B** in which the High Court of Delhi appears to have issued direction to the SHO of Lajpat Nagar Police Station to produce the child indicates that the entire episode is by way of stage maneuvering. We, therefore, find sufficient force in the submissions of learned counsel for the appellants. But having had the opportunity of ascertaining the views of young Akansha, as already stated,
- C** and in view of our conclusion that the child does not want even to talk to adoptive parents, we are not inclined to interfere with the direction of the Delhi High Court allowing the custody of Akansha to the natural mother until appropriate decision of competent forum is obtained with regard to the validity of the adoption deed as well as the custody of the child in question. We accordingly dismiss these appeals. We, however, make it clear that any
- D** observation made by Delhi High Court in the impugned judgment with regard to the validity of the registered deed of adoption or with regard to the suitability of the custody of Akansha will not be binding in the pending proceedings.

I.M.A.

Appeals dismissed.