

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Writ Petition No.2038 of 2008

Smt.Rutuja Ravindra Yadav	Petitioner
Vs.	
Smt.Sunanda Madhukar Yadav & anr.	Respondents

Mr.Vishal Kanade for the petitioner.
Mr.A.H.Fernandes for resp.no.1.
Mrs. R.M. Gadhvi, APP for State.
Ms.Manjula Rao for intervenor - Mr.Devendra Yadav.

CORAM: B.H.MARLAPALLE & S.J.KATHAWALLA,JJ.

October 31, 2008.

P.C.

1. Heard Mr.Kanade, the learned counsel for the petitioner - mother. Mr.Fernandes appears for the respondent no.1 and Mrs.Rao has appeared for Mr.Devendra Yadav who has produced the petitioner's minor son - Amar before us on 29/10/2008 and today as well. Though Mr.Devendra Yadav has not filed any formal application for intervention, he is the elder brother of the petitioner's late husband and, therefore, we heard Mrs.Rao.

2. Rule. By consent Rule is made returnable forthwith. Respondents waive service.

3. Mrs.Rao has placed before us some documents including the Award passed by the District Consumer

Redressal Forum, Ratnagiri as well as the copies of the letters received by the petitioner from Ratnagiri District Secondary Teachers' Co-operative Credit Society Ltd., at Ratnagiri. She has also placed before us a copy of the application moved by Shri Devendra Yadav before the Child Welfare Committee, Department of Woman and Child Development at Umarkhadi, Mumbai. Whereas the respondent no.1 has filed her affidavit-in-reply and stoutly denied that at any time the petitioner along with her minor son - Amar were staying with her after the demise of the petitioner's husband Shri Ravindra Yadav. In the said affidavit she also stated that the petitioner, immediately after her delivery in March 2003 went to stay with her mother at post Sathavali, Taluka Lanja, Dist. Ratnagiri, whereas the respondent continued to stay at Pali and she further states in the affidavit that Amar was all along with his mother and was not in her custody. Respondent no.1 is the mother-in-law of the petitioner and mother of Shri Devendra Yadav.

4. This petition filed under Article 226 of the Constitution prays for a writ of habeas corpus or an order in like nature so as to direct the respondents

to produce before this Court the petitioner's minor son - Amar, son of Ravindra Yadav for the purpose of handing him over to the petitioner. In short the petitioner is praying for a writ of habeas corpus and her son's custody.

5. At the first instance the petitioner had approached the Court of Judicial Magistrate, First Class at Ratnagiri under the Protection of Women from Domestic Violence Act, 2005 by filing an application under Section 12 of the said Act on or about 3/3/2008. She has alleged in the said application that on or about 29/1/2003 her husband Ravindra died and at that time she was pregnant. She gave birth to Amar on 2/3/2003 and when he was to complete the age of five years, the respondent no.1 drove her out of the house on or about 23/3/2008 and retained the minor son - Amar in her custody. She also alleged that despite her staying with her mother-in-law all along till she was driven out of the house, her signatures used to be obtained on some forms and for about five years she did not know anything about the receipts of pensionary benefits available to her on the demise of her husband and she claimed that all the money was being received and spent by the respondent no.1. The documents

placed on record by Mrs. Rao, the learned counsel for the intervenor indicate that an amount of Rs.2,45,800/- was due to be recovered from the petitioner's late husband by way of recovery of loan and the said loan has been cleared as per the letter dated 14/3/2006 issued by Ratnagiri District Secondary School Teachers' Co-operative Credit Society Ltd. at Ratnagiri and as per the award passed by the Consumer Forum on 31/10/2005 the petitioner received an amount of Rs.1,00,000/- with interest at 9 per cent from 25/6/2004. It appears that the amount received from the New India Insurance Company Ltd. as well as some amount from the pensionary benefits appear to have been utilised for repayment of the loan that was due to be repaid by the petitioner's late husband.

6. Be that as it may, we are mainly concerned with the application filed by the petitioner under the Protection of Women from Domestic Violence Act, 2005 and the implementation of the interlocutory orders passed in the said application by the learned Judicial Magistrate First Class at Ratnagiri. We have noted from the order passed on 7/3/2008 that the respondent no.1 caused her appearance in the said application through her Advocate on 7/3/2008 and the respondent

no.1 was directed to hand over the custody of Amar to the applicant i.e. the present petitioner. This order was not implemented and the petitioner filed another application on which an order came to be passed on 13/3/2008 by the learned Judicial Magistrate, First Class. As per the said order the respondent no.1 appeared on 10/3/2008 before the Court below and filed her say at Exhibit 10 and stated that Amar was not in her custody, she did not know where he would be and in any case he was always in the custody of the applicant. The learned Judicial Magistrate, First Class directed the search of the house of the respondent no.1 and we have been shown the search report by Shri M.B. Bane, PSI, Police Station, Ratnagiri (Rural). As against these statements made by the respondent no.1 before the learned Judicial Magistrate, First Class, we have noted from the application moved by the intervenor before the Child Welfare Committee that Amar has been in the custody of the intervenor from 27/2/2008 and the said application states that the petitioner's father handed over the custody of Amar to the intervenor on 27/2/2008 at his office in Lalbaug at 9.30 a.m. We have talked to Amar in our chamber on 29/10/2008 and the child clearly indicated that he was staying with his mother and

grandmother at Pali and the grandmother used to drop him to the school and collect after the school hours every day. Amar also stated before us that he was brought from Ratnagiri by the intervenor to Mumbai. We have dealt with all these issues only to point out that though the respondent no.1 is the grandmother and the intervenor is the uncle of Amar, the learned Judicial Magistrate First Class as well as the Committee for Child Welfare were misled by false statements and an inference will have to be drawn that the petitioner was being deprived of the custody of her son illegally and without respect to the process of law. Even the affidavit filed before us by the respondent no.1 is a pack of lies and we deprecate the behaviour of respondent no.1 as well as the intervenor in that regard.

7. Even if it is claimed that the respondent no.1 and the intervenor have the utmost interest and regard to the upbringing and welfare of Amar, they could achieve this by legal means and if they are interested in taking over the custody of Amar, they will have to move the appropriate forum. However, the facts that have come before us and when we are informed that the intervenor is also a learned member of the Bar, have

disturbed us and we refrain from saying anything further, more so when the application filed by the petitioner is pending before the learned Judicial Magistrate, First Class at Ratnagiri and we are dealing with the implementation of the interlocutory order passed in the said application.

8. We, therefore, allow this petition and direct the respondent no.1 as well as the intervenor to hand over Amar forthwith to his mother, the petitioner and both of them shall appear before the learned Judicial Magistrate, First Class on 18/11/2008 when the application is fixed for further hearing before the said Court. We make it clear that this order does not take away the rights of custody of any of the parties and we have dealt with the limited issue to hand over Amar's custody to his natural mother in obedience of the order passed by the learned Judicial Magistrate, First Class on 7/3/2008.

9. Rule is made absolute in terms of the above order.

(S.J.KATHAWALLA,J.)

(B.H.MARLAPALLE,J.)