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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 1541 OF 2015

Smt. Nirmala Bhagwantrao Patil .. Petitioner

Vs.

Mr. Sanish Papachand Champkaseril
and Ors. .. Respondents

....

Mr. Abhijeet A. Desai Advocate for Petitioner
Mr. H.S.Venegaonkar Advocate for Union of India
Mrs. G.P. Mulekar A.P.P. for the State of Maharashtra

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**CORAM : SMT.V.K.TAHILRAMANI AND
SHRI.B.P.COLABAWALLA, JJ.**

**RESERVED ON : APRIL 18, 2015
PRONOUNCED ON : APRIL 30, 2015**

ORDER [PER SMT. V.K.TAHILRAMANI,J.]:

1 This petition has been preferred by the Petitioner who is the maternal grand-mother of minor child Aarish seeking a writ of habeas corpus in relation to grand son Aarish who is about 7 years of age.

2 It is the case of the petitioner that the child is in the

custody of respondent no.1 who is the biological father of Aarish and the petitioner is seeking directions to respondent no.1 as well as respondent no.3 State of Maharashtra to produce the grand son of the Petitioner. The petitioner is also seeking directions against respondent no.2 the Passport Authority of India that the passport of respondent no.1 be confiscated / deactivated.

3 It is an admitted fact that respondent no.1 is the biological father of minor child Aarish. The mother of Aarish has expired in the year 2013. Though the Family Court has been moved seeking permanent custody of the child, yet no final order has been passed by the Family Court in relation to the custody of child Aarish. The respondent no.1 being the biological father of Aarish, is the natural guardian of Aarish. It cannot be said that Aarish is in illegal detention of respondent no.1. In such case, no writ of habeas corpus would lie.

4 The Petitioner has already moved the learned Judicial Magistrate F.C. Court No.5 Pune wherein she has sought directions under Section 97 of Cr.P.C. for issuing search

warrant against respondent no.1 for search of Aarish. In the said case, notice has been issued to respondent no.1.

5 As far as the prayer relating to confiscation / deactivation of the passport of respondent no.1 is concerned, a passport can be impounded, revoked or suspended only if the criteria under Section 10 or Section 10A of the Passport Act, 1967 are met. The passport can be impounded or revoked only if the ingredients of Section 10 are met and it can be suspended only if the criteria under Section 10A are met. In the present case, the criteria under Section 10 or 10A of the Passport Act are not met, hence, no order can be passed in relation to impounding, revoking or suspending of passport of respondent no.1.

6 Mr. Desai has placed reliance on a decision dated 25th April, 2010 in the case of **Shanti Devi Vs. State of Rajasthan** rendered by a Single Judge of the Rajasthan High Court, reported in **2000(2) WLN 199**, wherein a petition was moved by the mother of the children stating that her husband had expired and her in-laws had kept her three children

illegally in their custody. Mr. Desai has placed reliance on the observations in the said decision wherein it is observed that the interest of the child is of paramount consideration in deciding the matters of custody. However, on perusal of said decision, it is seen that thereafter the said Court has observed that "as the petitioner had already taken recourse to remedies to validate her claim to get custody of her minor children from the grand parents, we leave it to the District Court where her application is pending to decide that application as expeditiously as possible." We are also of the opinion that as the matter relating to custody of the child is pending before the Family Court, it would be appropriate if it is left to that Court to decide the issue.

7 Thereafter reliance was placed by Mr. Desai on a decision of the Supreme Court in the case of **Union of India Vs. Paul Manickam and another** reported in **(2003) 8 Supreme Court Cases 342**. On perusal of the said decision, it is seen that the said decision pertains to a case of detention under the provisions of Conservation of Foreign Exchange and Prevention of Smuggling Activities, Act 1974 (for Short "COFFEPOSA

ACT"), hence, it cannot apply to the facts of the present case.

8 The third decision on which reliance is placed is **Ravi Kant Keshari and another Vs. Krishna Kumar Gupta and others** reported in **AIR 1993 Allahabad 230** wherein it is observed that petition for habeas corpus by child's father for custody, is maintainable. In the said case, the Court observed that the petitioner may take such action as available according to law i.e. Hindu Minority and Guardianship Act, if so advised. This decision is also not helpful to the petitioner in the facts of the present case because in the present case relief is sought against the father of the child.

9 Looking to the fact that the matter is pending before the Family Court and before the learned Magistrate Court No.5, Pune, we do not deem it fit to entertain the present writ petition. Writ petition is dismissed.

[SHRI. B.P.COLABAWALLA, J.] [SMT. V.K.TAHILRAMANI, J.]

Kandarkar