

**IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

\*\*\*

**W.P.No.4233 of 2024**

**Between:**

V. Charitha,  
W/o.Sujay Kumar Reddy,  
Aged about 31 years,  
Residing 1<sup>st</sup> floor, Kids Zone Building,  
Satyamji Layout, Deseva Gudi,  
Kakupalle Village,  
Nellore Rural Mandal, SPSR Nellore District,  
Andhra Pradesh.

...Petitioner

*Versus*

1. The State of Andhra Pradesh,  
Rep.by its Principal Secretary,  
Home Department, Secretariat,  
Velagapudi, Guntur District,  
Andhra Pradesh.

2. The Director General of Police,  
State of Andhra Pradesh, Office at  
Mangalagiri, Guntur District,  
Andhra Pradesh.

3. The Superintendant of Police,  
SPSR Nellore District,  
Nellore City, Andhra Pradesh.

4. The Inspector of Police, Nellore Rural Police  
Station, SPSR Nellore District,  
Andhra Pradesh.

5. Mr. Subba rao, The Inspector of Police,  
Nellore Rural Mandal, SPSR Nellore District,  
Andhra Pradesh.

6. V. Sujan Kumar Reddy,  
S/o.Satish Reddy,  
Aged about 31 years,

R/o.Flat No.505,  
Mars Paradise Apartment,  
Saraswathinagar, Nellore City,  
SPSR Nellore District.

...Respondents

**Date of Judgment pronounced on : 31-07-2024**

**HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO  
&  
HON'BLE SRI JUSTICE HARINATH.N**

1. Whether Reporters of Local newspapers : Yes/No  
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/No  
to Law Reporters/Journals:
3. Whether the Lordship wishes to see the fair copy : Yes/No  
Of the Judgment?

**\*IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

**\* HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO  
&  
HON'BLE SRI JUSTICE HARINATH.N**

**+ W.P.No.4233 of 2024**

**% Dated: 31-07-2024**

V. Charitha,  
W/o.Sujay Kumar Reddy,  
Aged about 31 years,  
Residing 1<sup>st</sup> floor, Kids Zone Building,  
Satyamji Layout, Deseva Gudi,  
Kakupalle Village,  
Nellore Rural Mandal, SPSR Nellore District,  
Andhra Pradesh.

...Petitioner

And

\$ 1. The State of Andhra Pradesh,  
Rep.by its Principal Secretary,  
Home Department, Secretariat,  
Velagapudi, Guntur District,  
Andhra Pradesh.

2. The Director General of Police,  
State of Andhra Pradesh, Office at  
Mangalagiri, Guntur District,  
Andhra Pradesh.

3. The Superintendant of Police,  
SPSR Nellore District,  
Nellore City, Andhra Pradesh.

4. The Inspector of Police, Nellore Rural Police  
Station, SPSR Nellore District,  
Andhra Pradesh.

5. Mr. Subba rao, The Inspector of Police,  
Nellore Rural Mandal, SPSR Nellore District,  
Andhra Pradesh.

6. V. Sujan Kumar Reddy,  
S/o.Satish Reddy,  
Aged about 31 years,  
R/o.Flat No.505,  
Mars Paradise Apartment,  
Saraswathinagar, Nellore City,  
SPSR Nellore District.

...Respondents

! Counsel for the Petitioner	: Sri V. Surendra Reddy
^Counsel for Respondents	: Sri P. Gangi Rami Reddy
	: The Advocate General

<GIST :

>HEAD NOTE:

? Cases referred:

<sup>1</sup> 2024 SCC Online SC 31

<sup>2</sup> 2017 (1) ALD 679 DB (AP)

<sup>3</sup> 2024 SCC Online SC 31

<sup>4</sup> Order in W.P.No.23230 of 2023 (TS)

<sup>5</sup> (2019) 7 SCC 42

<sup>6</sup> 2021 SCC Online SC 3434

<sup>7</sup> 2020 SCC online SC 67

<sup>8</sup> 2022 SCC Online SC 43

<sup>9</sup> 2022 SCC Online SC 43

<sup>10</sup> 2021 SCC Online SC 3434

<sup>11</sup> 2020 SCC online SC 67

**IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI****HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO  
&  
HON'BLE SRI JUSTICE HARINATH.N****WRIT PETITION No.4233 of 2024****Between:**

V. Charitha,  
W/o.Sujay Kumar Reddy,  
Aged about 31 years,  
Residing 1<sup>st</sup> floor, Kids Zone Building,  
Satyamji Layout, Deseva Gudi,  
Kakupalle Village,  
Nellore Rural Mandal, SPSR Nellore District,  
Andhra Pradesh.

...Petitioner

*Versus*

The State of Andhra Pradesh,  
Rep.by its Principal Secretary,  
Home Department, Secretariat,  
Velagapudi, Guntur District,  
Andhra Pradesh and 5 others.

...Respondents

Counsel for the Petitioner : Sri V. Surendra Reddy

Counsel for Respondents : Sri P. Gangi Rami Reddy  
The Advocate General**ORDER****Dt: 31.07.2024***(per Sri Justice R. Raghunandan Rao)*

Heard V. Surendra Reddy, learned counsel for the Petitioner and  
Sri P. Gangi Rami Reddy, learned counsel for respondent No.6.

2. The petitioner herein is the mother of the boy, who is said to have been illegally detained by the 6<sup>th</sup> respondent, who is the father of the boy. The case of the petitioner is that the petitioner and the 6<sup>th</sup> respondent had been married, as per Hindu Rites and Customs, on 05.03.2017 and they have a son named Master V. Vahin Reddy who was born on 24.11.2018 in Nellore. The petitioner states that she had filed a complaint before the Nellore Rural Police Station, under Section 498-A of I.P.C and Sections 3 & 4 of Dowry Prohibition Act, which was registered as Crime No.416 of 2022. Subsequently, a charge sheet had been filed in the case and the said case is now numbered as C.C. No.94 of 2023 after the IV Additional Judicial Magistrate of First Class had taken cognizance of the charge sheet.

3. The petitioner contends that the 6<sup>th</sup> respondent, had forcibly entered into the house of the parents of the petitioner, on 28.01.2024 and had forcibly taken away the minor boy. Photographs showing the 6<sup>th</sup> respondent taking away the child have also been filed. The petitioner contends that a complaint was immediately given, on this incident, to the District Women and Children Care Empowerment Officer, who took steps for an enquiry. The Empowerment Officer was treated very roughly by the 6<sup>th</sup> respondent after which the petitioner, having realised that there was every danger of the petitioner losing

custody of the child, had approached this Court, by way of the present writ for Habeas Corpus.

4. The petitioner has also alleged that the 4<sup>th</sup> respondent, who is the inspector of Police, Nellore Rural Police Station, was siding with the 6<sup>th</sup> respondent, due to which the petitioner was also forced to approach this Court as no help could be expected from the police authorities.

5. The petitioner has also raised her concerns relating to the health of the minor boy on the ground that he is diagnosed with Autism and is hyperactive. She further contends that the minor boy has further defects in the sense that he is not able to talk like any other boy or girl of his age and that the boy is undergoing speech therapy and occupational therapy treatment in M.S.R. Spastic Centre, Nellore apart from being taken for treatment at Rainbow Children's Hospital, Chennai.

6. The petitioner contends that the 6<sup>th</sup> respondent, by forcibly taking away the minor boy, on 28.01.2024, without the intervention of the Court or any statutory authority has clearly taken illegal custody of the child and the same needs to be rectified by ensuring that the custody of the child is given to the petitioner. The petitioner would also

contend that the 6<sup>th</sup> respondent, is not in a position to take care of the boy.

7. The 6<sup>th</sup> respondent has filed a counter affidavit in which it is stated that the boy is in the custody of the 6<sup>th</sup> respondent who is his father and as such the custody of the father cannot be treated as illegal custody for which a writ of Habeas Corpus can be issued. The 6<sup>th</sup> respondent would also contend that the complaint filed by the petitioner under section 498-A of I.P.C is a false complaint.

8. The 6<sup>th</sup> respondent contends that his son is with his father and himself and has been admitted in L.K.G in St. Joseph's English Medium High School and he is going to the school and that the allegation that the 6<sup>th</sup> respondent has forcibly taken the minor boy on 28.01.2024 is not correct. He states that he is taking immense care in respect of the health of his son and he has got the health check up of his son at Rainbow Children's Hospital at Hyderabad. The 6<sup>th</sup> respondent further contends that the petitioner is working in Chennai while the father of the petitioner is working in Kuwait and the mother of the petitioner is suffering with cancer and other health problems. Due to which, there is no person in the family of the petitioner to look after the boy whereas the father, grandparents and other family members of the 6<sup>th</sup> respondent are available to take care of the boy and he is happy staying with his father. However, the 6<sup>th</sup> respondent, except a bald



denial of the allegations of forcible taking away of the child, has not answered these allegations. The 6<sup>th</sup> respondent does not deny the photographs showing him taking away the child. Consequently, it must be held that the 6<sup>th</sup> respondent has forcefully and unilaterally taken away the child from the custody of the mother.

9. Sri P. Gangi Rami Reddy, learned counsel for the 6<sup>th</sup> respondent would submit that the custody of the father of the child is lawful custody and as such, there cannot be any Writ of Habeas Corpus against the 6<sup>th</sup> respondent. He would rely upon the Judgment of the Hon'ble Supreme Court in the case of **Pavan Kumar Kathuroju vs. State of Telangana and Others**<sup>1</sup>. In this case, the High Court, upon a petition filed by the mother of the child, had directed the father to restore custody, of the child, to the mother, as the child was taken away unilaterally by the father. This order of the High Court was modified, to the extent of setting aside the direction of the High Court for handing over the child to the mother, while keeping all other directions intact.

10. A perusal of this order would show that the Hon'ble Supreme Court had issued directions. However, the learned counsel

---

<sup>1</sup> 2024 SCC Online SC 31

for the 6<sup>th</sup> respondent has not pointed out the ratio in the said judgment.

11. On the other hand, Sri V. Surendra Reddy, learned counsel for the petitioner contends that this Court can always intervene when the child is under illegal custody, even if the said custody is with one of the parents. He relies upon the following judgments.

1. Arwind Gopi Krishna Chawda vs. State of Telangana<sup>2</sup>,
2. Pavan Kumar Kathuroju vs. State of Telangana and Others<sup>3</sup>
3. Kathuroju Anusha Vs The State of Telangana and Others<sup>4</sup>
4. Tejaswani Gaud and Others vs. Shekhar Jagdish Prasad Tewari and Others<sup>5</sup>
5. Jose Antonio Zalba Diez Del Corrol @ Jose Antonio Zalba vs State of West Bengal and Others<sup>6</sup>
6. Yashita Sahu vs. State of Rajasthan & Ors.<sup>7</sup>
7. Vasudha Sethi & Ors vs. Kiran V. Bhaskar & another<sup>8</sup>

**Consideration of the Court:**

12. The facts which can be culled out from the pleadings and material placed before this Court is that the petitioner and the 6<sup>th</sup>

---

<sup>2</sup> 2017 (1) ALD 679 DB (AP)

<sup>3</sup> 2024 SCC Online SC 31

<sup>4</sup> Order in W.P.No.23230 of 2023 (TS)

<sup>5</sup> (2019) 7 SCC 42

<sup>6</sup> 2021 SCC Online SC 3434

<sup>7</sup> 2020 SCC online SC 67

<sup>8</sup> 2022 SCC Online SC 43

respondent are the mother and father of the boy who was born to them in the course of their marriage which had been performed on 05.03.2017. Thereafter disputes arose between the petitioner and the 6<sup>th</sup> respondent leading to a criminal case between them. The boy was in the custody of the petitioner and the 6<sup>th</sup> respondent had forcibly taken away the boy, on 28.01.2024, from the house of the parents of the petitioner.

13. The petitioner contends that the boy had certain difficulties, apart from being autistic. She contends that she is ensuring appropriate medical attention to the boy to get over these problems. The 6<sup>th</sup> respondent also admits that the boy has these difficulties. However, he contends that he is also taking care of these difficulties by ensuring proper medical attention to the boy. The 6<sup>th</sup> respondent also contends that the petitioner is working in Chennai and she is unable to look after the boy who stays in Nellore with her parents. The 6<sup>th</sup> respondent contends that he has a better claim for custody of the boy as the boy would be staying with him and his parents and grandmother who would all be available to take care of the boy. Apart from this, the 6<sup>th</sup> respondent also contends that he has lawful custody of the boy as he is the father of the boy and as such a writ of Habeas Corpus would not be maintainable.

14. The Hon'ble Supreme Court as well as various High Courts have been dealing with the question of how such writs of Habeas Corpus should be treated when one parent files a writ against the other parent for custody of the child or children. The Judgment of the Hon'ble Supreme Court in the case of **Jose Antonio Zalba Diez Del Corrol @ Jose Antonio Zalba vs State of West Bengal and Others**<sup>9</sup>, has been passed after considering a few of the preceding authorities on this issue. The Hon'ble Supreme Court after considering the earlier judgments of in **Yashita Sahu vs. State of Rajasthan & Ors.**,<sup>10</sup> and **Tejaswani Gaud and Others vs. Shekhar Jagdish Prasad Tewari and Others** had extracted the following paragraphs of the Judgments of the Hon'ble Supreme Court in **Tejaswani Gaud and Others vs. Shekhar Jagdish Prasad Tewari and Others** as the law with regard to maintainability of Habeas Corpus petitions.

19. Habeas corpus proceedings is not to justify or examine the legality of the custody. Habeas corpus proceedings is a medium through which the custody of the child is addressed to the discretion of the Court. Habeas corpus is a prerogative writ which is an extraordinary remedy and the writ is issued where in the circumstances of the particular case, ordinary remedy provided by the law is either not available or is ineffective; otherwise a writ will not be issued. In child custody matters, the power of the High Court in granting the writ is qualified only in cases where the detention of a minor by a person who is not entitled to his legal custody. In view of the pronouncement on the issue in question by the Supreme Court and the High Courts, in our view, in child custody matters, the writ of habeas

---

<sup>9</sup> 2021 SCC Online SC 3434

<sup>10</sup> 2020 SCC online SC 67

corpus is maintainable where it is proved that the detention of a minor child by a parent or others was illegal and without any authority of law.

**20.** In child custody matters, the ordinary remedy lies only under the Hindu Minority and Guardianship Act or the Guardians and Wards Act as the case may be. In cases arising out of the proceedings under the Guardians and Wards Act, the jurisdiction of the court is determined by whether the minor ordinarily resides within the area on which the court exercises such jurisdiction. There are significant differences between the enquiry under the Guardians and Wards Act and the exercise of powers by a writ court which is summary in nature. What is important is the welfare of the child. In the writ court, rights are determined only on the basis of affidavits. Where the court is of the view that a detailed enquiry is required, the court may decline to exercise the extraordinary jurisdiction and direct the parties to approach the civil court. It is only in exceptional cases, the rights of the parties to the custody of the minor will be determined in exercise of extraordinary jurisdiction on a petition for habeas corpus.

15. The view taken by the Hon'ble Supreme Court is that child custody matters must be clearly left to the Courts having jurisdiction under the respective Guardianship Act. However, a writ of Habeas Corpus can always be maintained provided the circumstances for exercise of such an extraordinary remedy are made out before the Court. The primary requirement for exercise of this extraordinary remedy would be that the minor is in the illegal detention of a person, including the parent of the child. Apart from this, the Judgments of the Hon'ble Supreme Court also hold that the High Court not only has jurisdiction under the writ of Habeas Corpus but also under the Parens

Patraie jurisdiction of the Court which requires the Court to ensure that the interest of the child in question is looked after.

16. Applying these principles, it is clear that the boy is in illegal custody of the 6<sup>th</sup> respondent. This view is being taken on the ground that the 6<sup>th</sup> respondent has forcibly taken away the child from the custody of the mother. The courts are frequently facing situations where one parent or the other takes the law into his or her hands and forcibly takes away the child from the custody of the other parent. Subsequently, when a writ of Habeas Corpus is moved, the standard defense taken by the said parent is that the custody of the child is lawful custody, as the laws state that the mother or father of the child is the legal guardian of the child. Accepting such a contention would be rewarding unlawful conduct on the part of such a parent. Condonation of such behaviour would only embolden other parents to take the law into their hands and take forcible custody of the child.

17. While the maintainability of a writ of Habeas Corpus has to pass the initial test of illegal custody, the Court may waive such question of illegal custody, in special circumstances, when the interest of the child is in jeopardy. The primary concern of the Court, in such cases, is the wellbeing of the child, and not the interest of either parent.

18. In the present case, the 6<sup>th</sup> respondent has taken custody of the child without authority of law. However, this Court, on the basis of affidavits filed by either side cannot determine whether it would be in the best interest of the boy for custody to be given, either to the petitioner or the 6<sup>th</sup> respondent. This is an issue which requires a closer enquiry by a competent Court which has jurisdiction under the relevant Guardianship law.

19. In the circumstances, to set aside the forcible taking away of the child, this Court disposes of this writ petition with the following directions:

- 1) The 6<sup>th</sup> respondent shall handover custody of the child to the petitioner within one week of this order;
- 2) The child shall be handed over to the petitioner by bringing the child to the house of the parents of the petitioner in Nellore during the day time hours and leaving the boy there;
- 3) In the event of the 6<sup>th</sup> respondent not complying with the directions of this Court, the 3<sup>rd</sup> respondent shall take steps to depute an appropriate police officer, not being either the 4<sup>th</sup> or 5<sup>th</sup> respondents, to take custody of the child and handover the child to the petitioner. For this purposes, the officer so

designated shall take the assistance of the District Women and Child Welfare Empowerment Officer, SPSR Nellore District who may depute an official of the department who assisted the designated police officer;

- 4) This order is only in terms of interim custody, subject to such orders as may be passed by a competent Court having jurisdiction under the appropriate Guardianship;
- 5) For the purpose of deciding final custody, subject to visitation rights that may be granted to the other parent, it would be open to both the petitioner as well as the 6<sup>th</sup> respondent to approach the appropriate Court for obtaining custody of the boy. Needless to say, the said Court would not take in to account any observations made in this order for determination as to who should get custody of the boy.

There shall be no order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

**R. RAGHUNANDAN RAO, J**

**HARINATH.N,J**

RJS



**HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO  
&  
HON'BLE SRI JUSTICE HARINATH.N**

**WRIT PETITION No.4233 of 2024**  
*(per Sri Justice R. Raghunandan Rao)*

**Dt: 31.07.2024**

**RJS**