IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application mandate in the nature of a Writ of Habeas Corpus under and in terms of Article 140 of the of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA 389/2015

(WRIT)

Hewa Patiranage Anusha Patirana,

No570, Pepiliyana Road,

Moragalla, Eheliyagoda.

Petitioner

Vs

Kapila Poornika Wanniarachchi,

Batapolyaya, Warunagama,

Wellawaya.

Respondent

Madini Himaja Nawaratna,

Batapolyaya, Warunagama,

Wellawaya.

Corpus

BEFORE: M.M.A.Gaffoor, J.

K.K. Wickremasinghe, J.

COUNSEL: AAL Lakshman Dias for the Petitioner

AAL Thushani Machado for the Respondent

AAL T.Wickremanayake for the Respondent

WRITTEN SUBMISSIONS FOR THE PETITIONER: 10.11.2017

WRITTEN SUBMISSIONS FOR THE RESPONDENT ON: 13.11.2017

DECIDED ON: 14.02.2018

JUDGEMENT

K.K.Wickremasinghe, J.

The Petitioner mother instituted application praying for a mandate in the nature of a writ of Habeas Corpus seeking inter alia the following reliefs:-

(a)commanding the Respondent (husband of the corpus) to produce the corpus (Petitioner's daughter) before this court to be dealt with according to law;

(b)Releasing/discharging the Corpus forthwith from custody;

(c)In the first instance to refer the matter for an inquiry to the Chief Magistrate of Avissawella and report under the proviso Article 141 of the Constitution.

The petitioner is the mother of the corpus and the respondent is the son in Law of the petitioner. The respondent and the corpus entered in to a contract of marriage on their own free will on the 28thof June 2015. At the time of marriage the both were adults. Now the respondent is 37 years of age and the corpus is 32 years of age. Consequent to the marriage, the corpus gave a birth to a child on the 16th of September 2016.

It is submitted by the petitioner that the corpus is mainly suffering from a mental disorder for several years and has been under medication, but the medical reports

dated 3/12/2015 reveals of only a tentative diagnosis and the other medical report shows that the corpus was getting treatment for probable diagnosis of schizophrenia (major psychiatric illness). Both these illnesses only amount to that of probable and tentative nature. Therefore the diagnosis is uncertain.

On top of all these factors, the corpus and the respondent appeared in court with the baby and apologized to both parents for getting married on their own free will. We take judicial notice of this factor and see how happy they are as a family.

It is apparent that change in the status quo would be prejudicial to the interests of the child. This position is decided in the case of ***Re Evelyn Wanakulasuriya* 56 NLR 525,528** which was in respect of a child who was 15 years of age and in the custody of a Mother Superior of a convent with whom she had been left with by her deceased father in order to avoid contact with her mother. Courts dismissed the mother's application by applying the test of whether a change in the status quo would be prejudicial to the interests of the child. Furthermore, our courts also recognized that the parents' right to custody is not absolute.

***Ahmed Vs Sanjeewa and others* 2005 (1) 254,259,** is a case where an 18 year old Muslim girl had eloped and got married to her boyfriend. The mother of the girl filed a habeas corpus application in this court. In the said application the corpus had given evidence before the magistrate and had given details as to how she left her parental home, and subsequently got married to the 2nd respondent. The 2nd respondent had subsequently denied having married the corpus, which fact was corroborated by the 4th respondent. The court took the view that as the corpus was a major, if she was misled into a marriage on false pretext, she is free to seek legal remedies in this matter. The petitioner has not established the fact that the respondents had unlawfully detained the corpus. The petitioner and the corpus being Muslims were governed by the Muslim law and Justice Imam cited the case of ***Hanifa Vs Razak* (68 NLR288)**. It was held that as a Muslim girl is *freed from patria potestas* on attaining 16 years of age, and her father is not entitled to claim custody of her against her will. Accordingly, the petitioner's application was dismissed as she failed to prove that the corpus was unlawfully detained by the respondents.

It is being noted that the petitioner was keeping the corpus in their custody against her will for five years. The petitioner has conceded this position in open court and m*entioned* that it was due to the fact that she was sick. She, being an educated girl, was stopped from going to work and her movements were restricted and confined herself by her parents (petitioner). Under these circumstances even a normal person would be ended up with to a mental disorder.

It is apparent that the prayer of the petitioner is defective for the following reasons;

1. Paragraph (a) of the prayer does not command/direct the respondent to produce the corpus before court to be dealt with according to law.
2. Paragraph (b) of the prayer does not command/direct the respondent to release/discharge the corpus.

The respondent's name is not mentioned in the prayer. Therefore writ of habeas corpus cannot be issued against the respondent.

As the corpus is a major if she was misled into a marriage on a false pretext, she is free to seek legal remedies in this matter. The petitioner has not established the fact that the respondents are unlawfully detaining the 6th respondent -corpus.

Having considered the facts in this case and for the aforesaid reasons, I am of the view that the petitioner has failed to prove that she is entitled to a habeas corpus remedy as prayed for in prayer (a) of her petition. Hence I dismiss the application of the petitioner without costs.

JUDGE OF THE COURT OF APPEAL

M.M.A.Gaffoor, J.

I agree

JUDGE OF THE COURT OF APPEAL