

Vivek Kumar Chaturvedi vs State Of U.P on 7 February, 2025

Author: B.R. Gavai

Bench: B.R. Gavai

2025 INSC 159

Non - rep

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. _____ OF 2025
(@Special Leave Petition (Criminal) No.14809/2024)

VIVEK KUMAR CHATURVEDI & ANR.

...Appella

VERSUS

STATE OF U.P. & ORS.

...Respon

JUDGMENT

K. VINOD CHANDRAN, J.

Leave granted.

2. The appellant, father of a minor child, assailed the order of the Writ Court in a Habeas Corpus Writ Petition which denied the custody of the child who was with his grand-parents; his mother having passed away.

3. The learned Single Judge who disposed of the Writ Petition interacted with the child who submitted that he is comfortably residing and pursuing his education at his maternal grandfather's house. It was also noticed that the father had re-married. On the basis of the above findings, it was opined that the welfare of the minor child; which is of paramount consideration, would be served by letting him continue with his grandfather; while the father was granted visitation rights to meet the child regularly on the first day of every month at the venue fixed by the jurisdictional Station House Officer.

4. Mr. Gopal Jha, learned counsel appearing for the appellant- father would rely on the decision of this Court in Gautam Kumar Das Vs. NCT of Delhi and another¹ which emphasizes the need of the minor child to be with the natural guardian; especially when the mother is no more. It is pointed out that the circumstances coming out in the above case are identical insofar as, after the death of the mother, the father being denied the company of the child. Obviously the child did not have any familiarity with the father, the death of the mother having occurred in the year 2021. It is also

submitted that the paternal grandfather of the minor child has conveyed a property in the name of the minor child to ensure his welfare and also deposited an amount of Rupees Ten Lakhs in the child's name. The father who is an Administrative Service Officer of the State, though re-married, is confident that the second wife would look after the child as a mother and draw support from the affidavit of his second wife who undertakes to take care of the child as her own and endorses fully her husband's need and desire to have the child with them for the betterment of his future.

5. Mr. Rajeev Kumar Dubey, learned counsel appearing for the respondents relies on *Nirmala Vs. Kulwant Singh & Ors.*² in which this Court had emphasized the requirement of a detailed enquiry regarding the welfare of the minor child and his preference; which exercise could be carried out only in the proceedings under the Guardian and Wards Act, 1890³. It is pointed out that the appellant-father has already filed a Guardian O.P. and in that circumstance, the prayer for production of the child by a writ of Habeas Corpus was not at all (2024) 10 SCC 588 2024 INSC 370 For brevity, "the Act".

maintainable. The fact that the father has re-married, soon after the death of the first wife was rightly considered by the High Court, in refusing the custody of the child to the father. It is argued that the appellant should be relegated to the remedy he has voluntarily invoked under the Act.

6. We have gone through the two decisions placed before us and *Nirmala*², according to us, relies on the peculiar facts of that case in which the mother was found missing and later found dead in a canal. An accusation was made against the father; during investigation of which case the father himself has appointed the grandmother as the guardian of the minor child and caretaker of a property which was gifted by a maternal aunt to the minor child. The case against the father was closed and he approached the Child Welfare Committee⁴ on the ground that the appellant-grandmother had employed fraud in taking away the child. The CWC granted custody of the minor child to the father, which was interfered with by the High Court finding lack of jurisdiction on the CWC, which led to a Habeas Corpus petition being filed by the father. The High Court found the welfare of the child to be best served in the hands of the father and granted visitation rights to the grand-parents, while keeping open the remedy available to agitate the cause of custody. This Court, specifically, noticed the decision in *Tejaswini Gaud and others Vs. Shekhar Jagdish Prasad Tewari and others*⁵ to find that ordinarily in child custody matters, a Writ of Habeas Corpus is maintainable only when it is proved that the detention of the minor child by a parent or otherwise, was illegal or without any authority of law and hence, in the peculiar For brevity, "the CWC" (2019) 7 SCC 42 facts and circumstances of that case, the order of the High Court was reversed and the parties were left to agitate their cause in accordance with the Act.

7. It has to be specifically noticed that in *Tejaswini Gaud and others*⁵, this court had permitted the invocation of the extraordinary remedy seeking custody of the child under Article 226 of the Constitution of India since the custody was sought by the father, the natural guardian of the minor child, from the sister and brother of the mother, who did not have any legal right to claim the custody of the child. *Gautam Kumar Das*¹ relied on *Tejaswini Gaud*⁵ to enable the natural guardian, the father, custody of a minor child, who was with the maternal aunts; in a petition under Article 226 of the Constitution of India. Quoting *Nirmala*² it was also held that there can be no hard and

fast rule insofar as the maintainability of a Habeas Corpus petition relating to custody of minor children; which would depend on the facts and circumstances of each case.

8. In the present case also, the father is seeking custody of the child from the grand-parents who were also looking after the child with the help of the siblings of the mother; admittedly. The grandfather had also initiated a proceeding for maintenance, claiming Rs.20,000/- (Rupees Twenty Thousand only) per month for the child; which makes it clear that the grand-parents are unable to look after the child by themselves.

9. On the other hand, it has been contended before us that there is conveyance of a land in favour of the minor child by the paternal grandfather who has also deposited an amount of Rs.10,00,000/- (Rupees Ten Lakhs only) in the child's name. The grandfather has also taken out a life insurance policy of Rs.25,00,000/- (Rupees Twenty Five Lakhs only), the beneficiary of which is the minor child. The father is an educated person and holding a responsible position having been appointed to the administrative services of the State. Though the father has re-married, it cannot stand against the claim for custody; especially since otherwise, there would have been a question raised as to how the child would be taken care of; the father being engaged in his work.

10. We cannot but observe that the learned Single Judge has not endeavored to elicit the child's attitude towards his father. Admittedly, the child, after his birth, was with his parents for about 10 years till the death of his mother. He was separated from the father in 2021 and has been living with his grand- parents, who cannot have a better claim than the father, who is the natural guardian. There is no allegation of any matrimonial dispute when the mother of the child was alive nor a complaint of abuse perpetrated against the wife or son. The father, the natural guardian, we reiterate, is well employed and educated and there is nothing standing against his legal rights; as a natural guardian, and legitimate desire to have the custody of his child. We are of the opinion that the welfare of the child, in the facts and circumstances of this case, would be best served if custody is given to the father.

11. However, we cannot ignore the fact that the child did not have the company of the father for more than three years and the child is now with the grand-parents and his academic year is coming to an end; pursuing the 7th standard in a school near the residence of the grand-parents. In the above circumstances, to permit the child to complete the academic year, we direct the child to be retained in the custody of the grandfather till 30.04.2025. While the child is continuing in the custody of the grand-parents, we permit him to be taken by the father; the appellant-herein, on alternate weekends to reside in his paternal house. The child shall be taken on the evening of Friday or the morning of Saturday and returned on the evening of Sunday. This arrangement shall continue upto 30.04.2025 till the custody of the child is handed over to the father; on 01.05.2025 in the presence of the jurisdictional Station House Officer. The grand-parents shall also have visitation rights, post-handing over of custody and they shall be permitted to take the child to their residence on every weekend in which the second Saturday falls, starting from June, 2025; which arrangement shall continue for an year and then, as per the desire of the child. The Guardian O.P. filed before the jurisdictional Family Court shall stand closed.

12. The appeal stands disposed of and the parties to bear their own costs.

13. Pending application(s), if any, shall stand disposed of.

....., J.

[B.R. GAVAI], J.

[K. VINOD CHANDRAN] NEW DELHI;

FEBRUARY 07, 2025.