

Dr. (Mrs.) Veena Kapoor

Vs

Shri Varinder Kumar Kapoor

Special Leave Petition (Criminal) No. 1073 of 1981

(CJI Y.V. Chandrachud, A. Varadarajan, V.B. Eradi JJ)

06.04.1981

ORDER

1. The petitioner, Dr. (Mrs.) Veena Kapoor, is the wife of the respondent. The two, it appears, are not living together. After their estrangement, their 1 1/2 year old child, Akhil Ishwar, is in the custody of the respondent. The petitioner filed a habeas corpus petition (33 of 1981) in the High Court of Punjab & Haryana, asking for the custody of the child alleging that the respondent was in illegal custody of the child. The petition having been dismissed by a learned Judge of the High Court, the petitioner has filed this petition for special leave to appeal.
2. It is well settled that in matters concerning the custody of minor children, the paramount consideration is the welfare of the minor and not the legal right of this or that particular party. The High Court, without adverting to his aspect of the matter, has dismissed the petition on the narrow ground that custody of the child with the respondent cannot be said to be illegal.
3. It is difficult for us in the habeas corpus petition to take evidence without which the question as to what is in the interest of the child cannot be satisfactorily be determined. We, therefore, direct that the learned District Judge, Chandigarh, will make a report to us before the 23rd of this month on the question whether the custody of the child should be handed over to the petitioner-mother, taking into consideration the interest of the minor. The learned Judge will give liberty to the parties to adduce evidence on the question in issue. The learned District Judge may either take up the matter himself or assign it to an Additional District Judge, if there is any at Chandigarh.
4. Parties have agreed to appear before the learned District Judge on Thursday, April 9, 1981 at 11.00 a.m. The learned Judge will give necessary directions to the parties for the expeditious disposal of the matter.
5. The matter will listed before us on Monday, April 27, 1981.

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