



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

*Dated this the 10<sup>th</sup> day of June, 2015*

Present

**THE HON'BLE MR JUSTICE VINEET SARAN**

&

**THE HON'BLE MR JUSTICE BUDIHAL R B**

**Writ Petition (Habeas Corpus) 75 / 2015**

***Between***

Mrs Sandya Goni, 39 yrs  
W/o Mr Ashok S Goni  
R/a # 02, Ajantha Apartments  
TF 302, N N Farms  
Sanjaynagar, Bangalore 94

Petitioner

(By Sri Smit N Mandgi, Adv.)

***And***

- 1 State of Karnataka – by its Prl. Secretary  
Home Department, Vidhana Soudha  
Bangalore
- 2 Commissioner of Police  
Infantry Road, Bangalore
- 3 Circle Inspector of Police  
Sanjay Nagar, Bangalore 94
- 4 Police Sub-Inspector  
Sanjaynagar Police Station  
Bangalore 94
- 5 Mr Ashok S Goni, 58 yrs  
S/o late Shivraj Goni  
R/a # 53, Goni Fairfeild

GF 002, N N Farms, 40 Ft. Road  
Sanjaynagar, Bangalore 94

Respondents

(By Sri H V Manjunath, AGA for R1-4;  
Sri Vishnu Murthy for Smt H V Vasantha  
Lakshmi, Adv. For R5)

Writ Petition is filed under Art.226/227 of the Constitution praying to direct 3<sup>rd</sup> respondent police to produce the daughter of the petitioner Ms Shreya Goni who has been illegally detained by the 5<sup>th</sup> respondent before this Court.

The Petition coming on for Orders this day, *Vineet Saran, J.*, made the following:

**ORDER**

This is an unfortunate case where a young girl aged about 13 years is torn between her two parents. The admitted facts are that since the year 2010 after the separation of the two parents, being the petitioner (mother) and respondent 5 (father), the child Ms Shreya remained in the custody of her mother. After separation, the petitioner and respondent 5 reside separately but opposite each other's houses in different apartments. It is not disputed that during this period, while the daughter Ms Shreya stayed with her mother, she used to visit her father. But, as per the statement of respondent 5 made before this Court, she never stayed overnight with her father.

It was on 8.5.2015 that respondent 5 (father of the girl) sent an SMS (message on the mobile phone) to the petitioner (mother of the girl) to the effect that since their daughter had attained puberty and there was a function to be held for it on 10.5.2015, he would like the daughter to visit him so that he could give a gift to his daughter. On such plea, on 8.5.2015 the mother permitted the child to go to the father and in such circumstance, father got the custody of the child which was for giving a gift at a function to be held on 10.5.2015. The averments in this regard have been made in paragraph 6 of the petition, which the learned counsel for respondent 5 has admitted to be correct. Though an objection has been filed today but no reply has been given to the averments made in the petition. The contents of paragraph 6 of the petition have not been denied. Further, along with the objections filed today, annexure B is a communication dated 8.5.2015 made by respondent 5 to the Station House Officer, Sanjaynagar Police Station, Bangalore, informing the police that his daughter Ms Shreya was in his custody, and that he was taking her out on vacation for about a month for summer holidays. After taking custody of the child from the mother on 8.5.2015, which was on the pretext of giving a gift at a function to be held on 10.5.2015, it is noteworthy that on that very date the respondent 5 (father) made such a communication to the police to the effect that he

was taking his daughter out on vacation for a month. This clearly shows that the custody of the child was taken by the father from the mother on misrepresentation. It clearly appears that the intention was not to give a gift to the daughter/child at a function to be held on 10.5.2015 but to take her out on a vacation for a month, as no such function is said to have taken place on the 10<sup>th</sup> on which date the father had said that he was to give a gift to his daughter.

This Court is conscious of the fact that there is nothing wrong in the father wanting to have custody of the daughter and take her out on vacation but, the manner in which custody was taken from the mother, which was deceitfully done by giving a wrong information, is what is objectionable.

On 5.6.2015, when this case was first taken up by this Court, notice was issued to respondent 5 and was posted for 18.6.2015. It was on an earlier complaint lodged by the petitioner before the police that the police had taken custody of the child from the father, and produced her before this Court today and on a mention having been made by Sri Manjunath, learned Addl. Government Advocate appearing for the State, the matter has been taken up for hearing today.

In this background, we have heard Sri Amit A Mandagi, learned counsel for the petitioner as well as Sri Manjunath, Addl. Government Advocate for respondents 1 to 4 and Sri Vishnu Murthy, learned counsel for respondent 5 who has also filed objections today. With consent of learned counsel for the parties this petition is being disposed off at this stage.

After having heard the learned counsel, the Bench retired to the Chambers and talked to the child Ms Shreya. Thereafter, the parents of the child i.e., petitioner and respondent 5 were also called and the Bench talked to them in the presence of the child. In view of the admission made by the parents that after 8.5.2015, when the child was taken into custody by the father, the mother did not get any opportunity to talk to her daughter, the Court permitted the child and the petitioner (mother) to talk to each other for few minutes in a different room. Thereafter, the Bench again talked to the child in the chambers, and then the hearing of the matter was resumed in the Court room.

It is a settled law that the welfare of the child is of paramount importance. The child has been admittedly in the custody of the mother ever since the separation of the parents in 2010. Normally the child is to

remain in the custody of the mother, especially when it is a girl and is of such tender age, which has been there in this case in normal course. There is nothing wrong in the father wanting the custody of the child but the same has to be got legally, in accordance with law. As we mentioned hereinabove, it is the manner in which the custody of the child was taken by the father on 8.5.2015 which is objectionable, as the same was done deceitfully. The communication made by respondent 5 to the petitioner was to the effect that he wanted to give a gift to his daughter at a function to be held on 10.5.2015, which function was never held and no such gift is said to have been given to the daughter. On the very same day i.e., on 8.5.2015, the father wrote to the police that he wants to take his daughter on a vacation. Not only that contents of paragraph 5 of the objection statement filed by respondent 5 are again contrary to the admitted SMS message, from the above, it is clear that the intention of respondent 5 was to somehow take the custody of the child from the mother, with whom the daughter was staying for the last five years i.e., since the separation. It is also noteworthy that the child Ms Shreya is a student of class VI at Sophia High School, and after the summer vacation, the school has reopened on 1.6.2015, but, she has not been permitted by the father to go to school. The Court had asked this question to respondent 5 (father) as to why he did not permit his

daughter to go to school from 1.6.2015 and in reply, it was said that he had withdrawn her admission from Sophia High School, and wanted to admit her in an International School, the session of which was to begin from August 2015. However, he could not say as to in which International School he had got admission for his daughter.

In the beginning, when the Bench talked to the child, she had said that she was happy with both the parents, and that her father had asked her not to go to school as he was getting her admitted in an International School. However, in the second meeting, the child categorically stated she wanted to go to the same school, and would like to stay with her mother.

From the conduct of the respondent 5 (father) it is clear that he had managed to get the custody of the child in an illegal manner by misrepresenting, and thus the continuance of the custody of the child with respondent 5 would become illegal, even though he was the father of the child. If custody of the child is to be taken by the father from the mother, it has to be taken in accordance with law under the prescribed procedure. The custody of a child, who is legally staying with her mother, can be shifted to the father only in accordance with law, and if

done otherwise, the same would amount to illegal custody with the father. Such is the case at hand.

In the circumstances, since the child had always remained with her mother ever since the separation between the petitioner and respondent 5 in the year 2010, and she was regularly attending the school from her mother's residence and admittedly, her custody always remained with the petitioner (mother) and further, the wish of the child as expressed before the Bench is also that she would like to stay with her mother and attend the same school (Sophia High School), we are of the opinion that at present, the custody of the child should be given to the petitioner (mother). We say this especially because the father took the custody of the child by misrepresenting before the mother, and immediately on the same day, sent a communication to the police, which was totally contrary to the SMS (message on the mobile phone) sent to the mother.

The child Ms Shreya has been brought to the Court by WPC 2870 – Ms Kalavathi. We direct that the custody of the child be given to the mother forthwith. For the welfare of the child, it is provided that she shall be permitted to meet her father in the same manner as was being

permitted earlier i.e., prior to 8.5.2015, but the custody of the child will remain with the mother. We may further observe that in case the father / respondent 5 wishes to take custody or have visiting rights of the child, he may approach the competent court under the relevant law, where the matter shall be considered and dealt with, in accordance with law, after the parties adduce the evidence in support of their case.

The petition stands allowed to the extent as is indicated above.  
However, there shall be no order as to costs.

Sd/-  
**Judge**

Sd/-  
**Judge**

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