

2009 Y L R 552(1)

[Lahore]

Before Khalil Ahmad, J

SAIMA ASLAM---Petitioner

Versus

ASIF TUFAIL---Respondent

Criminal Miscellaneous No. 5574 of 2008, decided on 26th May, 2008.

Criminal Procedure Code (V of 1898)---

---S. 491---Habeas corpus petition---Recovery of minor---Petition for---Custody of minor---S.H.O. who conducted raid, recovered and produced the minor in the court and she was given in the hands of the petitioner who was mother of the minor---Minor was a suckling baby and interest and welfare of the minor demanded that custody be given to petitioner mother who had not married as compared to father of the minor---Custody of minor having been handed over to the petitioner, father could approach the Guardian Court for custody.

PLD 2004 SC 1 and Ahmed Sami and 2 others v. Saadiq Ahmed and another 1996 SCMR 268 rel.

M. Iqbal Mohal for the Petitioner.

ORDER

KHALIL AHMAD, J.---Petitioner filed an application under section 491, Cr.P.C. for the recovery of minor Umaiza aged about 1-1/2 years from the illegal custody of respondent No.1. The learned Sessions Judge, Faisalabad on 14-5-2008 directed the S.H.O. concerned to conduct a raid, recover and produce the minor in Court on 17-5-2008. On 17-5-2008, the minor was produced in the Court and she was given in the hands of the petitioner.

The Court observed that the minor was not feeling comfortable with her mother and as such dismissed her application and directed the petitioner to approach the Guardian Court, the forum of ultimate jurisdiction, related to such matters. Learned counsel for the petitioner has relied upon PLD 2004 SC 1 to argue that the custody of a girl emotionally attached to the father can be granted to the mother.

2. Today the minor has been produced in Court in the company of paternal grandmother and father. The learned counsel for the petitioner states that the minor is for the last one and half years with the father and is being properly looked after.

3. It is on record that she is suckling baby and interest and welfare of the minor demands that custody be given to the mother who has not married till date as compared to the father. Keeping in view the dictum in the case of Ahmed Sami and 2 others v. Saadiq Ahmed and another 1996 SCMR 268. This writ petition is allowed and the custody of the minor is handed over to the mother. The respondent can approach the Guardian Court for custody who shall decide the same keeping in view the welfare of the minor.

H.B.T./S-116/L Petition allowed.