

1958

Present : Sinnetamby, J.

A. L. M. HANIFFA, Petitioner, and A. A. RAZACK *et al.*,
Respondents

S. C. 1,222—Application for a writ of Habeas Corpus

Habeas corpus—Muslim minor—Father's right to custody.

A Muslim girl is freed from the *patria potestas* on attaining 16 years of age. Her father, therefore, is not entitled to claim custody of her against her will.

APPPLICATION for a writ of *habeas corpus*.

M. I. M. Haniffa, for the petitioner.

S. Nadesan, Q.C., with *V. J. Martyn*, for the respondents.

Cur. adv. vult.

May 15, 1958. SINNETAMBY, J.—

The facts of this case as found by the learned Magistrate are set out in his recommendation and I do not propose to set them out in detail here. Suffice it to say that the 1st respondent who was married to the sister of the corpus, Sithie Fareeda, and was living with his wife in his father-in-law's house, took advantage of his position in the household to elope with Sithie Fareeda and carry her away to the house of the 3rd to 5th respondents where she is living with the 1st respondent. In the same house the 1st respondent's wife also lived at the time of the magisterial inquiry. The learned Magistrate was no doubt much influenced by the dastardly conduct of the 1st respondent in recommending that the corpus be delivered to her father. It is, however, necessary to consider the altered circumstances and the law in coming to a decision. The corpus continues to live with the 1st respondent who has since divorced his wife, the sister of the corpus. He has produced a certified copy of the Register of Divorces kept by the Kathi. He intends to marry the corpus. The corpus who was questioned by me stated that she has become a *Hanafi*, which means that she no longer needs her father's consent to marry and may appoint her own "Wali" for that purpose. (*Abdul Cader v. Razik* ¹). It is admitted that she is now over 16 years of age and in the case of girls over that age the general law of the land is that the girl's wishes in the matter should be considered. This is applicable equally to Mohamedans—*vide Marikar v. Marikar* ², where Wood Renton, C.J., held that a Mohamedan minor reached the age of discretion and was freed from the *patria potestas* on attaining puberty which has been fixed at 14 years for a boy and 16 years for a girl.

¹ (1952) 54 N. L. R. 201.

² (1915) 18 N. L. R. 481.

It was conceded that a Mohamedan girl reaches the age of discretion on attaining 16 years of age and it cannot therefore be said that the corpus in this case is being kept against her will by the respondents. I have seen the corpus. She is very mature for her age and I am satisfied that her decision to remain where she is, is her own. There is also the added fact that in the case of Mohamedan minors the mother and not the father it is who is entitled to the custody of an infant child. The mother of the corpus, it is to be noted, is not a party to these proceedings.

In view of the above the writ of *habeas corpus* is not available to the petitioner and the notice that issued in this case is accordingly discharged.

Application refused.

