

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP (227) No. 6397 of 2008

1. Smt. Anjali Nag, wife of Shri S.R. Nag, aged about 50 years, R/o Village Kirandul, Tahsil Kunwakonda, District Dantewada (South Bastar), CG

---- Petitioner

Versus

1. Suresh Kumar alias Surendra Kumar, son of Shri Nakul Singh, Aged about 40 years, R/o Village – Renghai, Post Dudhali, Tahsil Dondilohara, District Durg, CG
2. Nakul Singh son of Rai Singh, aged about 62 years, R/o Village Gandhi Nagar, Quarter No. 257, Bailadila, CG.

---- Respondents

For Petitioner:	Shri Sudip Agrawal, Advocate
For Respondent No.1:	Shri P.P. Sahu, Advocate
For Respondent No.2:	None

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

07/07/2015

On 9.5.2008 an application under Section 97 of the Code of Criminal Procedure was filed by the petitioner *inter alia* pleading that minor Udit Kumar - son of respondent No.1 and grandson of respondent No.2, was residing with her since childhood and it is she who was taking care of him. The petitioner further pleaded that respondent No.1 Suresh Kumar had taken his son along with him without her consent and presently he is residing with him in a village where his proper care would not be possible. According to the petitioner, respondent No.1 never took care of the child and was also ill-treating him and in these circumstances a direction may be issued to the respondents to produce the child before the Court. Further pleading of the

petitioner is that respondent No.1 being a dipsomaniac would not be in a position to take care of the child and thereby his entire future would be in dark.

2. After receiving the notice from the Sub Divisional Magistrate, reply (Annexure P-3) was submitted by respondent No.1 stating that as at the relevant time he was posted at Beladila, the minor child aged about 9 years lived with the petitioner for some time who was residing in the neighbourhood. According to respondent No.1, as the petitioner is issue-less she wants to take advantage of the situation and keep the minor child with her. According to his pleadings, written report was also lodged by the petitioner before the police of which reply was also submitted by him. Subsequently, the report was submitted by the police saying that the child was in the custody of his father and mother. He has denied the fact that any search warrant was required to be issued for production of the child before the Court. He has further pleaded that the child is in the custody of his natural guardian and therefore the question of producing him in the Court at the instance of a stranger does not arise.

3. Vide order dated 21.5.2008 passed by the SDM a search warrant was issued for production of the child and this order was challenged by respondent No.1 before the Additional District Judge, Balod in Criminal Revision No. 9/2008. By the order impugned dated 2.8.2008 learned Additional District Judge has held that as the child is in the custody of his natural guardian, question of issuing search warrant at the instance of a stranger does not arise and as the petitioner has no relation with him, order for his production in the Court cannot be passed. Revisional Court thus set aside the order passed by the SDM issuing search warrant. It is this order passed by the Revisional Court which is under assail in the instant petition.

4. Counsel for the petitioner submits that the order dated 21.5.2008 was simply an interlocutory order and even after recording the finding to the effect that the said order was an interlocutory order, the revisional Court has interfered with the same which is not permissible under the law.

5. Supporting the order impugned it has been argued on behalf of respondent No.1 that the main prayer in the application filed by the petitioner under Section 97 of the Code of Criminal Procedure itself was for issuance of search warrant for production of the child in the Court and therefore it cannot be said that the order dated 21.5.2008 was an interlocutory order. In fact, nature of order dated 21.5.2008 is final because the relief sought for by the petitioner was only to that effect. He submits that apart from the above fact, pursuant to the order dated 25.8.2008 passed by the revisional Court, entire proceeding itself has been closed by the Sub Divisional Magistrate and as such there remains nothing to be adjudicated. He submits that after passing final order dated 25.8.2008, about seven years have elapsed and by now age of the child is more than 16 years and therefore question of producing him before the Court at the instance of a stranger does not arise. He submits that as the minor child of respondent No.1/father is living with him and his mother, the petitioner cannot be permitted to play with his career simply because she is issue-less.

6. Heard counsel for the parties and perused the documents on record.

7. Main relief of the petitioner in the application filed under Section 97 of the Code of Criminal Procedure was for issuance of search warrant against respondent No.1 and production of the child in the Court. By order dated 21.5.2008, the SDM has literally allowed the application filed by the petitioner under Section 97 of the Code of Criminal Procedure and thus there is substance in the argument of respondent No.1 that order dated 21.5.2008 is

of final nature and therefore the revisional Court was competent to entertain the revision preferred by him. Most important aspect of the case is that the petitioner has no relation whatsoever with the minor child and that he was simply in her custody for a short period. It appears that the petitioner wanted to take advantage of the situation and to make her dream for grabbing the custody of the child from respondent No.1 true, she filed an application under Section 97 of the Code of Criminal Procedure for his production in the Court. Since the child is living with Respondent No.1 (natural guardian) and his wife, this Court fails to understand as to under which provision of law, he is required to be produced in the Court that too at the instance of a stranger. Furthermore, the main proceeding itself has been closed by the SDM, that child by now has become more than 16 years of age and being so, at this stage passing any order against his interest would not be in consonance with the provisions of law. While dealing with the identical issue in the matter of Ramesh v. Laxmi Bai (Smt.) reported in (1998) 9 SCC 266, it has been expounded by the Apex Court in unequivocal terms that *prima facie* Section 97 of the Code of Criminal Procedure is not attracted to the facts of the case when the child is living with his own father and being so the application filed by the petitioner before the SDM under Section 97 of the Code of Criminal Procedure itself was not maintainable.

8. In view of the aforesaid factual and legal position, this Court does not find any illegality in the order impugned warranting interference in a petition filed under Article 227 of the Constitution of India and accordingly the same is dismissed.

Sd/-

(Pritinker Diwaker)
Judge