

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 150 of 2015

- Shrawan Kumar Bandhekar S/o Sukhram Bandhekar, 29 Years, R/o Pandatarai P.S. Pandatarai District Kabirdham Chhattisgarh

---- Petitioner

Versus

1. Smt. Limis Bandhekar W/o Shrawan Kumar Bandhekar Aged About 23 Years R/o Bairagpara Ward No. 12, Pandariya, P.S. & Tahsil Pandariya, District Kabirdham Chhattisgarh
2. The Sub Divisional Magistrate, Pandariya, District-Kabirdham (C.G.)

---- Respondents

For Petitioner

Shri Harshal Chouhan, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board By

30/11/2015

1. The petitioner, who is the biological father of his daughter namely Ku. Leena Bandhekar, aged about 3 years, has preferred this writ petition to assail the order passed by the 1st Additional Session Judge, Kabirdham on 18.06.2015 (Annexure-P-3) dismissing his revision application, which in turn was preferred against the order passed by the Sub Divisional Magistrate (for short 'SDM'), Pandariya on 03.09.2014 (Annexure-P-2) directing the petitioner to produce his daughter before him.
2. It is argued that there being no dispute that the petitioner is the biological father of the girl child, the jurisdiction under Section 97

Cr.P.C. could not have been exercised by the SDM, Pandariya to direct production of the girl child. Learned counsel would place reliance on the order passed by this Court on 24.03.2015 in **WPC No.2068/2014 (Sonam Devi v. State of Chhattisgarh and others)**.

3. In this writ petition, notices were issued to the opposite parties. The respondent No.1, the mother of the girl child, who has moved the application under Section 97 Cr.P.C. before the SDM, Pandariya, has not entered appearance despite service of notice.

4. In the matter of **Sonam Devi** (supra), this Court has held thus in paragraphs 7, 8 & 9:-

“7. In considered opinion of this Court, in the name of welfare of the child, the Magistrate cannot be permitted to usurp the jurisdiction in the manner so as to permit him to handover custody of minor to one of the contesting claimants. It is more so when decision on such issue can be raised in the manner provided under the Hindu Adoptions and Maintenance Act or the Guardian and Wards Act for which procedure has been laid down under the Family Courts Act. If the Magistrate is permitted to exercise such power, the relevant provision of law would be rendered nugatory.

8. In **Ramesh Vs. Laxmi Bai (Smt)**¹, the following has been held:-

“4. From a perusal of the impugned order of the High Court, it appears to us that though the points which should weigh with a court while determining the question of grant of custody of a minor child have been correctly detailed, the opinion of the High Court that the revisional court could have passed an order of custody in a petition seeking search warrants under Section 97 CrPC in the established facts of the case is untenable. Section 97 CrPC prima facie is not attracted to the facts and circumstances of the case when the child was living with his own father. Under the circumstances, we are of the opinion that the orders of the High Court dated 17-7-1996 and that of the learned Additional Sessions Judge dated 9-7-1996 cannot be sustained and we accordingly set aside the orders and the directions given therein.”

(Emphasis supplied)

9. In **Jaishree Tiwari Vs. State of Rajasthan & Another** {Criminal Misc. Petition No.1377/2012, decided on 23.7.2012}, the Rajasthan High Court has also taken similar view.”

¹ (1998) 9 SCC 266

5. Thus, law is well settled that the provisions contained in Section 97 Cr.P.C. is not attracted when the child is living with his own father and his custody with one of the parents does not amount to an offence.
6. In view of the aforesaid, the proceedings pending before the SDM, Pandariya along with the order dated 03.09.2014 is quashed, however, this order shall not come in the way of the respondent No.1 to claim custody of the child, in accordance with law.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA

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