

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 362 of 2015

Aashish Pandey S/o Shri J.P. Pandey Aged About 32 years Occupation- Librarian, Jindal School Raigarh, R/o Chakradhar Nagar, Raigarh, Post, P.S., Tahsil & District- Raigarh- (Chhattisgarh)

---- Petitioner

Versus

1. Minor Asmee Pandey D/o Ashish Pandey Aged About 1½ Years Through: Grand Mother Shakuntala W/o Chandrashekar Tripathi, Caste- Brahmin, Present R/o Ambikapur Road Pattalgaon Tahsil- Pattalgaon, District - Jashpur- (Chhattisgarh)
2. Shakuntala Tripathi W/o Chandrashekar Tripathi Aged About 48 Years Caste- Brahmin, Present R/o Ambikapur Road Pattalgaon Tahsil- Pattalgaon, District - Jashpur- (Chhattisgarh)
3. Chandrashekar Tripathi S/o Dharamdev Tripathi Aged About 52 Years Caste- Brahmin, Present R/o Ambikapur Road Pattalgaon Tahsil- Pattalgaon, District - Jashpur- (Chhattisgarh)
4. State Of Chhattisgarh Through : Collector Jashpur Nagar, Distt.- Jashpur- (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri V.K.Pandey, Advocate
For Respondents 1 to 3	:	Shri Varun Sharma and Shri Sanjay Agrawal, Advocates
For Respondent / State	:	Shri Vinod Tekam, Panel Lawyer

Order On Board

10/07/2015

With the consent of the parties, the matter is heard finally.

1. This petition is directed against order dated 11/03/15 passed by the Additional District Judge, Kunkuri, Distt.-Jashpur, CG by which the learned Court below has granted interim custody of respondent No.1 (minor Asmee) to respondents 2 and 3.
2. Learned counsel for the petitioner argued that the petitioner is the father of respondent No.1 and therefore, he is entitled to interim custody of her daughter- Minor Asmee Pandey. He submits that in the absence of there being any allegation to prima facie disclose any disqualification on his part to be the guardian of his own daughter,

the applicant is entitled to interim custody during the pendency of the case.

3. Learned counsel for the petitioner submitted that respondents 2 and 3 are maternal grand parents of minor Asmee. The mother of minor Asmee died while she was in job at Patthalgaon and living with her parents there. At that time, minor Asmee was with her mother. However, after the death of her mother, it is the applicant who is the natural guardian and is entitled to custody including interim custody and has a preferential claim as against anyone in the family. It is also submitted that the Court below acted in hot-haste. It is submitted that without collecting necessary information from the applicant with regard to availability of female members in applicant's family and only swayed by the fact that the applicant moved an application under Section 97 of CrPC, though it was not maintainable, the order of custody has been passed.

4. On the other hand, learned counsel for respondents 2 and 3 submit that even before her death, the mother of minor Asmee was residing with them as she was posted at Pathhalgaon and therefore residing with respondents 2 and 3. After death of Sweety Tripathi, the mother of minor Asmee, it is respondents 2 and 3 who are entitled to interim custody of the child as the child was with them and regularly taken care-of. It is further submitted that they are maternal grand parents and no harm would be caused if the child remains in the custody of the maternal grand parents. It is submitted that in the house of the applicant, it is alleged that there are no female members to take care of Asmee who is only 1½ year old child. Therefore, the welfare of the child rests in her custody with maternal grand parents only.

5. It is not in dispute that the applicant is the father of minor Asmee. Prima facie, the material on record reveals that the applicant's wife-Sweety Tripathi was in job and residing at Patthalgaon with her parents i.e. respondent 2 and 3. She died with minor Asmee in her lap. The minor is stated to be aged about 1½ years only. Unfortunately, dispute has arisen between the father and maternal grand parents with regard to the custody of minor Asmee.

6. The Court below, while granting interim custody of the minor to respondents 2 and 3 has not considered relevant aspects, availability of female members in the family of the applicant but swayed by the sole fact that the applicant had moved an application under Section 97 of CrPC before the Magistrate and the child may be removed from the custody of respondents 2 and 3.

7. In the considered opinion of this Court, the reasons which have been assigned by the Court below to grant interim custody of minor in favour of respondents 2 and 3

are not proper. Merely because the father has moved an application under Section 97 of CrPC, it cannot be said that he has any disqualification or disability to keep the child in his custody during the pendency of the dispute. Respondents 2 and 3 are old aged grand parents. The applicant being the father of the child, is the natural guardian and as compared to anyone, he has the highest preference to get the custody of his own child.

8. After all, the father is entitled to custody of his own child and unless prima facie material is shown which disqualify him or renders him unsuitable for any reason like poverty, bad habits or criminal antecedents or lack of means to provide proper custody and atmosphere for growth of minor, his claim cannot be lightly brushed aside. The Court below has granted interim custody to the grand parents ignoring the preference of the father. During the course of arguments, it is submitted that in the house of the applicant, there are female members. I, however, find that the order has been passed by the Court below awarding interim custody without there being complete pleadings on record. The order shows that the petitioner has been granted time to file detailed reply.

9. In sum and substance, paramount considerations in the matter of award of custody is the welfare of minor which prevails upon all other considerations.

10. In view of above considerations, the impugned order cannot be sustained and is set aside. The applicant shall file his reply before the Court below before 15th of August, 2015, if not already filed. Complete details regarding members in the family of the applicant shall also be given. The Court below shall now consider the issue of grant of interim custody after taking into consideration all relevant aspects in the light of the observations made by this Court and then pass appropriate order of interim custody. It is directed that the order with regard to interim custody by the Court below shall be passed within a period of 45 days from the date of receipt of copy of this order and both the parties shall co-operate. None of the parties shall be granted unnecessary adjournments.

11. The petition is accordingly allowed.

Manindra Mohan Shrivastava
Judge