

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.2023 of 2014

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ORDER:

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Aggrieved by the order dated 27.08.2014 passed in CrI.A.No.455 of 2013 on the file of the V Additional Metropolitan Sessions Judge (Mahila Court), Hyderabad, the present revision is filed under Sections 397 and 401 Cr.P.C. wherein and whereunder the petitioner was directed to hand over the custody of the children to the second respondent herein.

The facts in issue are as under:

The petitioner is the husband of the second respondent herein and they were blessed with two children. Due to disputes between them, the petitioner and second respondent started living separately along with their children. On 24.08.2012, parents of the petitioner came to their house and demanded Rs.2.00 lakhs towards additional dowry. As the second respondent refused to comply their illegal demand, the petitioner is alleged to have beat her, consequent to which she became unconscious. The second respondent was shifted to Asra Hospital for treatment and taking advantage of her hospitalisation, the petitioner and his family members are alleged to have shifted the children from their house and confined them in a secret place. As such, the second respondent herein filed D.V.C.No.409 of 2012 against the petitioner and four others, claiming various reliefs under the Protection of women from Domestic Violence Act (for short "the Act"). Along with the D.V.C. the second respondent also filed CrI.M.P.No.1575 of 2012 under Section 21 read with Section 23 of the Act, seeking interim custody of her minor children namely Baby Ayesha Siddiqua @ Noorein Fatima and Master Syed Abdul Aziz. After hearing both sides, the learned Magistrate dismissed the same. Aggrieved by the same, the second respondent herein filed Criminal Appeal No.455 of 2013 before the V Additional

Metropolitan Sessions Judge (Mahila Court), Hyderabad. By an order, dated 27.08.2014, the learned Sessions Judge allowed the said appeal setting aside the order passed by the trial Court and allowed Crl.M.P.No.1575 of 2012 directing the petitioner and his family members to hand over the custody of the children to the second respondent herein pending disposal of the main D.V.C. within a period of one month. Challenging the same, the petitioner husband filed the present revision.

Heard learned counsel for the petitioner and learned counsel for the second respondent.

Learned counsel for the petitioner submits that the second respondent is suffering with mental disorder, as such she is not entitled for interim custody of the children. In support of his submission, he relied upon the medical certificates issued by Olive Hospital, Hyderabad, certificate issued by Premier Hospital, Mehdiapatnam and also the certificate issued by Owaisi Hospital and Research Centre, Hyderabad.

Learned counsel for the second respondent submits that the certificates filed by the petitioner are created for the purpose of this case and all the certificates are out-patient chits. He also submits that as per the out patient receipt dated 24.02.2015 issued by Owaisi Hospital and Research Centre, Hyderabad and OPD Assessment form dated 04.03.2015 issued by Olive Hospital, Hyderabad, the petitioner took treatment as an out-patient. He further submits that the second respondent has completed B.Ed. and working as teacher in Green Meadows Park School, Bahadurpura, Hyderabad and she also got award as a Best Teacher and that there is no truth in the allegations made. It is stated that recently she also completed her M.A. in English. The counsel for the second respondent placed on record out-patient chits issued by OWAISI Hospital stating that the petitioner is not in his normal senses. He further submits that on the date of obtaining these fake documents the petitioner was impersonated and even if the documents are genuine they do not relate to the petitioner.

At the time of arguments, both the counsels by placing reliance on

the documents blamed each other.

After hearing the rival contentions on 23.02.2015, a report was called from the Inspector of Police, Lungar House, Mehdiapatnam and Charminar Police Stations, with regard to the genuinity and authenticity of the documents. The learned Public Prosecutor after receiving one report read out the same, wherein it was mentioned that the documents are genuine but the said report only relates to medication given towards head ache.

Normally custody of the child if they are below the age of 10 years more particularly girls shall be given to the mother. The trial Court awarded the custody of the child to the father, which was set aside by the lower appellate Court.

As stated earlier, each party denied the genuinity and authenticity of the documents produced. It was contended by both the counsel that it would be proper if the trial Court is directed to deal with the matter afresh after obtaining report about the genuinity of the documents and also with regard to the health condition of both the parties. Under those circumstances, I deem it appropriate to set aside the order under challenge and direct the trial Court before whom the D.V.C. is pending to enquire into the genuinity and authenticity of the documents filed by both the parties and if need be get both the parties examined at their cost by a Government doctor specialized in the said field. It is made clear that none of the party should be allowed to be kept as in-patient in any of the hospital. After obtaining a *prima facie* opinion, the Court shall decide the issue afresh as to the custody of the child.

The counsel for the second respondent submits that the whereabouts of the children are not known and the mother is quite apprehensive about the same, if need be the Court shall direct the petitioner herein to produce the children before the Court as and when required for an effective adjudication. The entire exercise of calling for

the report, examination of both the parties should be done within a period of 30 days from the date of receipt of a copy of this order. Till then the custody of the children will be with the petitioner. It is needless to mention that the trial Court shall take all steps for disposal of the D.V.C. as early as possible, preferably within a period of three months from the date of receipt of a copy of the order.

For the aforesaid reasons, the Criminal Revision Case is disposed of.

Miscellaneous petitions, if any, shall stands closed.

JUSTICE C. PRAVEEN KUMAR

02.03.2015

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