

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 40 of 2016**

1. Jagdish Prasad Dwivedi S/o Late Baldev Prasad Dwivedi Aged About 79 Years
2. Smt. Indira Dwivedi (Sharma) D/o Shri Jagdish Prasad Dwivedi, Aged About 50 Years
3. Shishir Dwivedi S/o Jagdish Prasad Dwivedi, Aged About 33 Years
4. Ku. Shambhavi Dwivedi D/o Late Santosh Dwivedi Aged About 6 Years Minor Represented Through Guardian Grandfather Jagdish Prasad Dwivedi S/o Late Baldev Prasad Dwivedi,

All are R/o Gali No. 2, Jabda Para, Naya Sarkanda, Below Purana Pul, Bilaspur (Chhattisgarh)

---- **Petitioners**

Versus

1. State Of Chhattisgarh Through Collector, Korba (Chhattisgarh)
2. Smt. Jyoti Chaturvedi W/o Shri Rajeev Chaturvedi Aged About 31 Years C/o Santosh Kumar Tiwari R/o N.E.- 51, Pathariya Para, Near C.S.E.B. Colony, Korba, District Korba (Chhattisgarh)
3. Sub Divisional Magistrate, Korba District Korba (Chhattisgarh)
4. Additional Superintendent Of Police Incharge Special Juvenile Police Unit, Bilaspur (Chhattisgarh)
5. Rajeev Chaturvedi S/o R.N. Choubey, Aged About 50 Years R/o SH-9/ 86, K-10, Ma Bhawani Nagar, Colony, Shivpur, Sudhipur, Varanasi (Uttar Pradesh)

---- **Respondents**

For Petitioners	:	Mr. Sunil Otwani & Mr. Anant Bajpai, Advocate
For Res. No.1, 3 & 4	:	Mr. Adi Raj Surana, Dy.G.A., on advance copy

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

22/02/2016

1. The present writ petition has been filed by the petitioners against the order dated 5.2.2016 (Annexure P/1) passed by the Sub Divisional Magistrate, Korba in Criminal Case No.2/2016.

2. It is stated at the Bar that earlier, the Sub Divisional Magistrate, Korba has rejected the application filed by respondent No.2 being Criminal Case No.24/2015 on 8.1.2016 and against which, Criminal Revision No.4/2016 is pending consideration before the Sessions Judge, Korba.
3. Learned counsel for the petitioners would submit that the Sub Divisional Magistrate, Korba overlooking and ignoring the earlier order dated 8.1.2016 has passed this impugned order and even custody of the child has been directed to be handed over to respondent No.2, therefore, order is unsustainable and bad in law.
4. Be that as it may, since the revision preferred by respondent No.2 is pending consideration before the Sessions Judge, Korba, it would be expedient to the petitioners to relegate to remedy of revision before the Court of Sessions, Korba under Section 397 CrPC.
5. If petitioners prefer revision before the Court of Sessions within seven days from today, the Court of Sessions will do well and decide the revision preferred by the petitioners as well as the revision preferred by respondent No.2 simultaneously after hearing both the parties.
6. In view of facts & circumstances and submission of the learned counsel for the parties that child is still in custody of petitioner No.1, effect and operation of the order dated 5.2.2016 (Annexure P/1) passed by the Sub Divisional Magistrate, Korba in Criminal Case No.2/2016 shall remain stayed for a period of three weeks from today or till the application for stay is taken up for hearing and decided by the Court of Sessions. It is made clear that revision and stay application, if preferred by the peti-

tioners, will be decided by the Court of Sessions, Korba on its own merit without being influenced by order of this Court.

7. With the aforesaid observation, the writ petition stands finally disposed of. No order as cost(s).

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-