

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 9 OF 2016

JAGDISH V. CHOPDEKAR.

... Petitioner

Versus

MRS.INDIRA VINAYAK NAIK.

... Respondent

Mr. Joaquim Godinho, Advocate for the petitioner.

Mr. R. Menezes, Advocate for the respondent.

Coram:- C. V. BHADANG, J.

Date:- 26th April, 2016

P.C.

By this petition, the petitioner, who is the father of two minor daughters, aged 5 years and 7 years, is challenging the judgment and order dated 29/07/2015 passed by the learned Additional Sessions Judge at Mapusa in Criminal Appeal No.65/2014, by which the order dated 15/05/2014 passed by Child Welfare Committee, North Goa (CWC) has been confirmed. The CWC has refused to hand over the custody of the minor daughters Vaidehi and Utkarsha to the petitioner.

2. The brief facts are that the petitioner is facing prosecution for having committed offence punishable under Sections 302, 304-B, 498-A read with Section 34 of I.P.C., for causing the death of his wife, who is the mother of the minor daughters. On 29/10/2011, the minor children were admitted to Apna Ghar at Mercedes for care and

protection by the Bicholim Police. On 01/11/2011, both the minor children were released and were placed in the custody of the respondent, who is the mother-in-law of the petitioner and the grandmother of the children. Subsequently, on 25/01/2013, the petitioner filed an application before the CWC seeking custody of the children. The CWC obtained Social Enquiry Report (SIR) of the petitioner as well as of the respondent from the Probationary Officer and after considering the same, has found that the custody cannot be released in favour of the petitioner, inter alia, on the ground that the matter does not fall within the purview of CWC.

3. The only contention raised on behalf of the petitioner is that the report of the Probationary Officer was obtained behind his back and a copy of the same was not furnished to him, which has caused prejudice.

4. It is submitted by the learned counsel for the respondent that once the custody of the minor children was entrusted to the respondent by the CWC, the CWC became functus officio in as much as, the CWC can exercise jurisdiction only in respect of children, who are in need of care and protection. The submission is that once the custody was handed over to the respondent, the minors ceased to be children in need of care and protection. Perhaps, this found favour with the CWC as the CWC has, inter alia, held that the matter does not fall within the purview of CWC.

5. The ground about non-furnishing of the report of the Probationary Officer was raised before the learned Additional Sessions Judge. The learned Additional Sessions Judge in paragraph 11 of the judgment has found that while deciding the custody of the child, the Court is not bound by "mere legal right of the parent or guardian and in such case, due weightage has to be given to the circumstances such as child's ordinary comfort, contentment, intellectual, moral and physical development, health, education and general maintenance and also favourable surroundings". The learned Sessions Judge has also considered the report of the Probationary Officer in paragraph 12 of the judgment and has found that the CWC has rightly rejected the application of the petitioner.

6. It is undisputed that the petitioner is facing prosecution for having committed the murder of his wife and since 01/11/2011, the children are in the custody of the respondent. It is not the case made out by the petitioner that at present there are any female members in the house of the petitioner to look after the minor daughters. The CWC as well as the learned District Judge, on consideration of the report of the Probationary Officer, have found that it is in the paramount interest of the children that the custody remains with the respondent. Considering the fact that the individual rights of the parents/ guardian would be subservient to the paramount consideration of the welfare of the Children in such case and further

having regard to the limited jurisdiction exercised by CWC in respect of the children, who are in need of care and protection, I do not find that mere non-furnishing of the report of the Probationary Officer would be decisive in the matter.

7. The learned Counsel for the petitioner points out that the report of the Probationary Officer may come in his way in his service career/ record. It is evident that the report of the Probationary Officer was called and was considered for the limited aspect of considering whether the petitioner is entitled to custody of the children and the consideration will have to be restricted to that. With this, no case for interference is made out.

8. In the result, Criminal Writ Petition is hereby dismissed.

C. V. BHADANG, J.

SMA