

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.2017 OF 2016

ORDER:

The present Criminal Revision Case is filed by the petitioner/ appellant under Sections 397 and 401 of the Criminal Procedure Code, 1973, aggrieved by the judgment dated 06.06.2016 passed in Criminal Appeal No.368 of 2015 on the file of the II Additional District and Sessions Judge, Madanapalle, Chittoor District, wherein the Order dated 09.10.2015 passed in CrI.M.P.No.1043 of 2015 in D.V.C.No.24 of 2015 by the I Additional Junior Civil Judge, Madanapalle, granting custody of a child, who is aged about two years, to the mother was set aside and instead custody of the child was given to the 2nd respondent herein i.e., father.

2. As seen from the record, the petitioner herein filed D.V.C.No.24 of 2015 before the Court of I Additional Junior Civil Judge, Madanapalle, Chittoor District, seeking various reliefs. Pending the said D.V.C., she filed CrI.M.P.No.1043 of 2015 for interim custody of the child, which was allowed. Challenging the said order, the husband preferred Criminal Appeal No.368 of 2015 and the said appeal was allowed by the II Additional District and Sessions Judge, Madanapalle, holding as under:

“09. Though natural mother is the guardian of the child, but in the instant case, the past conduct of the first respondent and her responsibility, attitude, concern and affection towards little kid of 11 months shows that without any mercy to the milk sucking child, she left the child to his

fate with her husband i.e., first appellant, and eloped with her paramour to satisfy her lust, which is normally not the attitude of a mother expect to do such shameful act. Added to that, as per the record and contention of the learned counsel for the appellants, the first respondent is leading adulterous life with her paramour. If the child is given to the custody of first respondent and her paramour, they may do harm to the life of child goes to the root of the case. The learned I Additional Junior Civil Judge, Madanapalle without considering the above fact, past conduct of the first respondent and without understanding the circumstances and properly hearing both sides, simply passed a docket order to give custody of the child to the first respondent.”

3. Learned counsel for the petitioner mainly submits that in respect of a girl being aged about two years, mother would be natural guardian and as such, granting custody of the child to the father is totally erroneous and contrary to the law.

4. The same is opposed by the learned counsel for the respondents contending that earlier the petitioner filed O.P.No.141 of 2014, in which she filed I.A.No.21 of 2015 for interim custody of the child, but the said application was dismissed as not-pressed. In view of the above, he submits that granting interim custody of the child to the mother would not arise. He further pleads that a direction may be given for disposal of the main DVC itself and till such time interim custody of the child may be retained with the father.

5. As seen from the record, the petitioner filed O.P.No.141 of 2014 seeking interim custody of the child and since the main

Original Petition was dismissed as not-pressed, Interlocutory Applications filed for interim custody were also dismissed as not-pressed. But, that by itself may not be a circumstance to say that the petitioner, who is mother of the child, is not entitled for custody, of a child, who is aged about two years.

6. A perusal of the order under challenge would show that the learned Sessions Judge while holding that the mother is a natural guardian of the child, rejected the request on the ground that the mother was leading an adulterous life with her paramour and if the child is given to her custody, they may do harm to the life of the child.

7. But, the impugned order came to be passed without there being any material on record to show that the petitioner herein was leading an adulterous life. On the other hand, learned counsel for the petitioner placed on record the affidavits of the parents of the petitioner to show that the petitioner is living with her parents. In view of the above, the order under challenge needs to set aside. At this stage, learned counsel for the respondents submits that there is a CD showing conversation between DSP and the husband, which would disclose that the wife left his company in the year 2014 itself. But, for the reasons best known, there is no reference to the CD and the conversation therein in the impugned order.

9. Having regard to the above, the Criminal Revision Case is allowed setting aside the order under challenge and remanding the

matter to the appellate Court to consider afresh as to who is entitled for custody of the child basing on the material available after giving an opportunity to both the parties. It is needless to mention that the said appeal, which is now being remanded, shall be heard and decided within a period of two (02) or three (03) weeks from the date of receipt of a copy of this order. Till such time, *status quo* with regard to custody of the child shall be maintained.

JUSTICE C. PRAVEEN KUMAR

Date:19.09.2016
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