

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M No. 686 of 2017(O&M)

Date of decision: 13.1.2017

Gurdeep

....Petitioner

VERSUS

Rinku

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Naveen Singh Panwar, Advocate for the petitioner.

REKHA MITTAL, J.

The present petition filed under Section 482 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') directs challenge against orders dated 01.02.2016 (Annexure P-1) passed by Judicial Magistrate Ist Class, Charkhi Dadri and dated 02.12.2016 (Annexure P-2) passed by the Additional Sessions Judge (Exclusive Court Bhiwani) whereby interim custody of Khushi (minor), daughter of the parties, has been allowed in favour of the respondent-mother under Section 21 of the Protection of Women from Domestic Violence Act, 2005 (in short 'the Act').

The sole submission made by counsel for the petitioner is that as the petitioner left the matrimonial home in December 2014 when the child was barely 2½ months old, without bothering about welfare of the child, she is not entitled to interim custody of the child. In addition, it is submitted that as the child had not seen the mother since her age of 2 ½ months, she may not be even recognizing the respondent to be her mother.

I have heard counsel for the petitioner, perused the paper-book particularly the orders impugned.

The respondent filed a petition under Section 12 of the Act and invoked the provisions of Section 21 for grant of interim custody of minor-Khushi aged about 17 months at that time. Taking into consideration age of the minor, it can be safely held that the child needs warmth of lap and care of the mother at this tender age and mother would be the best person to bring her up. No such plea has been raised by the petitioner that in case custody of the child is handed over to the mother, it would act prejudicial to interest of the child when otherwise custody of a child less than 5 years of age is deemed to be with the mother. In this context, reference can be made to judgment of this Court **Smt. Sarabjit vs. Piara Lal, 2005(3) RCR (Civil) 213.**

For the foregoing reasons, the petition fails and is accordingly dismissed in *limine*. However, nothing stated in this order shall cause prejudice to either of the parties in the proceedings pending before the trial Court.

JANUARY 13, 2017

‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no