

240

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

CWP-26268-2015

Date of decision : 17.02.2017

Tejinderpal Singh

... Petitioner

Versus

Sub-Divisional Magistrate, Fatehgarh Sahib and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.P.S. Chakkal, Advocate and
Mr. S.S. Sarwara, Advocate
for the petitioner.

Ms. Monica Chhibber Sharma, DAG, Punjab.

Mr. Gopal Sharma, Advocate
for respondent No.3.

AMIT RAWAL, J. (ORAL)

Reply on behalf of respondent No.1 has been filed in Court today and the same is taken on record.

The petitioner, namely, Tejinderpal Singh, is aggrieved of the impugned order dated 02.12.2015 (Annexure P-6), whereby an application of respondent No.3 for providing the custody of Gurnivaz Singh to be given to her, has been entertained by the Sub-Divisional Magistrate, Fatehgarh Sahib and as per the impugned order, the Deputy Superintendent of Police has been given a direction to get the custody.

Mr. S.P.S. Chakkal and Mr. S.S. Sarwara, learned counsel appearing on behalf of the petitioner submits that once, there is a specific provision under the Hindu

Minority and Guardianship Act, 1956 (for short '1956 Act') for taking the custody of the child, the Sub-Divisional Magistrate did not have the jurisdiction to entertain and try the application.

He further submits that in pursuance to the aforementioned order, the custody of the child has been taken.

Mr. Gopal Sharma, learned counsel appearing on behalf of respondent No.3 submits that the child is 5 years' old and no harm would be caused, in case the order is allowed to be sustained, but does not deny the factum of not availing the remedy under the aforementioned provisions of the Act.

I have heard the learned counsel for the parties and appraised the paper book.

For the sake of brevity, order dated 02.12.2015 reads thus:-

"Office Sub-Divisional Magistrate, Fatehgarh Sahib

To

Deputy Superintendent of Police,

Fatehgarh Sahib.

Number: 1686 / F.K.2 dated 02.12.2015.

Subject:- Application regarding custody of Gurnivz Singh to be given to his mother Mandeep Kaur wife of Tajinderpal Singh son of Late Harminster Singh Village Goslan, Police Station Bhagwantpur, District Ropar (now residing at Village Boran Tehsil and District Fatehgarh Sahib).

In regard to above mentioned subject the enquiry of the application got conducted by Child Protection Officer, Fatehgarh Sahib and according to their report the father of the child was disowned by his parents and the father of the child is drunkard also. Therefore, it will be legally correct to give custody of the child to his mother Mandeep Kaur keeping

in view the future of the child. Photocopy is annexed along with. According to report of L.C.P.O. in accordance with Section 6(a) of Hindu Minority and Guardianship Act 1956, it is mandatory for a child till 5 years of age should be in custody of the mother. Therefore, custody of the child can legally be given to his mother. Photocopy is annexed along with.

Therefore, keeping in view the above facts, the custody of the child Gurnivz be given to Mandeep Kaur wife of Tajinderpal Singh son of Late Harminder Singh Village Goslan, Police Station Bhagwantpur, District Ropar (now residing at Village Boran Tehsil and District Fatehgarh Sahib) and after giving custody this office be informed.

Annexed:

SHO PS Badali Ala Singh be taken action

According to said rules and sent report within 5 day

Sd/-

Sub Divisional Magistrate

Fatehgarh Sahib

3240/5A/DSP/PW

2.12.15

ASI Avtar Singh will give

report after following orders"

It is very strange that the Officers at the helm of affairs like Sub-Divisional Magistrates, entertained the application by exceeding the jurisdiction in view of the statutory provisions of law. The legislature in the wisdom has framed the certain laws for bringing the rights to the parties. Such rights cannot be deviated in the manner and mode as indicated above.

I deem it appropriate to issue a direction to the Chief Secretaries, Punjab and Haryana to communicate all the Magistrates not to entertain any such type of application in view of the statutory provisions of law.

Resultantly, the impugned order, under challenge, is not sustainable and the same is hereby set aside. The respondent(s) shall be at liberty to take the remedy in accordance with law, but not in the manner and mode, as indicated above.

Since the custody has been taken in pursuance to the aforementioned order, the petitioner shall also be at liberty to take remedy in accordance with law.

Copy of this order be given to Mr. Sandeep Singh Mann, Sr. DAG, Haryana and Ms. Monica Chhibber Sharma, DAG, Punjab for compliance of this order.

Disposed of, accordingly.

17.02.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No