

FAO-4142-2016

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

FAO-4142-2016

Date of Decision: 11th December, 2017

Manjeet Kumar

...Appellant

Versus

Suman

...Respondent

**CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH**

Present: Mr. N.S. Kamboj, Advocate
for the appellant.

Mr.Sandeep Singh, Advocate
for the respondent.

AUGUSTINE GEORGE MASIH, J.

Challenged in this appeal is made by appellant-Manjit Kumar, father of minor child Mayank, to the order dated 31.03.2016 passed by the Additional Civil Judge (Senior Division), Sirsa, exercising the powers of the District Judge, in a petition preferred by respondent-mother Suman under Section 6 of Hindu Minority and Guardianship Act read with Section 25 of the Guardian and Wards Act, 1890, holding her to be entitled for the custody of minor child and granting visitation rights to the appellant-father to meet the minor child every week ordinarily at a religious place or other agreed place.

Briefly, the facts are that the marriage between appellant-Manjit Kumar and respondent-Suman was solemnized on 22.06.1998 at Sirsa according to Hindu rites and ceremonies. Two male children, namely, Akash and Mayank were born. Akash, the elder son, had been residing with his grand-parents at Rohtak after the birth of younger son Mayank. Since there was not much understanding between the respondent and her in-laws, the appellant alongwith respondent and minor son Mayank shifted to a rented accommodation. As per the allegations of the appellant, because of the quarrelsome attitude of the respondent, she had been, on and off, going to paternal house. On 07.05.2011, respondent hurled filthy abuses and also taunted him that he is less educated and that he would be involved in a false case. It is asserted that on 10.07.2011, with an intention to kill the appellant, the respondent mixed poison in the milk of the appellant, which was seen by their minor son Mayank, who informed the appellant, thus, saved his life. Allegations have also been made that the respondent had illicit relations with different persons other than her wedlock, to which, he raised objections but to no effect. Because of unethical and immoral act of the respondent, which became unbearable, the appellant called her parents on 06.06.2012 to sort out the matter but they threatened the appellant with dire consequences and advised him to tolerate and accept their daughter. They had come there with an intention to kill him alongwith pistols and robbed him of his documents and ₹ 2,00,000/-, for which, a complaint was submitted to the police but no FIR was registered.

In the petition, which had been filed by the respondent, who is mother of minor Mayank, it has been asserted that the appellant-father had expelled her from the house. She alongwith minor son Mayank moved to her matrimonial home at Sirsa. On 12.06.2012, minor Mayank was snatched from the respondent near Delhi Bridge at Sirsa and thereafter, the minor son was not allowed to meet the respondent. The appellant is a drunkard and addicted to alcohol apart from indulging in bad habits like bringing young girls in the house alongwith his friends and that too in the presence of the minor. Since the younger son Mayank, who is minor, lives in the company of the appellant, he would gradually adopt all theses habits and his career would be spoiled. Respondent is an educated lady and can provide better environment and exposure to minor son and his future would be safe in her hands.

On the basis of the pleadings, issues were framed. Respondent examined herself as PW-1 and closed her evidence on 24.02.2016, whereas, the appellant failed to lead any evidence in support of his contentions leading to the closure of his evidence on 30.03.2016. On the basis of the pleadings, the trial Court proceeded to hand over the custody of minor Mayank to the respondent-wife, however, appellant-husband was granted visitation rights to meet the minor once a week at a religious place or other agreed place.

We have heard the counsel for the parties and with their assistance have gone through the records of the case.

Although serious allegations have been made against the respondent by the appellant in his reply to the petition preferred by her but since, he had not appeared rather no evidence has been led by him before the trial Court and thus, there being no rebuttal to the evidence which has been led by respondent-Suman, who had appeared herself as PW-1 and reiterated the assertions made in the petition, the trial Court has rightly proceeded on the assumption that they are to be treated as correct. Even from the cross-examination of the respondent, nothing has come out therefrom.

The facts as have been admitted are that the marriage between the appellant and the respondent took place on 22.06.1998 at Sirsa. Akash was born first and therefore, is the elder son. Thereafter, minor Mayank was born on 02.05.2001. The elder son Akash had been residing with his grand-parents, which is not disputed, whereas, minor Mayank was residing with the appellant and the respondent, before they separated from each other.

An assertion has been made that minor Mayank was residing with the appellant at Tarawari, District Karnal, at the time of filing of the petition but in the light of the specific pleadings and the statement of the respondent-wife that the minor child was taken away by the appellant-husband from Sirsa on 12.06.2012, the said assertions of the respondent are to be accepted. In the light of the fact that the minor child was taken away and that too forcibly by the appellant from Sirsa, which is the parental town

of the respondent-mother, the Court at Sirsa had jurisdiction to entertain the petition.

The trial Court has rightly taken into consideration the evidence of the respondent-mother that the habits of the appellant relating to his addiction of drinking and indulging in other bad habits such as bringing young girls in the house alongwith his friends in the presence of the minor Mayank, who is of an impressionable age, would have bad impact on his mind and psyche, which has potential of ruining his future. He is likely to adopt bad habits which would be unethical and immoral in the light of the circumstances and surroundings. The appellant would, therefore, be not a good example for the minor. The trial Court is, therefore, not wrong in coming to a conclusion that the custody of minor child Mayank should be granted to the mother i.e. respondent-Suman.

So far as the resources are concerned, it may be reiterated that as the appellant has sufficient source of income, he is liable to maintain the child but that cannot be the sole basis for denying the custody of minor to the respondent-mother. The findings as recorded by the trial Court are fully justified and in accordance with the spirit of the statute.

In view of the above, the present appeal is dismissed being devoid of merit and the judgment and decree passed by the trial Court is affirmed, however, we maintain the right of the appellant to visit minor Mayank once a week at any religious place or other agreed place as has been ordered by the trial Court.

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It is directed that during the execution proceedings, the Executing Court shall take suitable steps for a period of at least six months to see and satisfy itself that the circumstances for amicable compatibility of the child with the mother is established before finally handing over minor Mayank to respondent-Suman.

(M.M.S. BEDI)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

11th December, 2017
Harish

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No