

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

FAO No.3613 of 2017(O&M)
Date of decision: May 24, 2017

Kuldeep Singh

---Appellant

Versus

Anupam Kaur

---Respondent

**Coram: Hon'ble Mr. Justice Ajay Kumar Mittal
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr.Sonpreet Singh Brar, Advocate
for the appellant.

HARINDER SINGH SIDHU, J.

The present appeal has been preferred by the appellant husband against the judgment dated 14.2.2017 passed by the Additional Civil Judge (Sr.Divn.), Mansa, whereby, the petition filed by him under Section 25 of the Hindu Minority and Guardianship Act, 1956 (for short 'the Act') for custody of his minor son has been dismissed.

The marriage of the appellant with the respondent was solemnized on 5.5.2002 at Mansa as per Sikh rites and ceremonies. One son, namely Azam Singh was born out of this union. It was the case of the appellant that his relations with the respondent did not remain cordial as she was of a quarrelsome nature, she taunted in front of his family members and relatives, she pressurised him to leave his parents and started residing at Bathinda and she failed to perform her duties in the household as per Indian culture. In January, 2006, she left the house of the

appellant and took along the minor child Azam Singh illegally and forcibly, without any reasonable excuse. Since then she has filed various cases against the appellant which were pending at the time of the institution of the present proceedings. These included a suit for maintenance against the appellant as an indigent person and an application under Section 125 Cr.P.C. against the appellant at Mansa. The appellant, in turn, had filed an application under Section 9 of the Hindu Marriage Act, 1955 which was also pending at the time of institution of the present petition.

Pleading that he had great love and affection for the minor child and that the respondent was not taking proper care of him and that the future and welfare of the minor lies with the appellant, as he is financially better placed to ensure a bright career for him, besides he has two sisters to take care of the minor, he filed the petition praying that the custody of the minor be handed over to him.

The respondent on the other hand, contended that the appellant was not well qualified, that he was addicted to vices i.e. drinks and other intoxicants, gambling etc. and giving him the custody of the minor would harm the interests of the minor. It was pleaded that the respondent is a highly qualified lady, having done M.A.(Punjabi), M.Ed., PGDCA. Her father is a retired bank manager, having good reputation and status, and sufficient sources of income and he was supporting the respondent. The minor child Azam Singh was enjoying good facilities and amenities of life like a posh house, A.C. and car etc. He was studying in a reputed Police Public School at Mansa, which facility was not available at village Balluana, where the appellant was residing.

Ld. Trial Court noted that the minor child has been staying with his

mother since 17.2.2006 when he was only 2½ years old. The petition was instituted when he was about six years old and at the time of decision he was about 14 years old. As the appellant himself had admitted in his cross-examination that the minor was residing with the respondent voluntarily, it was not proved that the custody of the minor with the respondent was illegal or forcible.

The stand of the appellant that he has great love and affection for the minor child, was held belied by the fact that cross-examination of the appellant revealed that he did not know of any essential details of the minor like the extra curricular activities in which he participated or what he desired to do in life. It was also revealed that the appellant had not visited the school of the minor since 2006, nor had he given him any birthday gift ever since, never bought any clothes for him, never met any school teacher or ever paid school fees of the child. All the expenses of the minor were borne by the respondent.

The minor in his statement dated 24.7.2015, made before the Court, stated that he did not want to leave the respondent. He was not even ready to accept any gift from the appellant. The appellant had failed to substantiate his assertion that the child was being neglected by the respondent.

The Court held that the mere fact that the appellant had landed property and income therefrom and was financially better placed than the respondent, who at present does not have any independent source of income, would not of itself be sufficient to grant custody of the child to the appellant.

Considering that the welfare of the child was of paramount consideration and that required not only financial support but consideration of the emotional and mental aspects as well, the Court noted that the minor child had

been staying in the custody of his mother for the last ten years and being rooted there, there was no reason to uproot him from her, simply for the reason that the appellant was financially better than the respondent. It was also noted that if the minor is uprooted from his mother, he would face mental trauma, which cannot be compensated by any amount of money. Consequently, the petition was dismissed.

We are not persuaded to take a different view from that of the Ld. Court below.

The child has been in the custody of the respondent for over 10 years, during which period, the appellant has never met him, nor taken any interest in supporting him and advancing his welfare. The evidence shows that the child is being properly looked after. He is studying in a good school. The respondent is well-educated and the child has also acknowledged her love and affection towards him. The Trial Court rightly took the view that the welfare of the child lies in the respondent retaining his custody.

Thus, the appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

May 24, 2017

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Whether speaking/ reasoned: Yes

Whether Reportable: Yes