

HON' BLE SRI JUSTICE G. SHYAM PRASAD

CrI.R.C.No. 1017 of 2018

JUDGMENT:-

This Criminal Revision Case arises out of the order dated 22.02.2018 in CrI.M.P.No. 3306 of 2015 in C.C.No. 1138 of 2014 passed by II Additional Chief Metropolitan Magistrate, Hyderabad.

The brief facts of the case are that the revision petitioner is the accused in C.C.No. 1138 of 2014. The 2nd respondent lodged a complaint against the petitioner and the police registered the same as Crime No. 291 of 2014, dated 05.08.2014 for the offence punishable under Sections 448, 363 and 504 IPC.

The case of the prosecution is that the petitioner is alleged to have entered into the house of the 2nd respondent's parents situated at Bank Colony, Asifnagar and forcibly took the child and when she tried to interfere he abused her in filthy language and went away with the child in his car. The petitioner filed O.P.No. 945 of 2014 under Sections 7 to 11 of the Guardian and Wards Act, and the learned Judge, Additional Family Court, Hyderabad, by order dated 13.08.2015, allowed the petition by appointing him as guardian of the minor child – Haashir Ali and giving custody of the child to him and also granted perpetual injunction

restraining the 2nd respondent-complainant from interfering with the petitioner's custody of the minor child.

The learned counsel for the petitioner submits that the petitioner-accused and the 2nd respondent – complainant have entered into an agreement prior to filing of the O.P. wherein Condition No.6 reveals that the 2nd respondent shall retain the minor child by name Master Hasshir Ali with her till the child attains the age of 7 years, thereafter, the 2nd respondent shall handover custody of the child to the petitioner without any objection. By virtue of the order passed by the trial Court in the O.P. the revision petitioner has been given custody of the child.

Now, the contention of the 2nd respondent is that the child was in her custody till the petitioner forcibly took him away by trespassing into her parents' house and abusing her.

The learned counsel for the petitioner submits that by the date of filing O.P. the child was in her custody i.e. on 12.08.2015. Subsequently, the 2nd respondent filed a false complaint against him stating that he forcibly took away the child from her custody.

Now, the Criminal Case is at the stage of framing of charges against the petitioner. The trial Court, on consideration of the material on record, has come to the conclusion that the custody of the child on that particular day

has to be proved by evidence. Unless evidence is let in, it is not possible to decide whether the child was actually in the custody of the 2nd respondent or whether the petitioner trespassed into the house of the 2nd respondent's parents and took away the child forcibly. These are all questions of fact which have to be gone into at the time of trial, therefore, the petitioner cannot seek for discharge at the intermediate stage of the case.

Having regard to the facts and circumstances of the case, the petitioner is given liberty to raise all his pleas with regard to custody of the child ordered by the trial Court and the alleged incident by adducing his evidence before the trial Court.

With the above observation, the Revision Case is disposed of.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

G. SHYAM PRASAD, J

29.10.2018

bcj