

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

COCP No. 3816 of 2018

Date of Decision: 18.12.2018

Sangeeta Devi

.....Petitioner

versus

Bhateri Devi and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Lajpat Sharma, Advocate,
for the petitioner.

Mr. Pawan Jhanda, A.A.G., Haryana.

Mr. Rajesh Khandewal, Advocate,
for respondents no. 1 and 2.

AMOL RATTAN SINGH, J. (ORAL)

This petition has been filed by the petitioner in Civil Revision no.6879 of 2017, with her alleging, in the present petition, that the order passed by this Court on November 13, 2018 (in the revision), has been intentionally and deliberately disobeyed by the respondents herein.

The first two respondents herein are the 2 respondents in the revision, i.e. the petitioners' mother-in-law and sister-in-law (respondents no.1 and 2), the remaining 4 being police officers/officials, i.e. the Superintendent of Police, Hiar, the Station House Officer, Police Station, Agroha, and a Head-Constable and Constable of the same police station.

It is apposite to state here that in the revision petition the petitioner challenged the interim order passed by the Family Court, refusing interim custody of her 8 year old son, who is staying with respondent no.1

herein, i.e. the petitioners' mother-in-law Bhateri Devi, the petitioners' husband having unfortunately died, and the petitioner now not staying in her matrimonial home.

Thus, in the revision petition, vide the aforesaid order dated November 13, 2018, this court had first directed that the petitioner be allowed to visit her son at the house of the respondent, thrice a week, with that order duly having been complied with by respondents no.1 and 2 herein.

Thereafter, vide the aforesaid order dated 13.11.2018, this court had directed that as the next step to familiarise the child with the environment in which the petitioner is living, she would be allowed to take him on Saturdays to her home, from the custody of respondent no.1 (and her family members), with the child to be returned to the respondents' home on the Sunday following, i.e. the next evening.

The Superintendent of Police, Hisar, and the Station House Officer of the Police Station concerned had been directed to ensure that respondent no.1 and her family members do not disallow the petitioner to take her son home on week ends, as had been directed vide the aforesaid order. However, the petitioner not having been able to take her son, she alleges in the present petition that respondent no.1 started use filthy language against her as also against respondents no.5 and 6, i.e. the Head-Constable and lady constable who had accompanied the petitioner, and stated that she would commit suicide if the child was taken from her.

Thereafter, despite respondent no.4, i.e. the Station House Officer, having also reached the house of respondent no.1, the child's custody was not handed over, as alleged.

Consequently, the present petition came to be filed, in which

notice was issued by a co-ordinate Bench on 27.11.2018, returnable at that stage on 14.12.2018.

On that date, the matter had been taken up out of turn on the request of learned counsel for the petitioner, on the ground that in the normal course its turn would not come up, the case having been listed way down in the ordinary motion list.

Consequently, this petition as also the revision petition (CR no.6879 of 2017), were ordered to be listed for today.

It is to be noticed that in the revision petition further directions have been given today, with regard to the manner in which the petitioner is to be familiarised with her son, in the situation that exists, as would be discussed further ahead in this petition also.

As already noticed in the last order of this Court, dated 14.12.2018, an affidavit of the Superintendent of Police, Hisar, had been filed in Court, a copy of which had been given to learned counsel for the petitioner.

A perusal of the said affidavit shows that the petitioner along with Head Constable Pankaj and Lady Special Police Officer, Suman Bala of Police Station Agroha, were deputed to accompany the petitioner on 24.11.2018 to the village of the respondents, i.e. village Khara Kheri. The police officials and the petitioner went to the school of the son of the petitioner (Parteek by name), along with respectable persons of the village where, despite best efforts, the child refused to go with the petitioner and started weeping loudly. Thereafter, the child was brought to the village itself, where also he refused to go with the petitioner, i.e. his mother.

Videography of the entire incident is also stated to have been prepared by Head Constable Pankaj.

The affidavit of the Superintendent of Police further states that in the aforesaid circumstances, the petitioner herself declined to take custody of her son.

A translated version of her statement to that effect has been annexed with the affidavit, the original of which has been produced in Court today by learned State counsel on directions of this Court, the file having been sent by the Superintendent of Police to Court.

As the petitioner is present in Court, upon query by this Court as to whether the signature on the statement referred to by the Superintendent of Police is actually hers and if so whether they had been taken under coercion, she admits to the signature and also states that she was not coerced by the police officials to sign the document, though what is stated therein was actually written by Head Constable Pankaj and that she had signed it on the advice of her lawyer.

Learned State counsel has also filed in Court today affidavits of Head Constable Pankaj and Lady Special Police Officer Suman, in response to the notice issued in this petition. The same are taken on record. Copies thereof have been given to learned counsel for the petitioner.

It is appropriate to reproduce here a part of the order passed in the revision petition, in order to depict the existing situation with regard to the child's custody.

The relevant part of the order runs as follows:-

“Having considered the entire matter, though undoubtedly and without question, the mother of a child has every right to the custody of her child over and above the grand-mother, i.e. the mother of the late father of the child, and the decree in favour of the petitioner has obviously been passed accordingly; yet, in the

opinion of this Court, in the aforesaid circumstances as described hereinabove as also in the impugned order, with the child still not willing to actually go with the petitioner, the decree cannot be satisfied presently because, again without question, it is the paramount interest of the child that has to be looked into by any Court.

The child is stated to be 08 years old and it is very obvious that he has developed a bond with his grand-mother as if she were his mother, probably only because of the fact that he has continued to remain in the house of the grand-mother even after his fathers' death, with the petitioner having left her matrimonial home on account of the fact that she was not getting along with her mother-in-law (respondent no.1) and that atmosphere was therefore not at all conducive for her to remain there.

It is to be noticed here that this Court has specifically put a question to the petitioner herself today, as to whether she was thrown out of her matrimonial home or had left it on her own accord, to which he had stated that due to the fact that she had never got along with her mother-in-law and the atmosphere was wholly 'un-conducive' to her continuing to live there after her husbands' death, she had no option but to leave her matrimonial home”

Thereafter, in CR no.6879 of 2017, the following direction has been given today by this court:-

“Without making any comment on the correctness or otherwise the aforesaid statement, it is directed that initially on every 1st and 3rd Saturday of the month, respondent no.1 shall bring the child to the Mediation and Conciliation Centre at the District Court at Hisar at 11:00 a.m., even though it may be a 'school working Saturday', where the petitioner would be allowed to meet the child for a period of two hours initially, to be thereafter increased as per the situation assessed by the learned execution Court.”

Thus, the entire situation already having been discussed in the

accompanying petition, i.e. CR No. 6879 of 2017, with it also not having been denied that the petitioner eventually had to refuse to take her child, in view of the fact that the child was absolutely unwilling to go with her, I see no ground to continue with this petition, with the police officers (respondents no.3 to 6) in any case having done their duty very diligently, which is to be highly appreciated.

As regards respondents no.1 and 2 herein, respondent no.2 is admitted to be the married sister-in-law of the petitioner, who does not ordinarily reside at the home of her mother, i.e. respondent no.1. It is also not shown before this Court that she was actually present on the date that custody of the child was attempted to be taken by the petitioner from the village of respondent no.1.

Coming to the role of respondent no.1, though in the petition it is stated that she abused the petitioner as also the police officials present and refused to hand over the custody of the child, however, this Court having specifically put a query to the petitioner herself, in view of what is stated by the Superintendent of Police in his affidavit, and the petitioner herself having admitted that with the child refusing to come with her and clinging onto his grand-mother, she had no option but to leave him there, I would not go further even as regards the allegations of the alleged abusive behaviour of respondent no.1, the child himself having refused to come with the petitioner on that date.

Appropriate directions also having been given in the revision petition to ensure that respondent no.1 brings the child to the Mediation and Conciliation Centre of the District Court on the 1st and 3rd Saturday of every month, and no wilful disobedience of the order of this court having been made out, the present petition is dismissed with the rule discharged.

Obviously, any violation of the orders issued today by this Court in the accompanying petition, i.e. CR No. 6879 of 2017, by any of the respondents, would entitle the petitioner to institute whatever proceedings she considers appropriate at any appropriate stage.

A photocopy of all documents annexed with the affidavit of the Superintendent of Police be placed on the Court file by learned counsel for the State today itself.

December 18, 2018
nitin/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No.