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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.3616 OF 2018

Nagma Sohail Khan] ..Petitioner.

v.

The State of Maharashtra & Anr.] ..Respondents.

Mr.Navid Mughal for the Petitioner.

Mr.Omprakash Jha i/by The Law Point, for Respondent No.3.

Mrs.M.M.Deshmukh, APP for the State.

**CORAM : INDRAJIT MAHANTY &
 A.M.BADAR, JJ.**

DATE : 13th AUGUST, 2019.

P.C.

1] This Writ Petition has been filed by the Petitioner inter alia seeking custody of the children from her estranged husband- Respondent No.3. On perusal of the order sheet we find that by various orders passed by this Court, the eldest child viz. Sofia was sent for psychiatrist evaluation by Dr. Harish Shetty and medical certificate dated 8th December, 2018 has been submitted before this Court and the same is quoted hereinbelow :

“ This is to state that I have examined Sofia on Saturday 8th December, 2018. She appears composed and is attending her 11th std Class. She is keen to get herself educated. She is secure in her present home and calls Sandeep Naidu as her Father. She recalls with pain the trauma she has faced with her biological

relatives. Though she is composed she will benefit with a few sessions of counseling to tide over her present turmoil associated with the legal proceedings. She is physically and mentally fit to continue her education and life”.

2] Learned counsel for the Petitioner also fairly admits that Sofia by flux of time became a major. But he submits that the respondent/husband while deserting the Petitioner had also taken away the children, born through earlier marriage of the Petitioner.

3] It appears from the order of this Court dated 25th October, 2-18 (*Coram : Ranjit More & Smt.Bharati H. Dangre, JJ*) that all the children were also produced before this Court and we find that this Court had opined after interaction with the children to the following effect :

“4. After our interaction with the children and the petitioners as well as the real mother of Sofia, we have inferred that all the three male children are not willing to stay with their mother though she is their biological mother. Similarly, Sofia is neither ready to stay with her adopted mother Nagma nor does she wish to accompany her real mother. We have observed the demeanor of the children who appeared before us and we have noted that all the four children have tremendous animosity towards the petitioner Nagma and on the other hand, all the four children, in unequivocal terms stated before us that it is the other petitioner whom they referred to as their father, has always catered to their needs and showered all his love and affection on them as a father and which, according to the minor children, was missing from the sight of a mother though she is the biological mother of the three children.

5. We are conscious of the fact that all the children are minor and we are specifically

concerned with the safety of Sofia who is now 17 years and 6 months old. We are also conscious that the petitioner in Writ Petition No.3681 of 2018 is not her biological father, but we are unable to fathom the love and affection of this child towards the father along with all the other three minor children. Since we are specifically concerned with Sofia who is a minor girl, we feel that she is in a state of distress and is disturbed on account of attitude of her natural mother and the mother who has adopted her and in this turmoil, she has sought the love and affection of the petitioner in Writ Petition No.3681 of 2018. We feel that minor Sofia is not an adolescent age and such mental pressure on her would have an impact on her overall personality and we are of the opinion that Sofia needs counseling at the hands of psychiatrist”.

4] On query by the Court, learned counsel for the Petitioner submitted that no proceeding has been initiated by the Petitioner either seeking judicial separation and/or divorce from the respondent-husband and also no proceeding had been initiated by the petitioner seeking custody of the children.

5] Taking into consideration the observations of this Court as stated hereinabove, as well as report of Psychiatrist Dr.Shetty, which is quoted hereinabove, we are of the considered view that keeping interest of the children in mind, we do not need to entertain any further prayer in this Petition. However, liberty is granted to the parties to approach the appropriate Court, if so advised, to seek custody of the child.

6] We, further, make it clear that nothing stated in this order shall prejudice and/or shall have any impact on the merits of the

case. The concerned Court shall be at liberty to arrive at the conclusion based on the evidence that may be provided. We further make it clear that if any such application is filed by either of the parties, the concerned Court shall do well to take up the matter and try to dispose of the same.

[A.M.BADAR, J]

[INDRAJIT MAHANTY, J]