

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

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**FAO-1527-2019 (O&M)
Date of Decision : 27.02.2019**

Baljit Kaur @ Rimpay

... Appellant

Versus

Bhagwinder singh @ Totu

... Respondent

**CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. Ranjodh Singh Sidhu, Advocate for the appellant.

HARNARESH SINGH GILL, J.

The present appeal has been filed by the appellant-Baljit Kaur @ Rimpay for the custody of her minor daughter namely Manpreet Kaur with a prayer to set aside the judgment dated 24.07.2014 passed by Guardian Judge, Tarn Taran, vide which the petition filed under Section 25 of the Guardians and Wards Act, 1890, for the custody of minor child, namely, Manpreet Kaur has been dismissed.

As per the facts of the present case, marriage of Baljit Kaur-appellant was solemnized with Bhagwinder Singh @ Totu-respondent in December, 1999 as per Sikh rites and ceremonies by way of Anand Karaj. Out of the wedlock, one daughter, namely, Manpreet Kaur, was born in the year 2003. It is alleged by Baljit Kaur-appellant that soon after the marriage she was maltreated and was given beatings for not bringing more dowry from her parental house in the shape of cash and motorcycle. It is further alleged that respondent-husband and his family members gave severe beatings to the appellant as well as to the minor child. Ultimately appellant

was turned out of her matrimonial home, along with her minor child in the month of July, 2010. The parents of the appellant along with relatives approached the family of the respondent-husband to rehabilitate her, but respondent refused to accept the appellant. It is still further alleged that on 02.05.2012, some unidentified persons came to her parental house, where she was residing and forcibly took away the minor daughter-Manpreet Kaur with them. Since then the minor daughter is in illegal custody of the husband, who is unable to provide basic amenities and necessities to the minor child.

Upon notice ,the respondent-husband, had appeared and filed his written statement denying the allegations made against him. He stated that the appellant-wife had no source of income to maintain herself and another minor daughter Sania, who is 5 months old and is in her custody. Moreover, the appellant is residing with her Bhua as her father has already died and the mother of the appellant is residing with her brother. After taking into consideration the aforesaid pleadings, the trial court framed issues on 26.04.2016.

For entrusting the custody of a minor child this court is to take into account all relevant circumstances including social environment, financial position, education facilities etc. Even the preferential right of the father, being the natural guardian, keeping in view the sole consideration of the welfare of minor.

The main issue was as to whether the appellant is entitled for the custody of minor child? We have heard Mr. Ranjodh Singh Sidhu, Advocate appearing on behalf of the appellant. He has argued that the appellant, being mother of the Manpreet Kaur, is the natural guardian and thus, she is

entitled for her custody. He has also argued that the appellant is doing a private job and if the custody of minor daughter is entrusted to the appellant, she will look after her welfare and interest and the respondent is not in a position to provide physical and financial comforts to the minor daughter.

After hearing learned counsel for the appellant and going through the available record, it is clear that appellant-Baljit Kaur has been staying away from the matrimonial house since July, 2010 and minor child, namely, Manpreet Kaur is living with her father-respondent since May, 2012. Appellant is working as a Maid. She is living with her Bhua, namely, Jaspal Kaur (PW-2) and appellant is also looking after another minor child, namely, Sania who was just 5 months old when appellant had left her matrimonial home on 02.06.2012. Her approximate income is Rs.2,000/- per month and to our mind it is not possible for the appellant to maintain the second child with this meager income.

It has also come on record that the father of the appellant has already died and the mother of the appellant is living with her brother-Jivan Singh and that is the reason the appellant is living with her Bhua-Jaspal Kaur. Moreover from the statement and cross examination of Jaspal Kaur (PW-3) it is clear that she is also working as a Maid. Thus, to our mind even Jaspal Kaur is not that financially sound.

We are fortified by the judgments, vide which law on the subject has been laid down by the Hon'ble Supreme Court of India.

The Supreme Court in the case titled as ***Mausami Moitra Ganguli Versus Jayant Ganguli***, 2008(4) R.C.R. (Civil) 551 in para 14, has held as under:-

14. *The principles of law in relation to the custody of a minor child are well settled. It is trite that while determining the question as to which parent the care and control of a child should be committed, the first and the paramount consideration is the welfare and interest of the child and not the rights of the parents under a statute. Indubitably the provisions of law pertaining to the custody of a child contained in either the Guardians and Wards Act, 1890 (Section 17) or the Hindu Minority and Guardianship Act, 1956 (Section 13) also hold out the welfare of the child as a predominant consideration. In fact, no statute, on the subject, can ignore, eschew or obliterate the vital factor of the welfare of the minor. The question of welfare of the minor child has again to be considered in the background of the relevant facts and circumstances. Each case has to be decided on its own facts and other decided cases can hardly serve as binding precedents insofar as the factual aspects of the case are concerned. It is, no doubt, true that father is presumed by the statutes to be better suited to look after the welfare of the child, being normally the working member and head of the family, yet in each case the Court has to see primarily to the welfare of the child in determining the question of his or her custody. Better financial resources of either of the parents or their love for the child may be one of the relevant considerations but cannot be the sole determining factor for the custody of the child. It is here that a heavy duty is cast on the Court to exercise its judicial discretion judiciously in the background of all the relevant facts and circumstances, bearing in mind the welfare of the child as the paramount consideration.*

The Division Bench of Karnataka High Court in **Smt. Radha @**

Parimala Versus N. Rangappa, 2004 (3) R.C.R. (Civil) 775, in para 10, has held as under:-

10. It is a well-known principle of law governing the custody and guardianship of minors that it is the prime duty of the Court to do all acts and things necessary for the protection of minors for they cannot take care of themselves. The Court being an organ of the State should act as pater patriae for sustenance and protection of minors by doing of necessary acts and things. In other words, welfare of the minor must be the paramount consideration of the Court and not the wishes of the parties who seek custody or guardianship of the minors. The expression "welfare" in this context is to be understood in its widest sense and embraces not merely the material and physical well-being and happiness of the minor, but every circumstance and every factor bearing upon the moral/and religious welfare and the education and upbringing of the minor. In the matter of appointment or declaration of a guardian, the first and foremost starting point and the dominant consideration for the Court at every stage is the welfare of the minor. In all matters relating to the custody and upbringing of the minor as well as the administration and management of the minor's property, the primary and paramount consideration for the Court must be the welfare of the minor. The words 'welfare of the child' admits of no straight-jacket yard tick. It has many facets, such as financial, educational, physical, moral and religious welfare. The question where the welfare of the minor lies should be answered after weighing and balancing all factors germane to the decision making, such as relationships, claims and wishes of parents, risks, choices and all other relevant

circumstances. The answer lies in the balancing of these factors and circumstances and determining what is best for the minor's total well-being.

Similar view has been taken by Supreme Court in ***Gaurav Nagpal Versus Sumedha Nagpal***, 2008(4) R.C.R. Civil 928.

Thus, taking into consideration the facts of the present case, we find that the financial position of Baljit Kaur-appellant is not sound to be able to look after the minor daughter, namely, Manpreet Kaur. The respondent is financially on better footings and has been looking after the minor child since 02.06.2012. The welfare of the child is the paramount consideration even though, the appellant is mother and the natural guardian. On the other hand, the respondent-father is also a natural guardian and keeping in view their status, we hold that the custody of minor-Manpreet Kaur shall remain with respondent and thus, we do not find any infirmity in the order dated 24.07.2014 passed by Guardian Judge, Tarn Taran and the present appeal is hereby dismissed.

As the appeal has been decided on merits, the issue of condoning the delay in filing the appeal has been rendered academic.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

27.02.2019
pooja saini

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No