

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-2616-2019 (O&M)
Date of Decision: 22.04.2019

Banita Chadha

.....Appellant

Versus

Ankit Chadha

.....Respondent

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

Present: Mr. Aakash Juneja, Advocate, for the appellant.

Mr. V.K. Jindal, Senior Advocate, with
Mr. Akshay Kumar Jindal, Advocate,
for the respondent-Caveator.

Harnaresh Singh Gill, J.

The appellant-wife has filed the present appeal challenging the order dated 05.02.2019 passed by the learned Principal Judge, Family Court, Rohtak, vide which petition under Sections 7, 10 & 25 of the Guardians and Wards Act, 1890 filed by the respondent-husband, for appointment of Guardian of the minor child Arshita, has been allowed.

The respondent-husband had filed the aforesaid petition for appointment of the guardian of the minor child Arshita, averring therein that marriage between the parties was solemnized on 15.04.2009. Out of the said wedlock, a female child was born on 14.03.2010. The appellant-wife was living in adultery with one Sachin Yadav and was having physical relations with him, regarding which FIR No. 24/2015 under Section 497 IPC stood registered by the respondent-husband at Police Station Kasna, Greater Noida (UP). It was further alleged that the appellant-wife being unchaste could not impart moral

values and ethics to the child. Even when the appellant-wife had been living with the respondent-husband, she used to spend her time with said Sachin Yadav, thereby completely neglecting the minor. It was further alleged that the respondent-husband is working as a Director in IEC College of Hotel Management, Greater Noida (UP) and thus, was able to maintain the child and provide her the basic necessities of life. The appellant-wife had removed the minor from the custody of the respondent-husband without his consent.

Upon notice, the appellant-wife had appeared and filed her written statement controverting the allegations contained in the petition filed by the respondent-husband. The factum of marriage and the birth of the minor child, was admitted. It was, however, alleged that she had been continuously harassed for bringing insufficient dowry. Yet further, the respondent-husband used to check the mobile of the appellant-wife on regular basis and would always suspect her character. Even during pregnancy, she was not provided with proper food and other necessities of life, resulting into the premature delivery of the child. In September, 2012, both, the appellant-wife and the respondent-husband were selected in I.E.C. Group of Institute, Greater Noida and they started residing in a rented accommodation at Noida, but the unnecessary interference of the respondent's parents continued. With a view to damaging the reputation of the appellant-wife, the respondent-husband had prepared false and fabricated e-mails and tricked photographs by associating the name of the appellant-wife with the Head of the Department and on the basis

of such documents an FIR had been registered by the respondent-husband against said Sachin Yadav. Efforts were made to reconcile the matter with the help of the parents of the appellant-wife and other respectables in the society, but to no avail. Under these circumstances, the appellant-wife was left with no option except to go to her parental house along with the minor child.

On the pleadings, various issues were framed. Parties led their respective evidence.

The learned trial Court while allowing the petition filed by the respondent-husband has found that the respondent-wife was living in adultery with one Sachin Yadav. Various e-mails and other text messages exchanged between them, stood proved. Still further, the authenticity of the e-mails and other documents purported to have been exchanged between the appellant-wife and said Sachin Yadav, had been proved by examining PW2-Dr. Ranjeet Kumar, Forensic Expert. This witness submitted his report Exhibit P.8 concluding therein that the e-mails received were legitimate and header source reflected the genuine information, meaning thereby that the e-mails were not a spoof or sent by fake mail sending utilities. The said witness was cross-examined at length, but his testimony could not be impeached in any manner. It was, thus, held that the appellant-wife had failed to discharge the onus shifted on her to prove that the documents and the e-mails, were false and fabricated, as no evidence of any kind was led in this regard, especially when it stood established on record that the appellant-wife herself was highly qualified i.e. M.Tech (Computer

Science). It was thus, found that once the genuine source of the e-mails stood proved on record, there was no requirement of certificate as stipulated by Section 65B(h) of the Evidence Act. Besides, it was also found that the respondent-wife had, despite knowing it well that the custody of the minor at one point of time was with the respondent-husband being father, yet she had got an FIR registered against the mother and sister of the respondent-husband. Apart from that, the appellant-wife and her family members, had been involved in FIR No. 603 dated 9.11.2017 for the offences under Sections 186, 332, 342, 533, 506 read with Section 34 IPC at Police Station Civil Lines, Rohtak, for having thrashed the process server, who had gone to effect service of summons upon the appellant-wife. It was found that with this kind of conduct of the appellant-wife and her family members, it could not be expected that they could give any moral education to the minor child. Accordingly, keeping in view the moral conduct of the appellant-wife and her family members and further having taken into consideration the parallel resources at the ends of both the spouses, it was found that the custody of the minor deserved to be given to the respondent-husband.

We have heard learned counsel for the parties, but we do not find any merit in the present appeal.

At the very outset, learned counsel appearing for the respondent-caveator brought to the notice of this Court that vide judgment and decree dated 3.4.2019 passed by the learned Additional Principal Judge, Family Court, Rohtak, marriage between the parties has been dissolved by a decree of divorce

under Section 13(1)(i) and Section 13(1) (i-a) of the Hindu Marriage Act, 1955. A copy of the said judgment and decree has been produced in Court today for our perusal. While passing said judgment and decree, the learned Family Court, has come to the conclusion that the appellant-wife was having adulterous relations with said Sachin Yadav (respondent No.2 therein) and that instead of being apologetic of her adulterous behavior, the appellant-wife had filed a false complaint against the respondent-husband and his family members with a view to pressurizing them to take her back to her matrimonial home. It may be noticed that a careful examination of the said judgment and decree and the order passed in the present case, would show that the evidence to prove the adulterous conduct of the appellant-wife is common in both the cases and the Forensic Expert (PW-Dr. Ranjeet Singh) was examined in both the cases to prove the e-mails and other documents exchanged between the appellant-wife and said Sachin Yadav. Thus, there remains nothing to be dilated upon to interfere with such finding of the Court below, especially when the appellant-wife being highly educated and that too being M.Tech (Computer Science), did not lead any evidence to prove on record that the evidence led by the respondent-husband is false and fabricated.

Indisputably, while considering the rival claims of the parents as regards custody of the minor female child Arshita, the Court has to take into consideration the paramount welfare of the child. In the instant case, it could not be disputed by learned counsel appearing for the appellant-wife that the appellant-wife failed to prove before the Court below in the

present proceedings as also in the divorce petition filed by the respondent-husband that her conduct was not adulterous. Still further, lodging of an FIR at the instance of the appellant-wife and her family members i.e. for kidnapping the minor child against the mother and sister of the respondent-husband and their involvement in a criminal case at the instance of a process server, prima-facie gives credence to the finding of the learned trial Court that the minor child cannot be given moral and ethical values, which are the basic requisites for her upbringing, if the custody of the minor is allowed to remain with the appellant-wife. Apart from that the respondent-husband's father is a retiree and his mother is a house-wife and that the respondent is serving as a Director in IEC College of Hotel Management, Greater Noida (UP). Thus, the minor, can be well taken care by them besides providing her the basic necessities of life.

In view of the above, we do not find any infirmity or illegality in the impugned order passed by the learned Principal Judge, Family Court, Rohtak, which may warrant interference by this Court in the present appeal.

Hence, the appeal is dismissed.

(RAKESH KUMAR JAIN)
JUDGE

22.04.2019
ds

(HARNARESH SINGH GILL)
JUDGE

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No