

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 3470 of 2019

Date of Decision: 29.05.2019

Raja Ram Sharma and others

.....Appellants

Versus

Meena

.....Respondent

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

Present: Mr. S.K. Tripathi, Advocate, for the appellant.

Harnaresh Singh Gill, J.

This appeal is directed against the order dated 20.03.2019 passed by the learned Additional Principal Judge, Family Court, Faridabad, whereby petition under Section 26 of the Hindu Marriage Act, 1955 (for short 'the Act'), filed by the respondent-wife for custody of minor son Krishan @ Dhruv, has been allowed.

Appellant No.1 is the husband, whereas appellant Nos.2 and 3 are his parents and parents-in-law of the respondent.

The respondent-wife had filed the petition for the custody of the minor son Kishan @ Dhruv with the averments that the marriage between appellant No.1 and respondent-wife was solemnized on 4.12.1999. Out of the said wedlock, three children were born. It was further averred that petitioner No.1-husband was having illicit relations with one lady, namely, Radha and when he was asked to refrain himself from such

illegal activities, he issued threats to her and ultimately, she was turned out of the matrimonial home on 22.02.2013 and was asked to bring Rs.10,00,000/- in case she wanted to come back. While she was handed over the custody of the female children, the custody of minor son was not given to her. The matter was reported to the police, but no action was taken. Her father in-law filed a petition for the custody of the female children, but later on instead of withdrawing the said petition, the defence of the respondent-wife was got struck off.

Upon notice, the appellants entered appearance, but written statement was filed by appellant No.1-husband only. While admitting the factum of marriage and birth of three children out of the wedlock, the allegations of harassment and cruelty were denied. Still further, it was averred that the respondent-wife had lodged an FIR on 4.6.2018 regarding the custody of the male child, whereas the said child was already in the custody of the respondent-wife. It was further averred that in the petition for restitution of conjugal rights filed by appellant No.1, a compromise was effected, yet the respondent did not join the company of appellant No.1.

On the pleadings, various issues were framed by the trial Court.

In support of their case, the parties led their respective evidence. Respondent-wife appeared as PW1 besides examining PW2-H.S. Malik, whereas appellant-husband appeared as RW2 and had examined RW1-Pradeep Singh.

The learned trial Court while passing the impugned order has found that during the pendency of the petition, the child had already gone back to the respondent-wife. PW2-H.S. Malik, from the Child Welfare Committee appeared and had deposed that the child Krishan was produced before them; his counseling was done and the statement of the child was also recorded. The child expressed his willingness to go with his mother and accordingly, in the best interest of the child, his custody was handed over to his mother i.e. respondent-wife.

The child was also called before the trial Court to assess his willingness. The child stated that when he was staying with his father, he was not properly taken care of by his father. Instead, he was put in hostels in Uttarakhand and Agra. He further stated that he used go to school on foot and after the school hours, when he would return in the afternoon, there was no food to eat in the house. Thus, it was held that the child was living in a deplorable condition in the custody of appellant No.1. As per appellant No.1 himself, he was unemployed with no earning and had no constant income to maintain the child and that from the interactions held with the child, it surfaced that it is the mother only, who can take good care of the child.

Learned counsel appearing for the appellant contends that while passing the impugned order, the learned trial Court has lost sight of the fact that the respondent-wife had caused harassment and mental agony to the appellant-husband and his parents, by getting registered an FIR against them in respect of the illegal custody of the minor child, whereas the

custody of the child was already with the respondent-wife. Still further, the finding of the learned trial Court as regards the child not getting day time meal is not tenable in view of the fact that the child had disclosed before the Court the tutored version. It is further argued that once in the petition under Section 9 of the Act filed by the appellant-husband, a compromise was effected, the respondent-wife was required to join the company of the appellant-husband. Thus, by accepting the petition for custody of the minor child, the learned trial Court has allowed the respondent-wife to take the benefit of her own wrong.

We have heard learned counsel for the appellant but do not find any merit in the present petition.

A perusal of the order passed by the learned trial Court would reveal that the custody of the child had already been handed over to the respondent-wife, even prior to the decision of the custody petition by the trial Court. The child was produced before the Child Welfare Committee wherein his counseling was done. As the child expressed his willingness to stay with his mother, the Child Welfare Committee had handed over the custody of the child to his mother i.e. the respondent. Still further, the learned trial Court had held interactions with the child and during such interactions, the child had narrated the atrocities meted out at the hands of his father i.e. appellant No.1.

Learned counsel for the appellants could not dispute the said finding except asserting that the child had stated the tutored version. However, in our opinion, the child cannot be

said to have stated tutored version all the time. Prior to his interactions with the learned Presiding Officer, the minor was also counselled by the Child Welfare Committee. Before the said Committee as well, the minor child had expressed his willingness to stay with his mother. Rather, if the version of the child is taken on its face, then the same speaks volumes of the circumstances under which he was being kept by the respondent-husband. Shifting the minor child from one Hostel to another and not providing him with the meal(s), is an act of unbecoming of a parent. Still further, indisputably, two elder sisters of the minor are residing with his mother. In such circumstances, the minor could not be deprived of the love, affection and the company of his siblings. Thus, the learned trial Court, was perfectly justified in granting the custody of the minor child to the respondent-wife.

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

Hence, the present appeal is dismissed.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

29.05.2019
ds

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No