

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

FAO-3168-2018

Date of decision : 27.11.2019

Mamta

....Appellant

V/s

Vikram

....Respondent

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present: Mr. Sandeep Beriwal, Advocate for
Mr. Amit Khatkar, Advocate for the appellant.

Mr. R.K. Rathore, Advocate for
Mr. M.S. Rathee, Advocate for the respondent.

RAJAN GUPTA J. (ORAL)

Aggrieved by the judgment dated 24.05.2017 passed by Additional District Judge, Jind whereby petition under section 25 of the Guardian & Ward Act, 1890 filed by appellant seeking custody of her minor daughter has been dismissed. Learned counsel for the appellant submits that appellant being mother and natural guardian is legally entitled to the custody of her minor daughter. Respondent who is a cruel person cannot give love and affection as required by the minor child. Thus, trial court has gravely erred in dismissing her petition. Plea has been opposed by learned counsel representing the respondent. According to him, impugned order has been passed keeping in view the best interest and welfare of the minor child.

We have heard learned counsel for the parties and given careful thought to the facts of the case.

Brief factual background of the case marriage between appellant and respondent was solemnized on 01.04.2005 as per hindu rites.

Out of this wedlock, two children namely Parul and Komal were born. It was alleged by the appellant that from the very beginning, she was harassed and humiliated on account of bringing insufficient dowry. Their married life could not run smoothly and there was continuous bickering. On the instigation of the family members, respondent used to abuse and beat her mercilessly. On 25.03.2014, she was turned out of her matrimonial home and her minor daughter Komal aged about three years had forcibly been snatched from her custody. Thereafter, she filed petition under section 25 of the Guardian & Ward Act, 1890 seeking custody of her minor daughter on the ground that she not being looked after properly by the respondent. As she is below five years, she is legally entitled for her custody. Her husband refuted the plea and filed written statement. He stated that appellant had left the matrimonial home of her own free will and if the custody of the minor daughter was handed-over to her, her life would be spoiled. Besides, appellant was having no source of income to maintain herself. He claimed that the minor daughter was living happily and every care was taken for her healthy upbringing. In support of her case, appellant herself stepped into the witness box as PW-3 and examined two other witnesses. Likewise respondent stuck to his stand while deposing before the court. Trial court after considering the rival contentions came to the conclusion that custody of minor child was safe with the father (respondent herein) as he could serve better. It, thus, dismissed her petition.

We find no infirmity with the impugned order. It is evident that marriage between the parties was solemnized and out of this wedlock two children were born. However, differences developed and finally appellant instituted divorce petition and ultimately marriage was dissolved by decree

of divorce. After getting divorce, appellant left the minor children with the

respondent. They were living with their father (respondent herein) since then. Keeping in view the facts and circumstances of the case, it would be in the interest and welfare of the children if their custody remains with the respondent.

In view of above, we do not find any merit in the present appeal. Same is hereby dismissed.

(RAJAN GUPTA)
JUDGE

November 27, 2019
Ajay

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No