

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

FAO-7258-2017

Decided on : August 29, 2019

Bachittar Singh & anr.

..... Appellants

Versus

Amarjit Kaur

..... Respondent

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

Argued by : Mr. Aman Pal, Advocate
for the appellants.

None for the respondent.

Manjari Nehru Kaul, J.

The instant appeal has been preferred by the paternal grand uncle and grand aunt of the minor child, Avdeep Kaur, against the order dated 21.07.2017 vide which an application filed by the respondent-Amarjit Kaur under Section 25 of Guardian and Wards Act, 1890 (for short 'the Act') for getting the custody and for being appointed as guardian of the person of minor child was allowed by the trial Court.

2. As per the averments made in the application before the Court below filed by the respondent-Amarjit Kaur (maternal grandmother of the minor child) her daughter Gagandeep Kaur (since deceased), mother of the minor child Avdeep Kaur, was married with Avtar Singh on 27.09.2009. Out of the said wedlock, minor child Avdeep Kaur was born on 27.04.2011. It was averred by the respondent that her daughter Gagandeep Kaur had been killed by her husband and other members of his family for which a criminal case bearing FIR No.208 dated 02.09.2013 under Section 304-B

and 120-B IPC was registered against them. She pleaded that being the maternal grandmother of the minor child and being the nearest relative of the child, she should be handed over the custody of the child more so as the father, grand mother, paternal aunts and paternal uncle were in judicial custody and facing trial for the murder of the minor child's mother. Thus, there was no male or female member in the house to take care of the child. She also alleged that on 03.09.2013 when the respondent alongwith her husband and others were present at village Hassanpur i.e. the village of Avtar Singh, a day after the lodging of the aforementioned criminal case, the appellants took the minor child forcibly from her custody and despite her continuous and persistent efforts, the minor child was not returned to her nor was she allowed to meet her. The respondent pleaded that since she had sufficient means she would be able to not only maintain the minor child but provide her with good education, as well as love and affection too. She further alleged that the minor, Avdeep Kaur, was being neglected while living with her father's uncle and aunt, who on account of the aforementioned criminal case registered against the members of their family, were inimical towards her.

3. Per contra, the appellants in their reply filed before the Court below refuted and denied the allegations of the respondent that the child was not being treated well inter alia submitting that the custody of the minor child had been handed over to them by Avtar Singh, father of the minor girl, when the police had come to arrest him in a false case, which had been foisted on him at the behest of the respondent and her husband. They further contended that Avtar Singh, who was their nephew had been brought

up as their own child and educated by them ever since the death of his father.

4. In order to prove the case, the respondent herself stepped into the witness box as AW-1 and tendered her affidavit. Besides herself, she examined Nirmal Singh as AW-2 and Harbans Singh as AW-3. On the other hand, appellant No.1 stepped into witness box as RW-2 and tendered his affidavit. Besides himself, he also examined Avtar Singh, father of the minor child Avdeep Kaur, Tek Chand Batra, Administrative Officer, LIC, Branch Sangrur as RW-3, who deposed qua Children Money Back Plan Policy No.165658565 dated 28.02.2015 in the name of Avdeep Kaur and Gurwaj Singh, Clerk of Guru Teg Bahadur Public School as RW-4, who deposed qua the minor being a student of the said school.

5. After analyzing the evidence led by the parties and also the other material available on record, learned Court below allowed the application and directed the appellants herein, to hand over the custody to the respondent i.e. the maternal grandmother of the minor child.

6. We have heard learned counsel for the appellants and perused the evidence as well as other material available on record. During the pendency of the instant appeal, the parties were referred to the Mediation and Conciliation Centre of this Court to explore the possibility of an amicable settlement, however, it failed to yield any positive result.

7. Learned counsel for the appellants reiterated the submissions made before the trial Court and submitted that the minor child was happily and comfortably residing with them. Her custody had been handed over to them by none other than the child's father, Avtar Singh, who was her natural

guardian; the child also got to meet and spend time with her father as and when he was released on parole. It was further urged that the appellants were taking good care of the education of the child. The appellants had also tried to financially secure the minor by way of an insurance policy (Children Money Back Plan of LIC) amounting to Rs.4 lacs for which they were paying a premium of Rs.9,975/- per annum whereas the respondent-maternal grandmother had failed to place on record any document/evidence to establish that she was in a better position to educate and bring up the child.

8. In matters of custody and guardianship of a minor, the paramount consideration has to be the welfare of the child and all other considerations are therefore, secondary. This is the mandate of law. Under Section 25 of the Act, relief cannot be ipso facto handed over any applicant, who seeks the custody of a minor child. However, the same can be given once the Court is satisfied that it would be conducive to the welfare of the minor child. ***'Welfare of the child'*** has to be thus, construed in its widest sense and would include within its ambit financial and physical comforts besides the minor child 's emotional needs including his/her age, gender and most importantly to ascertain the capacity of the person to contribute to the child's over all development.

9. After giving our anxious consideration, we are of the opinion that affluence and the capacity of the appellants to provide the minor child all the comforts cannot be thus, the criterion of letting them retain the custody of the minor child. Admittedly, the father of the minor child is serving a sentence awarded under Section 304-B IPC and hence, is not

present in the house, as per the counsel of the appellants himself. The appellants are not even the real paternal grandparents of the minor child as against the respondent, who admittedly is the nearest and closest relative of the minor child being her maternal grandmother. It goes without saying that in the instant case, the company and the presence of maternal grandmother would be conducive to the welfare and the all round development of the minor child specially when she attains the age of puberty. The appellants, who are paternal grand uncle and aunt of the minor child, cannot be kept on the same pedestal as the maternal grandmother. The minor child cannot be left in the care and custody of her father's uncle and aunt when her maternal grandmother is very much alive and willing to provide her with all the love and care alongwith a good upbringing. No doubt, the learned counsel for the appellants urged and stressed that the child was being taken care of by the appellants and the father also meets the child whenever he is released on parole but when compared with the respondent, who is the maternal grandmother, the custody of the minor child has rightly been entrusted to the latter as we feel that the best interest of the minor would be served by the respondent, who would provide physical comfort, good education as well as emotional support and stability to the child who has been living at the mercy of her father's relatives ever since the unfortunate death of her mother when she was just 2½ years old.

10. Hence, we do not find any infirmity or illegality in the impugned order passed by the learned Court below. Needless to say that the child should not and cannot be denied the love, affection and company of her father. Therefore, whenever the father is released on parole, he may, if

he so desires, visit and meet the minor child Avdeep Kaur, through a mutual arrangement between the parties. The Court hopes that the hostile feelings between the parties will not stand in the way of the child meeting her father Avtar Singh. In the long run, it is the child, who would be benefitted as she would surely need the moral support and affection of her father.

11. Accordingly, the instant appeal being devoid of merit, is dismissed.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

August 29, 2019
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Whether speaking/non-speaking:	Yes/No
Whether reportable :	Yes/No