

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

CR No.6940 of 2019

Date of Decision : 22.11.2019

Varinder Kaur

.....Petitioner

Versus

Gurdial Singh

.....Respondent

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Mr. Manpreet Singh, Advocate for
Mr. D.S. Kahlon, Advocate
for the Petitioner.

SUDIP AHLUWALIA, J. (ORAL)

Mr. Pankaj Kalotra, Advocate has put in appearance and filed his Power of Attorney on behalf of the respondent, today in Court; Be kept on record.

2. This Revision Petition is directed against the Order passed by the Ld. Principal Judge, Family Court, Jalandhar on 3rd October, 2019 (Annexure P-5).

3. The parties before this Court were the joint Petitioners in a Petition for Dissolution of their marriage under Section 13-B of the Hindu Marriage Act, 1955 (for short, 'the Act') filed on 16th August, 2019.

4. Thereafter, the parties appear to have been called before the Court on 3rd October, 2019 ostensibly for reconciliation or for first

motion hearing. But the exact purpose for which the matter was fixed on that date, is not clear from the impugned order.

5. Be that as it may, the Ld. Principal Judge after the parties had appeared before the Court, observed as under in the impugned order :-

“From the above circumstances, there appears some suspicious circumstances, as to why children are living separately from both the petitioners, and as to what circumstances have occurred to file divorce petition by the petitioner, so, before recording of first motion statements of petitioners, in order to satisfy the Court, petitioners are directed to come present along with their children to inquire from them about the facts and circumstances narrated in the petition, and for said purpose to come up on 26.11.2019.”

6. Such observation was on account of the fact that marriage of the parties had taken place about 30 years ago in the Year 1990 and both of them had crossed the age of 50 years and their children had also attained the age of majority and were residing separately from them.

7. In such a situation, the Ld. Judge, Family Court nursed some suspicion about the circumstances of the case as to why the children are living separately from the Petitioners. Both of the Petitioners were thereafter directed to produce the children before the Court, so that it could *“inquire from them about the facts and circumstances narrated in the petition”*.

8. After hearing Ld. Counsel for both sides, this Court is convinced that the impugned order is not sustainable. Parents of minor children, who hold actual custody, can certainly be directed to produce them before a Family Court, if, there is a dispute regarding their custody or guardianship. But there is no contemplation in law of a situation where full-fledged adults, who are not in custody of their parents, can be directed to be produced before any Court. Of course, an adult person, if so required, can be independently summoned for giving evidence in accordance with law. But such provision certainly would not be inconsonance with the spirit of an Application under Section 13-B of the Act, wherein relief in accordance with the statute is claimed by the parties on mutual consent. Undoubtedly, it is duty of the Court to try and effect a reconciliation between them, if possible, or otherwise to satisfy itself that there is no element of fraud or collusion involved in the proceedings. But such satisfaction has to be arrived at, on the basis of the direct interaction with the parties, and if it is not so satisfied, it is expected to record its reasons thereafter.

9. However, directing the parties to “produce” full-fledged adults to explain any queries that might be raised by the Court, is in the opinion of this Court, a rather far-fetched endeavour in seeking to dispel any doubts regarding the element of collusion, if at all it exists in the facts and circumstances of the present case.

10. For the aforesaid reasons, the present Petition is allowed after setting aside the impugned Order dated 3rd October, 2019.

11. Parties are directed to appear before the Ld. Court below on the next date fixed by it, after which, the Court shall deal with the pending Application under Section 13-B Act of the Act, in accordance with law.

November 22, 2019

Dpr

**(SUDIP AHLUWALIA)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No