

O.P.No.186 of 2018

SENTHILKUMAR RAMAMOORTHY, J

This Petition has been filed under Section 25 of the Guardians and Wards Act, 1890 read with Order XXI Rule 2 & 3 of the Original Side Rules to direct the Respondent to hand over the permanent custody of the minor daughter, S.Sashwata, aged about 4 years and 9 months to the Petitioner.

2. I heard the learned counsel for the Petitioner and the learned counsel for the Respondent.

3. The learned counsel for the Petitioner first narrated the facts as follows. The Petitioner entered into a partnership with a person called Meenakshi so as to carry on e-learning business. In addition, she also entered into an arrangement with a person called Mr. Nikhil J. Verghese (Nikhil) so as to carry on the business of selling airline tickets. The said Nikhil was employed at the Emirates Airlines and was provided tickets at concessional rates by the said Airlines. The Petitioner undertook the business of selling the said concessional tickets to various persons including an Ex-MLA. By carrying on the above mentioned business activities, the Petitioner earned substantial amounts which were, in turn, provided to and used by her husband

and the family. The learned counsel submitted that the Petitioner was cheated by Nikhil, who misrepresented that she would get attractive benefits and commission if she helps him in selling the airline tickets of Emirates Airlines. On the basis of the false promises of Nikhil, she collected about Rs.26 lakhs from various persons, including the ex-MLA, Mr. S.V.Sekar. Thereafter, Nikhil absconded and his whereabouts are not traceable. In these circumstances, the ex-MLA, S.V.Sekar, filed a police complaint against the Petitioner before the Inspector of Police, Central Crime Branch at Vepery, Chennai. On that basis, a FIR was registered in Crime No.162 of 2016 on 15.06.2016 and the Petitioner was arrested on 05.01.2017. Eventually, the Petitioner was granted bail on 06.03.2017. The learned counsel submitted that the minor child of the Petitioner was raised in the matrimonial home where she lived along with the Respondent, i.e. her husband. However, beginning from May 2016, persons to whom the airline tickets were sold came to the matrimonial home and demanded money. Therefore, in June 2016, the Respondent forced the Petitioner to leave the matrimonial home. This was followed by the arrest of the Petitioner as stated above. Consequently, the minor child of the Petitioner was under the custody of the Respondent. After obtaining bail, the Petitioner applied for and was granted visitation rights by order dated 13.04.2018.

4. The learned counsel for the Petitioner submitted that the Petitioner undertook the said business dealings so as to contribute to the welfare of the family, including the child. After enjoying the benefits that accrued on account of such business activities, the Respondent evicted the Petitioner from the matrimonial home once the customers began harassing the Petitioner. According to the learned counsel for the Petitioner, the Respondent should have stood by the Petitioner during this critical period and helped her to deal with the crisis. Instead the Respondent evicted the Petitioner from the matrimonial home. He also pointed out that the minor child is a girl aged about 6 years and that the girl child would be best taken care of by the mother.

5. In support of his submissions, he relied upon the judgment of the Hon'ble Supreme Court in **VIVEK SINGH V. ROMANI SINGH,(Vivek Singh) MANU/SC/0156/2017**, wherein the Hon'ble Supreme Court held, in paragraphs 15 to 17, that the child's primary need is for the care and love of its mother. He also pointed out that the child is presently under the care of the Respondent's brother's wife who ill-treats the child. Therefore, he concluded his submissions by pointing out that when the mother of the child wants custody of the child, the child should not be in the care of the aunt or the grand parents because it is not in the interest of the child to be deprived of the company of the mother.

6. In response, the learned counsel for the Respondent submitted that the Respondent is well qualified with a Bachelor of Computer Applications and Bachelor of Commerce Degree. He was previously employed as a software engineer and is now carrying on business and earning about Rs.35,000/- p.m. She also contended that the child has always been in the custody of the father in the matrimonial home and that the child is being raised in a healthy environment because it is a joint family consisting of the paternal grand parents and the Respondent's brother and sister-in-law also.

7. As regards the Petitioner, he submitted that she indulged in unlawful activities by receiving money from various parties who hounded her so as to demand money. Eventually, she left the matrimonial home in these circumstances in August 2014. The learned counsel also submitted that the minor child is studying in Varna Play School, Madipakkam and that the original receipts issued by the said School, the academic progress report card, the certificate issued by the School in respect of extra-curricular activities and the School Identity Card were also exhibited as Exs. R6 to R9 through RW-1.

8. By referring to the cross-examination of the Petitioner (PW-1), the learned counsel for the Respondent pointed out that the Petitioner admitted that the Respondent admitted the minor child in school and

was actively involved in the interaction with the school teachers. She also pointed out from the said cross-examination that the Respondent ensured that the minor child received vaccination. Significantly, she pointed out that the Petitioner agreed that the Respondent and his family are taking sincere care of the minor child.

9. With regard to the events leading to the estrangement between the Petitioner and the Respondent, the learned counsel for the Respondent submitted that the creditors of the Petitioner visited the matrimonial home frequently from the year 2013. She also referred to various cheques and pro-notes that were issued by the Petitioner and which have been exhibited as Exs.R2 and R3. She also referred to the correspondence between the Petitioner and the Respondent and as to how the Petitioner issued email dated 21.06.2019 threatening the Respondent with dire consequences. In support of her submissions, the learned counsel referred to and relied upon the following judgments:

(i) **Y.VARALAKSHMI V. Y.KANAKA DURGA PRASAD [1989**

(1) ALT 614], wherein, at paragraph 17, the Division Bench of the Andhra Pradesh High Court held that any displacement of the child will cause psychological damage to him.

(ii) **TARA HAND MAVAR V. SMT. BASANTI DEVI [1988 WLN UC 500]**, wherein, at paragraph 13, the Division Bench of the Rajasthan High Court held that in considering the question of custody of the minor, the Court has to be principally concerned with the welfare of the minor.

(iii) **SMT.RAMA ALIAS RAM KALA VS SHRI ANIL KUMAR JOSHI [(2000) 124 PLR 711]**, wherein, at paragraph 13, the Punjab and Haryana High Court held that better economic position should not be the paramount consideration in deciding the custody of the minor.

10. By way of rejoinder submissions, the learned counsel for the Petitioner submitted that the Petitioner is doing the business of selling Salvar kameez and that the accusation that the Petitioner cheated the customers is completely false.

11. I considered the submissions of the learned counsel for the respective parties and examined the records.

12. At the outset, it is necessary to note that in proceedings for custody, the interest of the minor child is the paramount concern of the Court. In this case, the admitted position is that the minor child has lived at Flat No.63, Door No.11, Sai Vital 1st Street, Madipakkam, Chennai-600 091, from the time of her birth.

13. On perusal of the evidence, I find that the child has been admitted in the Varna Play School as evidenced by Exs.R6 to R9. It is also clear from the cross-examination of PW-1 that the Respondent admitted the minor child in School and has also ensured that the child received sufficient attention by interacting with the teachers and also ensuring that the child receives vaccination as and when required. In fact, PW-1 has categorically admitted that the Respondent and his family are taking sincere care of the mind child. It is also clear from the evidence recorded in this case that legal proceedings were initiated in respect of the business activities of the Petitioner, including the registration of the case in Crime No.162 of 2016 on 15.06.2016 (Ex.P2). Although the petitioner was granted bail on 06.03.2017, it is the admitted position that the criminal proceeding has not been concluded. In these facts and circumstances, I am of the view that it would not be in the interest of the minor to be displaced from the home environment to which the minor child is accustomed.

14. In addition, it is the admitted position that the Respondent's parents, brother and sister-in-law are also available to take care of the minor child. It is no doubt true that ordinarily the custody of minor children below a certain age and especially female children is granted to the mother. However, this is subject to exceptions when the facts and circumstances warrant. In the judgment of the Hon'ble Supreme

Court in **VIVEK SINGH**, which was relied upon by the learned counsel for the Petitioner, the fact situation was that both the parents were living together until the husband forced the wife to leave the matrimonial home in a situation where the wife was not to be blamed. Thereafter, she applied for custody at the earliest possible time. In those circumstances, the Hon'ble Supreme Court held that the child requires the love and affection of the mother and, therefore, granted custody to the mother. The fact situation in this case is different. It is the admitted position that several disgruntled customers/clients of the Petitioner demanded repayment of money and this resulted in the lodging of criminal proceedings and, in fact, even resulted in the incarceration of both the Petitioner and the Respondent. The said criminal proceeding is still ongoing.

15. Keeping in mind all these factors, I am of the view that the custody of the minor child should remain with the Respondent until these issues are sorted out. Needless to say, it is always open to the Petitioner to re-apply for custody once there is a material change in the facts and circumstances and the Petitioner is in a position to provide a stable environment for the development of the child. This is without prejudice to the rights of the Petitioner to continue to exercise visitation rights and to make any applications, if necessary, in that regard.

16. The Original Petition is disposed of on the above terms.

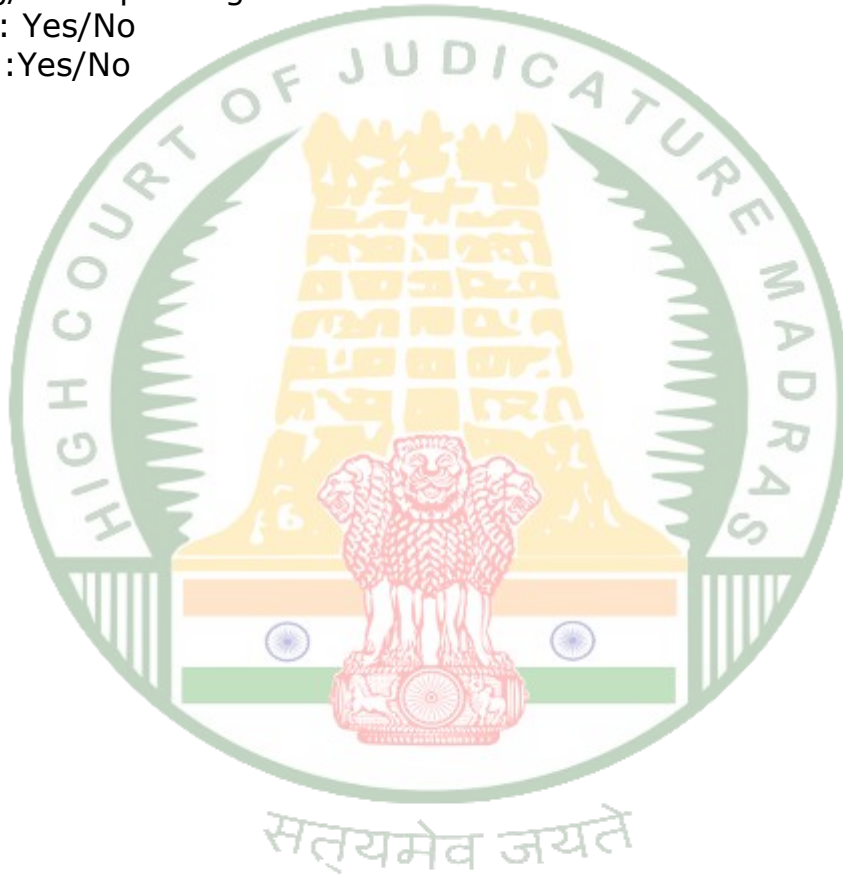
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Speaking/Non Speaking order

Index : Yes/No

Internet :Yes/No

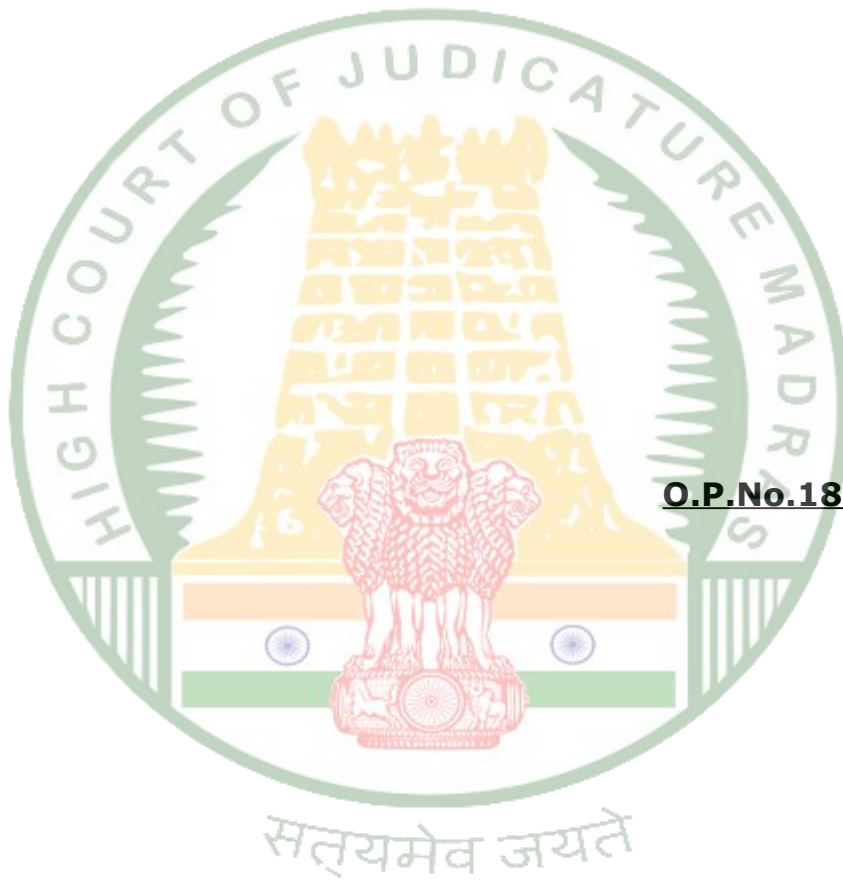
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