

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

CRM-M No.38874 of 2018
Date of decision: 13th March, 2020

Dr. Prakashvir Pathak

... Petitioner

Versus

Dr. Archana Sharma

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Manoj K. Sood, Advocate for the petitioner.

Mr. Yashveer Kharb, Advocate for the respondent.

FATEH DEEP SINGH, J.

It is after a dingdong battle the parties, who happen to be husband and wife, have come up before this Court as a consequence of their matrimonial disaccord and estrangement. Dr. Archana Sharma initially had filed against her husband Dr. Prakashvir Pathak an application under Sections 12, 17, 18, 19, 20, 22 and 23 of the Protection of Women from Domestic Violence Act, 2005 (in short, 'the Act'), wherein the Court of learned Judicial Magistrate 1st Class, Faridabad through findings dated 08.12.2017 observed as under:-

“In the present facts and circumstances of the case, this Court is of the considered view that Section 21 is amendable two aspects that the temporary custody of the child as well as arrangement for visit of child/children to the respondent. It is admitted position on the case file that

the custody of the children is with the complainant namely Dr.Archana Sharma and there is no adverse reason for not granting the visiting right to the applicant being the father to the children. Hence, considering the interest of the children, the application in hand stands allowed to the effect that the petitioner i.e. Dr. Archana Sharma will arrange the meeting of the children with the applicant on every weekend for day time and the custody of the child shall be handed over back by the respondent to the petitioner Dr. Archana Sharma till 5:00 p.m. on the same day. It is also contended by the respondent that complainant has also taken with her the passport and other educational certificates and locker key of the respondent at the time of leaving his house. In these circumstances, the complainant is directed to return the passport to the respondent on the next date of hearing. Application in hand stands disposed of accordingly.”

Dissatisfied over the same, the wife filed an appeal and the Court of learned Additional Sessions Judge, Faridabad through impugned order dated 10.07.2018 allowed the appeal of the wife and set aside the visitation rights granted by the trial Court. The same is subject matter of challenge before this Court.

Heard Mr. Manoj Kumar Sood, Advocate for the petitioner; Mr.Yashveer Kharb, Advocate for the respondent and perused the records of the case.

This Court in '**Roop Lal & others vs. Manpreet Kaur**' (CRM-M No.2800 of 2016 and a bunch of petitions decided on 05.11.2019) has detailed at length the very ambit of the Act and seeking the aid of the Universal Declaration of Human Rights, which voiced its concern against discrimination and holding out that all human beings are born free with equal rights and dignity and thus all are entitled to equal treatment, had laid stress to ensure equal rights to men and women.

Admittedly, the children born to the estranged couple are minor and therefore for the balanced growth of the children to ensure that they grow in a healthy environment having care and protection of the **father** as well as **mother** which would have its repercussions on the psyche of the children and would ensure that they grow up to be balanced human beings, it is of imperative necessity that the father too is made to associate in the evolution of life of the children. There may be a cause of concern for the Court that where the couple is unable to live together and witnessing domestic violence in the household would be detrimental to the growth of the children and the parents have now separated, but at the same time the rights of the father over the children cannot be ignored as it would be not only physical and mental but psychological endangerment as well which would deprive the children of all aspects of the life. This Court though constrains itself as to the legality and validity of the order but stresses the fact that the Court ought to have involved conciliation

experts as well as experts from the field of child development so as to get assistance of experts, what was most urgently required during the pendency of the case and thereafter for the children. The Court below, as is reflective from the impugned findings, on bald allegations of the wife on its own without the aid of an expert has drawn the conclusion that there was no need to grant even visitation rights to the father, quite contrary to the law of nature. How the learned Court below has drawn the conclusion without there being any concrete and substantial evidence that the visit of the petitioner husband may be harmful to the interest of the children. To the query posed by this Court to the counsel for the two sides, nothing could be revealed which could be of alarming nature and would be not conducive for the growth of the children which the Court below has deciphered that visitation rights would invite for the children. More so, the impugned order clearly reflects that it is more of a lackadaisical approach than having in mind the object of the Act and the needs for balanced growth of the children in question.

As has come across, the elder child at the time of occurrence was aged around 17 ½ years and the younger one 12 years. It cannot be accepted that the presence of the father during the visitation rights would be not beneficial for the growth of the children. Rather the learned Judicial Magistrate, whose order was set aside by the impugned findings in appeal, has clearly held that there was no adverse reason for not

granting the visitation rights to the father. How or in what manner the learned appellate Court did not feel it appropriate to concur with the findings of the learned trial Magistrate, are totally amiss in the impugned findings. In the light of the same, the orders dated 08.12.2017 of learned Judicial Magistrate 1st Class, Faridabad need to be upheld and that of learned appellate Court dated 10.07.2018 need to be set aside by way of acceptance of the present petition and restoring the stipulation laid in the orders of learned Magistrate which needs to be followed by the Court below.

The petition stands disposed off in those terms.

(FATEH DEEP SINGH)
JUDGE

March 13, 2020

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No