

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 570 OF 2021

Mrs. Pranali W/o Mayur Shrivastava

Vs.

The State of Maharashtra, Through the Commissioner of Police, Nagpur & ors

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri K.H. Dodani, Advocate for the petitioner.

Shri V.A. Thakare, A.P.P. for the respondent Nos.1 and 2/State.

CORAM : V.M. DESHPANDE AND AMIT B. BORKAR, JJ.

DATE : 12th AUGUST, 2021.

1. After hearing Shri K.H. Dodani, learned counsel for the petitioner, in our view, this Criminal Writ Petition can be disposed of, even without issuing notice to the respondent No.3.

2. The petitioner is wife of respondent No.3. From their wedlock, they are having two sons. One is Shlok aged about 16 years and younger Vardaan aged about 4 years. It appears that there is a dispute in the matrimony therefore, the petitioner filed a Petition No. A 1406 of 2019 under Section 27(i)(d) of the Special Marriage Act, 1954 for grant of decree of divorce. The said petition is pending on the file of learned Judge of Family Court-3, Nagpur. In the said proceedings, the petitioner has moved an application for grant of custody since, the custody of both sons is with the respondent No.3, under Section 26 of the Hindu Marriage Act, 1955. The said application is still pending which is at Exh.12.

3. The learned counsel submits that the direction be given to the respondent herein for handing over the custody. We are afraid that such a prayer can be granted at this stage by this Court especially when, the application for custody is pending before the Competent Family Court.

4. An apprehension is expressed by the learned counsel that the respondent No.3 may leave Nagpur. He submitted that now the next date of the petition before the Family Court is 07.09.2021.

5. It is the submission of the learned counsel Shri K.H. Dodani that the respondent No.3 is represented by his lawyer in the Family Court.

6. Looking to the fact that the age one of the sons is only four years and the petitioner his mother, we are of the view that the issue of custody has to be decided expeditiously by the learned Judge of the Family Court. Hence, we pass the following order:

ORDER

(i) The Criminal Writ Petition is disposed of as withdrawn.

(ii) The petitioner is permitted to file application before the learned Judge of the Family Court before whom Petition No. A 1406 of 2019, is pending for preponing the date after

giving due notice to the respondent No.3, through his advocate of the said application.

(iii) The Family Court is expected to decided the issue of custody as expeditiously as possible, within a period of one month from the date on which the learned Principal Judge will be fixing the matter after preponing the petition.

7. The Criminal Writ Petition is disposed of as withdrawn.

JUDGE

JUDGE

C.L.Dhakate