

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

**CWP No.9428 of 2021**

**DATE OF DECISION : 12.05.2021**

**Sandeep Kaur Sandhu**

**...Petitioner**

**Versus**

**State of Punjab and others**

**...Respondents**

**CORAM : HON'BLE MR. JUSTICE ARUN MONGA**

Present : Ms. Alka Chatrath, Advocate and  
Mr. Nitin Arora, Advocate  
for the petitioner.

Mr. Pawan Sharda, Sr. D.A.G., Punjab.

Mr. J.S. Dadwal, Advocate  
for respondent Nos.2 and 3.

**(Presence marked through video conference)**

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**ARUN MONGA, J. (ORAL)**

Petitioner, a separated mother having three years old son, is before this Court *inter alia* seeking appropriate orders to direct her husband to grant her visitation rights to meet her son. Until the petitioner separated from her husband owing to matrimonial differences, both parents enjoyed joint custody of their son. The petitioner was not allowed by her husband to meet her son for more than a year until the time of filing the instant proceedings.

2. The petitioner claims that she was made to move out along with her minor son, who was all of a 2 years and few months at the time, to her parental home. It is the case of the petitioner that the respondent No.2/father, one fateful day, on the pretext of spending some time with his son, took him away with the consent of the petitioner. It turned out later on, that the said consent was misused by him as he did not restore the custody of the child to the petitioner.

3. When the matter first came up for hearing before this Court on 04.05.2021, following order was passed by me :-

*“ Minor son of the petitioner-mother namely Tehgun Singh Sandhu born on 29.09.2017, was taken by respondent No.3 (Grand-father) on 07.03.2020, allegedly by force/illegally, from*

*the legitimate custody of his mother, against her wishes. Minor son was all of 02 years and 06 months old at that time.*

*Distraught, the petitioner/mother approached this Court by way of instituting a petition seeking issuance of a writ in the nature of habeas corpus on 16.02.2021 (having in between tried in futility to amicably sort out the matrimonial dispute with her husband by involving the family members and friends). However, the petitioner was advised to withdraw her writ petition and seek her remedy before the Family Court by instituting appropriate proceedings under the Hindu Minority and Guardianship Act, 1956. Pursuant thereto, the petitioner instituted a petition for permanent custody before the Family Court, Amritsar, inter-alia, also seeking visitation rights during the pendency thereof.*

*Learned counsel for the petitioner contends that notwithstanding the legal mandate, that ordinarily upbringing of a minor child under 05 years of age, needing tender caring and extra affection, is essentially to be under the natural custody of her mother, as envisaged under Section 6 (a) of the Act *ibid*, learned Family Court, overlooking the sensitivity of the matter, simply adjourned the guardianship petition to 14.07.2021. Even grant of interim visitation rights to the petitioner till the next date were not considered, in other words said prayer was deeminglly rejected.*

*Learned counsel further submits that given the long duration of separation caused by the forcible removal of the minor son from the custody of petitioner, the minor child is being deprived of the natural upbringing and everyday affection of his mother. She strenuously contends that each day's denial of his mother's affection to the minor child at this stage of life, is highly detrimental for his growth and welfare. She also submits that it is already more than a year since the minor son has been deprived of his mother. The petitioner has not even once been allowed to see her son, who was taken away when he was barely of the tender age of 02 years and 06 months.*

*Learned counsel submits that father of the minor son remains busy in agricultural fields being an agriculturist. He is thus unable to look after the welfare of the minor child, who needs constant supervision, given his age and stage, particularly during current pandemic to which children are more susceptible due to the lower levels of immunity.*

*Notice of motion for 07.05.2021.*

*Ms. Akshita Chauhan, Assistant Advocate General, Punjab, on service of advance copy of the petition, joins the proceedings and accepts notice on behalf of State of Punjab.*

*Private respondents be served dasti as well as through their counsel representing them before the Family Court. The petitioner and respondent No.2 (husband) along with minor child shall personally join the video conferencing on the date fixed. Learned State counsel is requested to make appropriate arrangements through State machinery, including local police if needed, to ensure that the parties join the video conferencing on next date. For the purpose of joining Court proceedings through video conference, in case parties are required to be brought to the Family Court, appropriate steps will be taken by respondent No.1*

*through its officials. In the event, there is no video conferencing facility in Family Court, then proper arrangements be made in any other alternative Court at Amritsar where the facility is installed.”*

4. Apropos above order, the parties along with their elders of the family joined the video conference hearing of the Court on 07.05.2021 from the Family Court, at Amritsar. With the able assistance of the respective counsels and the elders of the family, this Court keeping the welfare of the minor child in mind, which is the foremost consideration, given his tender age, endeavoured conciliation proceedings between the parents as is reflected from the order of even date as below :-

*“Pursuant to order dated 04.05.2021, minor child, namely Master Tehgun Singh Sandhu, along with his parents have joined the hearing through video conferencing.*

*2. I have interacted with the parties as well as the child on two different occasions; first in the morning session of the Court when the matter was adjourned post lunch to enable the parties to go out together for a family lunch and also initiate a discussion to sort out their differences amicably; and later in the afternoon session of the court. When the matter was taken up in the second half, on a Court query, both the parties seem to be receptive to settle out their differences. However, given the long pause, it is but natural that some time is needed to iron out their differences.*

*3. As regards custody of the minor son, the petitioner’s (mother) version is that the child has throughout been in her custody ever since the date of separation. He was stealthily taken away from her on the pretext that father would come back with the child and restore the custody to her. The said version of the petitioner is controverted by respondent No.2/father, who submits that the petitioner voluntarily abandoned her matrimonial home, leaving the child in the custody of his father.*

*4. The aforesaid version and counter-version is to be finally adjudicated by the Guardian Judge where the petition for permanent custody of the child is pending, this Court is though hopeful that the occasion for the same would not arise as the parties would be able to amicably sort out their differences. Given that the child has been separated from his mother since 07.03.2021, I am of the view that he deserves the company of his mother. It would be unfair to him to deprive him of the maternal affection at this stage of life. Each day at this tender age, once gone past would not come back. No amount of motherly love showered by his mother at later stage can substitute what he is losing now.*

*5. In the premise, in the welfare of child, it is directed that the father will take the minor child to his mother’s place everyday at 11.00 AM and leave him in the custody of his mother and collect the child at 3.00 PM same day and carry out this exercise for next few days, until the next date of hearing before this court.*

*6. Post it on 12.05.2021 for further hearing and settlement talks. The case be taken up at 11.30 AM. Parties along with the minor child shall remain present before the Family Court/District Court, Amritsar, for the purpose of joining video conferencing on the date fixed.”*

5. In the aforesaid back round, when the matter has been taken up for hearing today, the parents at the outset have stated that, in the interest of family peace and tranquility as well as the welfare of the minor child, they have decided to resume their co-habitation at their matrimonial home. Goes without saying that the same would not have been possible, but for the conciliatory and receptive attitude of the parties and the effective intervention of the elders of the families.

6. Both the learned counsels, under their respective instructions, state that parties have amicably since settled their differences, the present proceedings are rendered infructuous. In fact, the petitioner is being taken to her matrimonial home by her husband-respondent No.2 from the Court premises itself without any further delay and this Court appreciates such a positive outlook on his part.

7. Needless to say, that all the pending *inter se* cases filed by the parties against each other, including the petition before the Guardian Judge, Amritsar, are rendered infructuous. It is expected from the parties to withdraw their respective cases filed against each other.

8. In the parting, this Court also records its appreciation of the learned counsels in their having gone an extra mile to make sure that needless litigation is avoided and the parties resume their matrimonial life. The petition is disposed of as infructuous.

**MAY 12, 2021**  
gurpreet

**(ARUN MONGA)**  
**JUDGE**

**Whether speaking/reasoned : Yes/No**  
**Whether reportable : Yes/No**