

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

114

CRR-1307-2021

Decided on : 28.10.2021

Roop Chand and another

... Petitioner(s)

Versus

Preeti and others

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

(Through Video Conferencing)

PRESENT: Mr. Arvinder Arora, Advocate
for the petitioner(s).

MANJARI NEHRU KAUL, J. (Oral)

Learned counsel for the petitioners has impugned the order dated 13th October, 2021, passed by the learned Additional Sessions Judge, Ambala, vide which the revision, which had been filed by them against the interim order of Additional Civil Judge (Sr. Divn.), Naraingarh, was dismissed.

Learned counsel for the petitioners has vehemently argued that it was beyond the jurisdiction of the Courts below to grant interim custody of their minor grand daughter, aged 05 years (i.e. daughter of their deceased son) to respondent No.1 (daughter-in-law of the petitioners), as a petition under Section 7 and 8 of the Guardian and Wards Act, 1890 (in short 'GW Act'), preferred by the petitioners was still pending consideration before the Family Court at Ambala. It was vehemently urged that it was only the Family Court, which could decide *qua* the custody, interim or otherwise of the minor grand-daughter of the petitioners and thus the Courts below had gravely erred in giving the interim custody of their grand-daughter to her

mother i.e. respondent No.1 under Section 21 of the Domestic Violence Act, 2005 (for brevity 'DV Act').

In support of his submissions, learned counsel for the petitioners has placed reliance upon '**S. Parthasarathi Vs. State of Karnataka & Ors., 2010(56) RCR (Civil) 939**'.

I have heard learned counsel for the petitioners and perused the material on record as also the case laws on which the reliance has been placed by the learned counsel.

The question which would arise for consideration is whether the Civil Courts below exceeded their jurisdiction while granting interim custody of the minor grand-daughter to respondent No.1 (i.e. her mother) under Section 21 of the DV Act, more so, when Family Courts had been established for exercising jurisdiction *qua* family matters including those under the GW Act.

It would, therefore, be apposite to reproduce Sections 21, 26 & 36 of the DV Act, which are as under:-

“21. Custody orders.— *Notwithstanding anything contained in any other law for the time being in force, the Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this Act grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent: Provided that if the Magistrate is of the opinion that any visit of the respondent may be harmful to the interests of the child or children, the Magistrate shall refuse to allow such visit.*

xxx xx xxx xx

26. Relief in other suits and legal proceedings.—

(1) *Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.*

(2) *Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.*

(3) *In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.*

xxx xx xxx xx

36. Act not in derogation of any other law.— *The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.”*

A bare reading of the Section 21 leaves no manner of doubt that it starts with an non-obstante clause and in no way bounds the Magistrate from exercising the power to grant interim custody of a child regardless of powers of the other Courts, which may have been conferred upon them under other enactments including under the GW Act.

Moreover, Section 26 and Section 36 of the DV Act, which stands reproduced hereinabove categorically stipulates that any relief(s), which may be or may have been granted under the DV Act, are supplementary and not in derogation of the provisions of any other laws, which for the time being, may be in force.

It also needs to be emphasized that the object and

purpose behind the enactment of DV Act, which is a special legislation, was protection of the women from any form of violence for which a forum of redressal had been specifically provided for. Still further, Section 21 of the DV Act, not only comes to the rescue of an aggrieved woman for the protection of her rights, but also considers the wellbeing of a child/children by providing for specific provisions as to his/her interim custody.

The reliance placed upon **S. Parthasarathi's case** (supra) would not come to the rescue of the petitioners, as the facts of that case are clearly distinguishable from the case in hand.

After perusing the material on record including the impugned orders passed by the Courts below, this Court does not find any illegality and perversity in the impugned orders which would persuade this Court to exercise its inherent jurisdiction under Section 401 Cr.P.C. to set aside the impugned orders. Before parting, it would also be relevant to observe that in the interest of the minor child aged 05 years of respondent No.1, this Court would loathe to deprive the child of the love and affection of her mother in her tender years, more so, when undisputedly the mother is a natural guardian of her child.

Petition stands dismissed in above terms.

(MANJARI NEHRU KAUL)
JUDGE

October 28, 2021

J.Ram

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