

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

BEFORE:

The Hon'ble Justice Soumen Sen

And

The Hon'ble Justice Siddhartha Roy Chowdhury

FMAT 107 of 2022

With

CAN 1 of 2022

Smt. Mamoni Pal (Biswas)

Vs.

Sri Samir Pal

For the Appellants : Mr. Debdutta Basu, Adv.
Mr. Sudip Sarkar, Adv.

For the Respondents : Ms. Papiya Chattopadhyay, Adv.

Hearing Concluded On : 14th July, 2022

Judgment On : 21st July, 2022

Soumen Sen, J.: I have read the judgment authored by my brother Justice Roy Chowdhury and agree with his conclusions and reasonings, but having regard to the importance generally attached to the custody of a minor, I wish to add a short judgment of my own.

The custody of sweet little adorable Oshmi is the subject matter of the appeal.

We have interacted with her and our experience has been captured in the judgment of my brother Justice Roy Chowdhury and I refrain from revisiting the facts.

The custody of a minor is a very delicate issue.

The statutes governing the custody of a minor principally are The Guardians and Wards Act, 1890 and The Hindu Minority and Guardianship Act, 1956. These two statutes are relevant for two present purposes.

The Guardians and Wards Act, 1890, was the first statute that primarily enacted to consolidate the various Acts then in force keeping in view the personal law of diverse communities in India. Section 7 gives power to the Court that if it is satisfied that it is for the welfare of a minor that an order should be made, it may make an order appointing a guardian of his person or property, or both, or declaring a person to be such a guardian. Section 8 lays down that no order under Section 7 will be made except on the application of the person desirous of being, or claiming to be, the guardian of the minor or any relative or friend of the minor or the Collector of the district in which the minor ordinarily resides or in which he has property or the Collector having authority with respect to the class to which the minor belongs. Section 17 enjoins upon the court to have due regard to the personal law of the minor and specially take note of the circumstances which point towards the welfare of the minor in either appointing a guardian or declaring a guardian. If the minor is old enough to form an intelligent preference, the court may be justified to consider that preference also in coming to the final conclusion.

The Hindu Minority and Guardianship Act, 1956 was enacted as a law complementary to the Guardians and Wards Act, 1890. This defines a 'minor' to be a person who has not completed the age of eighteen years.

'Natural guardian', according to this Act, means any of the guardians mentioned in Section 6. Section 6 says that the natural guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in the joint family property) are - (a) in the case of a boy or an unmarried girl, the father, and after him, the mother, provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother. Section 13 of the Act lays down that in the appointment or declaration of any person as guardian of Hindu minor by a Court, the welfare of the minor shall be the paramount consideration.

A bare reading of the provisions of the two Acts referred to above with the statement of object and reasons make it clear that the welfare of the minor is the predominant considerations and the legal rights of the persons claiming to be the guardians or claiming to be entitled to the custody would play a very insignificant role in the determination by the court.

In a fairly recent decision of the Hon'ble Supreme Court in ***Rajeswari Chandrasekar Ganesh v. State of Tamil Nadu & Ors.*** reported at **MANU/SC/0890/2022** the Apex Court in deciding a petition seeking right of habeas corpus in a matter relating to custody of a child discussed the principles relating to custody of a child in great details by referring to a large catena of Indian and Foreign decisions. In the said decisions the Apex court observed that while considering the competing claims of guardianship, the test would be to see what would best serve the welfare and interest of the child. It was observed that in all circumstances

welfare of the minor child would prevail over the legal rights of the parties in the custody battle.

The principles of law relating to the custody of a child that are relevant for the present purpose and discussed lucidly in the said judgment are stated in paragraphs 83 to 89 of the reports which reads:

83. *In the case of Anjali Kapoor v. Rajiv Bajaj, (2009) 7 SCC 322, where the custody of a minor child was being claimed by the father being the natural parent from the maternal grandmother, the mother having died in child birth, it was held that taking proper care and attention in upbringing of the child is an important factor for granting custody of child, and on facts, the child having been brought up by the grandmother since her infancy and having developed emotional bonding the custody of the child was allowed to be retained by the maternal grandmother. While considering the competing rights of natural guardianships vis-a-vis the welfare of the child, the test for consideration by the Court was held to be; what would best serve the welfare and interest of the child. Referring to the earlier decisions in Sumedha Nagpal v. State of Delhi, (2000) 9 SCC 745; Rosy Jacob v. Jacob A. Chakramakkal, (1973) 1 SCC 840; Elizabeth Dinshaw v. Arvand M. Dinshaw, (supra) and Muthuswami Chettiar v. K.M. Chinna Muthuswami Moopanar, AIR 1935 Mad 195, it was also held that the welfare of child prevails over the legal rights of the parties while deciding the custody of minor child. The observations made in the judgment in this regard are as follows :*

“14. The question for our consideration is, whether in the present scenario would it be proper to direct the appellant to hand over the custody of the minor child Anagh to the respondent.

15. Under the Guardians and Wards Act, 1890, the father is the guardian of the minor child until he is found unfit to be the guardian of the minor female child. In deciding such questions, the welfare of the minor child is the paramount consideration and such a question cannot be decided merely based upon the rights of the parties under the law. (See Sumedha Nagpal vs. State of Delhi.” (2000) 9 SCC 745 (SCC p. 747, paras 2 & 5).

84. In *Rosy Jacob v. Jacob A. Chakramakkal* (*supra*), this Court has observed that:

“7...the principle on which the court should decide the fitness of the guardian mainly depends on two factors:

(i) the father’s fitness or otherwise to be the guardian, and (ii) the interests of the minors.”

85. This Court considering the welfare of the child also stated that : (SCC p. 855, para 15) “15....The children are not mere chattels: nor are they mere playthings for their parents. Absolute right of parents over the destinies and the lives of their children has, in the modern changed social conditions, yielded to the considerations of their welfare as human beings so that they may grow up in a normal balanced manner to be useful members of the society....”

86. In *Elizabeth Dinshaw* (*supra*), this Court has observed that whenever a question arises before a court pertaining to the custody of the minor child, the matter is to be decided not on consideration of the legal rights of the parties but on the sole and predominant criterion of what would best serve the interest and welfare of the child.

87. The question as to how the court would determine what is best in the interest of the child was considered In *Re: McGrath (Infants)*, [1893] 1 Ch. 143 C.A., and it was observed by Lindley L.J., as follows :

“...The dominant matter for the consideration of the Court is the welfare of the child. But the welfare of a child is not to be measured by money only, nor by physical comfort only. The word welfare must be taken in its widest sense. The moral and religious welfare of the child must be considered as well as its physical well-being. Nor can the ties of affection be disregarded.”

88. The issue as to the welfare of the child again arose In *re “O” (An Infant)*, [1965] 1 Ch. 23 C.A., where Harman L.J., stated as follows :

“It is not, I think, really in dispute that in all cases the paramount consideration is the welfare of the child; but that, of course, does not mean you add up shillings and pence, or situation or prospects, or even religion. What you look at is the whole background of the child’s life, and the first

consideration you have to take into account when you are looking at his welfare is : who are his parents and are they ready to do their duty?”

89. The question as to what would be the dominating factors while examining the welfare of a child was considered in *Walker v. Walker & Harrison*, 1981 New Ze Recent Law 257 and it was observed that while the material considerations have their place, they are secondary matters. More important are stability and security, loving and understanding care and guidance, and warm and compassionate relationships which are essential for the development of the child’s character, personality and talents. It was stated as follows :

“Welfare is an all-encompassing word. It includes material welfare; both in the sense of adequacy of resources to provide a pleasant home and a comfortable standard of living and in the sense of an adequacy of care to ensure that good health and due personal pride are maintained. However, while material considerations have their place they are secondary matters. More important are the stability and the security, the loving and understanding care and guidance, the warm and 18 compassionate relationships that are essential for the full development of the child’s own character, personality and talents.” (emphasis supplied)

In a matter of the child custody the court is exercising *parens patriae* jurisdiction. The Court is required to give due weight to the ordinary comfort of the child, contentment, intellectual, moral and physical development, health, education and general maintenance, and the favourable surroundings. The Court is not bound either by statutes nor by strict rules of evidence nor procedure or precedent. In deciding the issue of custody, the paramount consideration should be the welfare and well-being of the child. [See: ***Nil Ratan Kundu v Abhijit Kundu*** reported in **2020 (12) SCC 248** at paragraph 17].

It is well settled that while deciding the matters of custody of a child the welfare of the child is primary and paramount. If the welfare of the

child so demands, then technical objections cannot come in the way. The Courts are expected to decide the issue of custody on a paramount consideration which is in the best interest of the child.

It is the duty of the Court to ensure that the child is required to be kept away from negative influences and stressful atmosphere. In a catena of decisions it has been held that in dealing with a matter concerning a minor, the court has a special responsibility and it is the duty of the court to consider the welfare of the minor and to protect the minor's interest. In considering the question of custody of a minor, the court has to be guided by the only consideration of the welfare of the minor. [See: **Sheoli Hati v Somnath Das**, reported in **2019 (7) SCC 490**].

In **Gaurav Nagpal v Sumedha Nagpal**, reported in **2009(1) SCC 42** at paragraph 28, the Hon'ble Supreme Court has lucidly explained the word "welfare" in the following words:

"50. When the court is confronted with conflicting demands made by the parents, each time it has to justify the demands. The court has not only to look at the issue on legalistic basis, in such matters human angles are relevant for deciding those issues. The court then does not give emphasis on what the parties say, it has to exercise a jurisdiction which is aimed at the welfare of the minor. As observed recently in Mausami Moitra Ganguli case (2008) 7 SCC 673, the court has to give due weightage to the child's ordinary contentment, health, education, intellectual development and favourable surroundings but over and above physical comforts, the moral and ethical values have also to be noted. They are equal if not more important than the others.

51. The word "welfare" used in Section 13 of the Act has to be construed literally and must be taken in its widest sense. The moral and ethical welfare of the child must also weigh with the court as well as its physical well-being. Though the provisions of the special statutes which

govern the rights of the parents or guardians may be taken into consideration, there is nothing which can stand in the way of the court exercising its parens patriae jurisdiction arising in such cases.” (emphasis supplied)

A child does not fully understand who biological father is or who is biological mother. Child only understands his or her need satisfaction and emotional comfort and gratification. This has been borne out by numerous scientific studies and has led to many revolutionary ideas about animal and human behaviour like Attachment theory of Bowlby. But in the long term, in the interests of healthy psychological development it is best that the child is allowed to know the truth and cope with it healthily.

The father’s fitness to be the guardian, the love and affection of the grandparents for the minor, the environment and atmosphere prevailing at father’s place as opposed to the paternal home of the mother, the education and favourable surroundings, ethical and moral values at her father’s place and above all physical and mental comfort the child is likely to receive at father’s place has compelled us to give interim custody of the minor till the custody matter is finally decided.

(Soumen Sen, J.)

Siddhartha Roy Chowdhury, J:- This appeal is directed against the judgment and order no. 29 dated 7th October, 2021 and order no. 32 dated 7th March, 2021 passed by learned Additional District and Sessions Judge, 1st Court, Bongaon, 24th North Paraganas in Misc. Case no. 1 of 2018 arising out of an application under Section 25 of the Guardians and

Wards Act, 1890 filed by Samir Pal against Mamoni Pal (Biswas) seeking custody of his minor daughter Oshmi Pal.

It is contended that the parties to the proceeding got married on 31st January, 2013 which was duly consummated and, in their wedlock, a female baby was born on 3rd July, 2014. After some years of marriage, the Opposite Party/Appellant herein bagged job of constable in police department. She used to attend her duty leaving the baby under the care and custody of her mother-in-law. It is alleged that after few days the Respondent picked up relation with one Samar Das and started living with that man deserting not only her husband but also her baby. The petitioner made several unsuccessful attempts to bring her back.

On 19th July, 2016 the Opposite Party/Appellant filed a case under Section 97 of Cr.P.C before the S.D.O., Bongaon and took the child to her custody on the strength of the order of S.D.O. passed in the said proceeding. On 28th July, 2016, she filed a matrimonial suit before the learned Additional District Judge, Bongaon which was registered as MAT Suit no. 246 of 2016. On 2nd August, 2016 the petitioner came to know that the Opposite Party gave birth to another child with Samar Das. The petitioner made several attempts to meet his minor daughter but in vain. According to the petitioner, the opposite party/mother is not in a position to take care of the child. The child is not getting proper care from her maternal-grandmother, who is ailing and maternal uncle is not fit to take care of the child. It is adverted by the petitioner, since the child was brought up from her cradle days by her paternal grandparents, paramount welfare of the child would be secured if the Petitioner is given the custody of the child.

Notice was issued upon the opposite party/wife (the Appellant herein) and she entered into appearance on 20th March, 2018, prayed before the Trial Court for time to file written objection. Learned Trial Court allowed the prayer and fixed 22nd June, 2018 for filing written statement and on 27th June, 2018 the case was posted for ex-parte hearing as no step was taken from the side of the Opposite Party. Thereafter, on 5th October, 2021 the Opposite Party Mamoni Pal (Biswas) appeared before the Court along with her girl child Oshmi, pursuant to the direction of the learned Trial Court upon the Officer-in-charge of Bagdah Police Station. On that very day learned Trial Court recorded the statement of Mamoni Pal, the Opposite Party on oath as court witness, heard argument and on 7th October, 2021 learned Trial Court passed the impugned order.

Hence the appeal is preferred by the Opposite Party as she felt aggrieved and dissatisfied with the order.

We have perused the materials on record.

Before entering into the merit of the appeal, at the outset we consider it expedient to say that learned Trial Court failed to follow the principle of natural justice as well as the provisions of Civil Procedure Code while deciding the application under Section 25 of the Guardians and Wards Act.

When the Mamoni Pal, the Appellant herein failed to file written statement or written objection as the case may be, learned Trial Court posted the case for ex-parte hearing. In course of time the Petitioner and his mother adduced evidence as PW 1 and PW 2. After recording their evidence ex-parte, learned Trial Court decided to have an interaction with the child but after several directions ultimately could secure the presence

of the child on 5th October, 2021, by directing the Officer-in-charge, Bagdah P.S. Opposite Party/mother also appeared on that date. On that very date i.e. 5th October, 2021 the learned Trial Court examined Mamoni Pal and recorded her statement on oath as Court witness, though Mamoni Pal the Appellant herein did not appear before the learned Trial Court as witness. Therefore, learned Trial Court had no scope to put question by invoking the provision laid down under Section 165 of the Evidence Act. The proceeding before the learned Trial Court was not a criminal proceeding so as to exercise the jurisdiction by invoking the provision of Section 311 of Cr.P.C to examine any person as Court witness.

In our view, the learned Trail Court ought to have recalled the order by which the suit was posted for ex-parte hearing before recording any statement of Opposite Party Mamoni Pal in whatever capacity. Opportunity ought to have been given to the Opposite Party to cross examine the witnesses instead of passing the impugned order based on uncontroverted testimony of the petitioner and his mother recorded ex-parte as PW 1 and PW 2.

Undoubtedly the conduct of the Opposite Party was utterly bad and the impugned order perhaps reflects the exasperation of the learned Trial Court. However, lack of fair play and violation of natural justice since writ at large, we are of the view that the impugned judgment and orders should be set aside and the Misc. Case no. 1 of 2008 should be sent back to learned Trial Court on remand for trial afresh.

This is one aspect of the matter, that we are deciding and while doing so we cannot ignore the most important aspect i.e. paramount welfare of the minor girl.

The Guardians and Wards Act, 1890, was primarily enacted to consolidate the various acts, then in force, keeping in view the personal law of diverse communities in India. Section 6 of the act provides that no provision in the Act, shall be constituted to take away or derogate from any power to appoint a guardian of a minor's person or property or both, which is valid by law to which the minor is subject. Section 7 of the Act confers power to the Court that if it is satisfied that it is for the welfare of a minor that an order should be made, it may make an order appointing a guardian of the person or property of minor or declaring such person to be a guardian. Section 8 says that no order shall be made under Section 7 except on the application of the person desirous of being or claiming to be the guardian of the minor. Section 12 confers power upon the Court to make interlocutory order for interim protection of the person and property of the minor and Section 17 of the Act enjoins upon the Court to have due regard to the personal law of the minor and particularly take note of the circumstances which point towards the welfare of the minor in either appointing or declaring a guardian and if the minor is old enough to form an intelligent preference, that may also be considered.

Hindu Minority and Guardianship Act, 1956 is enacted as law complementary to the Guardians and Wards Act, 1890. (i) Section 6 of the said act says that natural guardian of a Hindu minor in the case of a boy or unmarried girl, the father and after him the mother provided that custody of a minor who has not been completed the age of five years, shall ordinarily be with the mother. (ii) Section 13 says that welfare of the minor shall be of paramount consideration and no person shall be entitled

to the guardianship, if the Court is of opinion that such guardianship will not be for the welfare of the Child.

We had the occasion to interact with the child Oshmi Pal and her parents in our chamber on 15th June, 2022 and we made a brief observation as to the conduct of the parents, their social and financial background and we directed the mother to give the child to the custody of her father though for a limited period keeping in mind available summer vacation of the school. We would like to reproduce the excerpt from the said order :

“Oshmi though aged about eight years but she appears prima facie to have been suffering from malnutrition.

The child is initially found to be hesitant to speak out. But with the passage of time after getting acquainted with the atmosphere, she takes us into her confidence. During such interaction we find her saying about her sister whom she refers to as ‘Bunu’, who is also her playmate, about her maternal uncle, maternal grandmother, but noting about her father. She pretends to be oblivious about him. However, attachment between daughter and father comes to surface when we call the father inside our chamber. The child not only sits on the lap of her father. She immediately starts interacting with him, talking about her grandparents, her house and its surroundings and also her other family members.

In course of our interaction of course in absence of her parents, Oshmi told us about the father of the other daughter of the appellant. When we ask the mother to come in, the child becomes stiff and apparently scared, the spontaneity that we found in her while interacting with her father in absence of her mother, simply withers away.

It goes without saying that the child needs care and protection of both the parents. Unfortunately, while we were interacting with the mother sending the child outside the chamber we found that the lady was always in a mode of denial. It will not be an exaggeration to say that the child was

tutored by her mother. The lady denied the fact that she is the mother of the another child, which she had admitted in a judicial proceeding and subsequently stated that said child lives with her father away from her home, but from Oshmi we learnt the second child is staying with the Appellant and is aged about 4 years, which the appellant/mother admits subsequently. This conduct of the appellant/mother shows that she does not have any faith in truth.

Oshmi, the child should face the reality that her parents, unlike many, do not stay together and she should know them through her own experience, it will help her grow properly as a future responsible citizen. There may be some kind of hesitation from within initially; but bitter medicine is also required for better tomorrow. After all paramount consideration should be given to the welfare of the child, and to meet that object, child should be allowed to connect with her father.” (Emphasis supplied)

Learned Advocate for the Appellant placing reliance upon several judgments of Hon’ble Supreme Court and this Hon’ble Court as well as Hon’ble High Court, Bombay pronounced in ***Kumar V. Jahgirdar vs. Chethana Ramatheertha*** reported in **(2004) 2 SCC 688**, ***Lekha vs. P. Anil Kumar*** reported in **(2006) 13 SCC 555**, ***Saraswatibai Shripad Ved vs. Sripad Vasanji Ved*** reported in **AIR 1941 Bombay 103** and ***Anamitra Dutta Gupta vs. Soumey Dutta Gupta*** reported in **AIR 2001 Calcutta 88** adverted that the child being female should be kept in the custody of her mother and mother should be preferable to father as guardian. We do not endorse such view as expressed by the learned Advocate for the Appellant by placing the aforesaid judgments of Hon’ble Courts that mother has absolute right to keep company of the child. There cannot be any straight jacket formula. This proposition as

advanced, if accepted, would defeat the underscoring object which is paramount welfare of the child.

Learned Advocate for the Respondent on the other hand, insisted the Court to talk to the child once again to know how happy was she in the company of her paternal grandparents and her father. We have already spoken to the minor child and assessed her intelligent preference while sending her to her father for seven days and nothing adverse was reported. Keeping in view the circumstances that emerged while interacting with the parties and the minor girl, we are of the view that as an interim measure, minor child Oshmi should be given to the custody of her father, the Respondent herein, till completion of the trial by the learned Court below in the interest of paramount welfare of the child.

The child is a student of Lower K.G. II of a school in the neighbourhood named Baikola Chayanir. We direct the Respondent father to get the child admitted in Gobordanga Nivedita Primary School which is only two kilometers away from his residence and to ensure hassle free attendance of the child to the school. The Respondent father is further directed that if the child wants to talk her mother or if the mother wants to talk to child, he shall get the child connected over phone to her mother.

In addition thereto the mother shall have the visitation right, she can meet Oshmi twice a month physically on Saturday and Sunday between 10.00 a.m. to 6.00 p.m. and in that event the Respondent father would make necessary arrangement. In the event child is willing, the Appellant may take her out for the day and return her to the

custody of the Respondent father within 6.00 p.m. This arrangement will continue till the disposal of the case or until further order. We direct the parties to accord each other with dignity without indulging in anything unbecoming of a responsible parent. If the case is not disposed of before the Puja Vacation, the Appellant mother, if wants to keep the child in her company and makes appropriate prayer, learned Trial Court, will consider the prayer and take appropriate decision, based on sound judicial discretion, without compromising with the paramount welfare of the child.

Hon'ble Supreme Court in **Sangram Singh vs. Election Tribunal, Kotah & Ors.** reported in **Air 1955 SC 425** held :

*"50. In the present case, we are satisfied that the Tribunal did not exercise its discretion because it considered that it had none and thought that until the ex parte order was set aside the defendant could not appear either personally or through counsel. **We agree with the Tribunal, and with the High Court, that no good cause was shown and so the defendant had no right to be relegated to the position that he would have occupied if he had appeared on 17-3-1953,** but that he had a right to appear through counsel on 20-3-1953 and take part in the proceedings from the stage at which they had then reached, subject to such terms and conditions as the Tribunal might think fit to impose, is, we think, undoubted.*

"Whether he should have been allowed to cross-examine the three witnesses who were examined after the appearance of his counsel, or whether he should have been allowed to adduce evidence, is a matter on which we express no opinion, for that has to depend on whatever view the Tribunal in a sound exercise of judicial discretion will choose to take circumstances of this particular case, but we can find no justification for not at least allowing counsel to argue.

Now the Tribunal said on 23-3-1953 -

"The exact stage at which the case had reached before us on the 21st of March 1953 was that under the clear impression that respondent No. 1 had failed to appear from the very first date of

the final hearing when the ex parte order was passed, the petitioner must have closed his case after offering as little evidence as he thought was just necessary to get his petition disposed of ex parte. Therefore, to allow the respondent No. 1 to step in now would certainly handicap the petitioner and would amount to a bit of injustice which we can neither contemplate nor condone."

In **Nanda Dulal Pradhan & Anr. vs. Dibakar Pradhan & Anr.**

being Civil Appeal no. 4151 of 2022 dated 11th July, 2022 (unreported)

Hon'ble Supreme Court held :

*"In view of the above and for the reason stated above the impugned judgment and order passed by the High Court is hereby set aside. The order passed by the First Appellate Court setting aside the ex-parte judgment and decree and restoring the suit is hereby restored. **However, it is observed that on restoration of the suit, the defendant nos. 2 & 3 shall not be permitted to file the written statement, as though number of opportunities were given earlier, they did not file the written statement.** However, at the same time they may be permitted to participate in the suit and cross-examine the witnesses and make submissions on merit. Present appeal is partly allowed to the aforesaid extent. However, in the facts and circumstances of the case there shall be no order as to costs."*

Since the paramount welfare of the child is of prime interest, ignoring her previous conduct before the learned Trial Court, we are inclined to allow the Appellant mother to have her say in response to the petition under Section 25 of the Guardians and Wards Act, 1890, by filing written statement/written objection, so that Court can have a clear picture while deciding the custody of the child.

We direct the learned Trial Court to admit the record to its original file and allow the Appellant to file written objection/written statement within 15 days from the date of receipt of record and to proceed with the case accordingly. The petitioner shall also be given

opportunity to adduce evidence in support of his case upon filing of written statement by the Appellant/Opposite Party, in a de novo trial and if no such written statement is filed, she may be allowed to cross examine the witnesses and make submission on merit. The entire trial should be completed as expeditiously as possible preferably within one year without granting adjournment to either of the parties unless necessitated by compelling circumstances.

We make it clear that learned Trial Court shall not take into consideration the observation made by us while granting interim custody of the child to the Respondent father. Learned Trial Court shall take decision based only on evidence and other materials on record, without being influenced by any of the observations of this Court. Learned Trial Court will be at liberty to consider the prayer of the parties regarding the time, place and manner of exercise of visitation right given to the Appellant mother; keeping in mind convenience of the child.

Learned Advocate for the Appellant submits that the order passed by learned Trial Court in a proceeding under Section 340 of the Cr.P.C. should be set aside.

The conduct of the Appellant wife before the learned Trial Court was far from being satisfactory. Unlike any ordinary lady, she is a constable of police. Being a member of disciplined force, she has failed to show any respect towards the Court and its proceeding; rather her evil design to avoid the Court proceeding and her arrogance is looming large, which was willful and intentional. Dignity of Court and majesty of law shall have to be maintained at any cost and sitting in appeal we are

not inclined to interfere with the order passed under Section 340 Cr.P.C. However, liberty is given to the Appellant to beseech clemency of the learned Trial Court, and in such event learned Trial Court shall take decision afresh and if necessary by re-visiting the later order dated 7th October, 2021. This disposes of the application being CAN 1 of 2022.

The appeal is allowed but in part.

There shall be no order as to cost.

Department is directed to send down the L.C.R. along with copy of the order to the learned Trial Court forthwith.

(Siddhartha Roy Chowdhury, J.)