

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1878 of 2022

Sanmaya Parida

Petitioner

Mr. S.K. Mishra, Advocate

-Versus-

Abhimanyu Biswal and Another

....

Opposite Parties

CORAM:

MR. JUSTICE R.K. PATTANAIK

ORDER

23.11.2022

Order
No.
01.

1. Defect is pointed out by the SR be removed in course of the day. However, on the prayer of learned counsel for the petitioner, it is allowed to be removed in the Court itself.

2. Instant petition is filed by the petitioner challenging the impugned order under Annexure-3 in Criminal Revision No.4 of 2022 by the learned Additional District and Sessions Judge, Baripada, Mayurbhanj whereby relief in terms of Section 97 Cr.P.C was declined while setting aside the order dated 5th April, 2022 under Annexure-2 passed by the learned S.D.M., Kaptipada, Udala.

3. Leaned counsel for the petitioners submits that petitioner is the lawful guardian of the child who is presently in custody of opposite parties/Grandparents and in respect of his custody, the leaned S.D.M., Kaptipada allowed it and directed the opposite parties to hand him over to the petitioner which was challenged in Criminal Revision No.4 of 2022 and the learned Sessions court set it aside on the premise that the custody is not unlawful confinement within the meaning of Section 97 Cr.P.C.

4. Leaned counsel for the petitioner justifies the order of the learned S.D.M., Kaptipada and claims that the impugned order under Annexure-3 cannot be sustained in law as the child cannot be in the custody of the opposite parties, the petitioner being his lawful and natural guardian.

5. Notwithstanding the order under Annexure-2, the learned revisional court rightly held that the custody of the child with the opposite parties does not amount to wrongful confinement within the meaning of Section 97 Cr.P.C. and therefore, in the considered opinion of the Court, it calls for no interference. If at all the petitioner is aggrieved with regard to the custody of the child, he can approach the civil court for appropriate relief in that regard. In other words, the Court is not inclined to interfere with the impugned order under Annexure-3 whereby the learned Sessions court declined the custody on the ground that the same does not tantamount to wrongful confinement by the opposite parties.

6. Accordingly, it is ordered.

7. In the result, CRLMC stands dismissed. However, the petitioner is at liberty to approach the civil court for appropriate relief vis-à-vis custody for the child.

8. Urgent certified copy of this order be granted as per rules.

(R.K. Pattanaik)
Judge