

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2646 OF 2022

Abhijit Rajvardhan Kosambi ...Petitioner
Versus
Priyanka Abhijit Kosambi And Anr. ...Respondents

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Mr. Rohan D. Kaiche, Advocate for the Petitioner.

Mr. Dinesh P. Adsule, Advocate for Respondent No.1.

Mr. Arfan Sait, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 6th SEPTEMBER, 2022.

PER COURT:

1. The petitioner has challenged the order dated 16th April, 2022 passed by the learned Additional Sessions Judge-5, Nashik below Exhibit – 4 in Appeal No.87 of 2022 and order dated 9th June, 2022 passed by learned Additional Sessions Judge – 6 Nashik, rejecting the application below Exhibit – 20 in Criminal Appeal No.87 of 2022.

2. The petitioner is husband of respondent No.1. Proceedings under Section 12 of the Protection of Women from Domestic Violence Act were initiated by respondent No.1. Vide order dated 11th April, 2022, learned J.M.F.C., Nashik directed the petitioner to pay interim maintenance of Rs.10,000/- per month. The petitioner

was also directed to handover the interim custody of the son Aminesh, to respondent No.1 within a period of one month from the date of the said order.

3. The petitioner had preferred appeal No.87 of 2022 challenging the said order before the Court of Sessions Court, Nashik. During the pendency of the appeal, the petitioner preferred application for granting stay to the order passed by lower Court. The second application was preferred for conducting interview of the child taking into consideration desire of child.

4. The application for stay was decided by order dated 16.04.2022. The prayer for ex-parte stay to the order of interim custody was rejected. The other application for interview of child was rejected by order dated 09.06.2022 on the ground that the Court of learned Magistrate has granted interim custody of child and the prayer cannot be considered at this stage.

5. Learned Advocate for the petitioner submitted that, presently the child (son) is aged around six years. The child is in custody of the petitioner from 9.3.2021. The child is an artist. He has performed in Marathi movie and some advertisements. The child is also taking education in school and participating in extra curricular activities. The child is happy with the petitioner. The custody of

the child may be continued with the petitioner. The petitioner is willing to give access to visit the mother of the child. The child is required to be intervened to consider his wish while deciding issue of custody on 10.06.2022. The petitioner preferred application for adjournment since he intends to challenge the order before High Court. The Sessions Court by order dated 10.06.2022 granted two weeks time to get stay from higher Court. It was also observed that both the parties have finished the arguments.

5. The respondent No.1 has filed reply opposing the prayer in this petition. Learned Advocate appearing for respondent No.1 submitted that the child is in custody of the petitioner from 9.3.2021 without the consent of respondent No.1. Prior to that the child was in custody of respondent No.1. The petitioner has not allowed the respondent No.1 to see the child. The Court of learned Magistrate has taken into consideration all the aspects and the fact that the welfare of the child is of paramount importance and considering the age of the child, directed that to handover the custody of the child to respondent No.1. The child is taken to various places for participating in programmes and that it is doubtful that whether the child is taking education. The appeal preferred by the petitioner is pending before the Sessions Court.

The relief prayed in this application may not be granted.

6. It is pertinent to note that the appeal challenging the order dated 11.04.2022 passed by the learned J.M.F.C. is pending before the Court of Sessions and it is not warranted to go deeply into the merits of the case. The learned J.M.F.C. has granted interim custody of child to respondent No.1. The child is not handed over to respondent No.1. The issues which are urged in this petition is about to grant of stay to the impugned orders passed by the learned J.M.F.C. with regards to the custody of the child and interview of the child before passing any order in the appeal. Both applications are rejected. Vide order dated 16th April, 2022, the Sessions Court had observed that the ex-parte stay to the order of interim custody cannot be granted at this stage. While rejecting the other application with regards to the interview of the child, the learned Sessions Judge in order dated 09.06.2022 has observed that one of the paramount consideration is welfare of the child and to decide the welfare, one of the factor is the wish of the child. All the factors are to be taken into consideration and then the custody of the child is to be decided. The present custody is granted by way of interim custody and looking to the facts and circumstances of the case at this stage such prayer cannot be granted. The trial

Court would take into consideration on leading evidence by both the parties and considering the merits of the case and the opportunity is available to petitioner at that stage. The order indicate that the parties had argued at length and they were directed to argue remaining part if any, till the next date as the matter pertains to custody of the child, it should be decided as early as possible.

7. It is noted that the appeal is still pending before the Court of Sessions and the petitioner has challenged the issue relating to custody of the child as well as the interim maintenance. The first Court has granted the interim custody. The contention of the counsel for the petitioner is that the order is apparently in the nature of final order. Since the petitioner had preferred the application seeking reliefs, the Court was required to pass such order.

8. It is pertinent to note that, the child was aged around four and half years on 9th March, 2021 and presently the child is aged around six years old. The welfare of the child is paramount importance. The proceedings under the Protection of Women From Domestic Violence Act as well as appeal preferred by the petitioner are still pending, no case is made out for setting aside the

impugned orders dated 16.04.2022 and 09.06.2022. Hence, I pass the following order :-

ORDER

- i.** Writ Petition No.2646 of 2022 is rejected and disposed off;
- ii.** The custody of the child be handed over to the mother/respondent No.1 before the Court of learned J.M.F.C. Nashik on 4th October, 2022 at 11.00 am. where the proceedings under the Protection of Women from Domestic Violence Act are pending.
- iii.** Hearing of appeal is expedited.

(PRAKASH D. NAIK, J.)