



CRP.(PD).No.1315 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 01.09.2022

Delivered On: 22.09.2022

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

CRP(PD).No.1315 of 2020

and

C.M.P.No.7179 of 2020

K.Sai Krishnan

... Petitioner/Petitioner
Petitioner/Petitioner

Vs.

K.Shanmuga Priya

... Respondent/Respondent
Respondent/Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 19.03.2019 made in I.A.No.6703/2018 in I.A.No.559/2017, O.P.No.4496/2017 on the file of the learned Additional Judge – V, Family Court, Chennai.

For Petitioner : Mr.D.Kamachi

For Respondent : Mr.K.S.Jeya Ganeshan



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ORDER

This Petition had been filed to set aside the order dated 19.03.2019 made in I.A.No.6703 of 2018 in I.A.No.559 of 2017 in O.P.No.4496 of 2017 on the file of the learned Additional Judge – V, Family Court, Chennai.

2. The learned Counsel for the Petitioner submitted that this Petition filed against the Order passed by the learned Additional Judge – V, Family Court, Chennai in I.A.No.6703 of 2018 in I.A.No.559 of 2017 in O.P.No.4496 of 2017 dated 19.03.2019. The trial Court failed to consider that the Petitioner is the biological father of the minor child and he has right to have interim custody of the child and have access to the child freely at any suitable, convenient and comfortable place. The minor child is a male child, he needs care and company of his father for a considerable period of time. The Court below failed to see that the welfare of the minor son will not be affected. The Court below erred in concluding that the Petitioner/Husband had filed Petition for visitation



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right and not for interim custody. The prayer in the Petition seeks permission to take the minor child every alternate Friday at 6.00 p.m., from the Respondent's House. The learned Judge failed to distinguish between the legal custody of the mother over the child from that of the father's right to temporarily coddle with the child or moving with the child. The Court below ought to have seen that the Petition for divorce in HMOP.No.1300 of 2017 is pending. The Respondent insulted and picked up the unnecessary quarrels with the Petitioner at the time of visiting the child. The Court below failed to see that since no Police Complaint was lodged by the Husband, his contention is unreliable. The Court below failed to see that the mind of the child had been influenced by the Respondent that is why the child did not have affection towards his Father. The Court below erred in not considering the plea of the Petitioner/Husband that his child is under Respondent/Wife and she is continuously brainwashing the child and insisting the child to call the Petitioner as “Bad Boy” and “Dummy Appa” etc. The Court below ought to have seen that the child is under custody of the Respondent/Wife, but she is having the habit of shifting her residence often without any prior



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intimation to the Petitioner. The Court below erred in not considering the plea of the Petitioner/Husband that the Respondent/Wife is always keen on extracting money from the Husband but not taken any single step to renew the relationship. Therefore, the Petitioner seeks to set aside the Order passed in I.A.No.6703 of 2018 in I.A.No.559 of 2017 in O.P.No.4496 of 2017.

2.1. The learned Counsel for the Petitioner submitted that the Husband is the Petitioner herein, he had filed Petition seeking custody of the child since the learned Judge, Family Court had dismissed the Petition.

2.2. It is the contention of the learned Counsel for the Petitioner/Husband that this Court had passed Orders directing the child born to the Petitioner/Husband to be produced before the learned Judge, Family Court for psychological counseling. He relied on the following rulings:

(i) ***Cont. CAS(C) 1017/2019 & CM Nos.7482/2020 and***



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12348/2020 in the case of ***Geeta Vohra @ Geeta Chopra Vs. Nitin***

Chopra, the relevant portion is extracted hereunder:

“10. It is argued that the Respondent is repeatedly taking a defence that the order passed by the Trial Court is a conditional order, dependent on the continued consent of the child and if the child refuses to meet the Petitioner, Respondent cannot be held guilty of contempt, but the said defence cannot be sustained. It is submitted that when the order was passed on 06.06.2019, the child was nearly 9 years and with the gap of interaction between him and the Petitioner, it is only natural that he may be expressing some reservation in meeting the Petitioner. At this vulnerable age the child is not mature enough to give consent as he does not even understand the intricacies of the matter and being in the custody of the father, to the exclusion of the mother, it is only natural that the Respondent would have poisoned his mind against the Petitioner. It is pertinent to note that during the chamber interaction with the Trial Court on 25.05.2019, the child had himself agreed to meet the mother and had hugged his sibling, leading to the Court, observing that both had become emotional. Thus, the condition of the continued consent of the child is meaningless.”

(ii) (2017) 3 SCC 231 in the case of ***Vivek Singh Vs. Romani***

Singh in Civil Appeal No.3962 of 2016, the relevant portion is extracted

hereunder:

“16. The aforesaid observations, contained in para 31 of the order of the High Court extracted above, apply with greater force today, when Saesha is 8 years' old child. She is at a



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crucial phase when there is a major shift in thinking ability which may help her to understand cause and effect better and think about the future. She would need regular and frequent contact with each parent as well as shielding from parental hostility. Involvement of both parents in her life and regular school attendance are absolutely essential at this age for her personality development. She would soon be able to establish her individual interests and preferences, shaped by her own individual personality as well as experience. Towards this end, it also becomes necessary for parents to exhibit model good behaviour and set healthy and positive examples as much and as often as possible. It is the age when her emotional development may be evolving at a deeper level than ever before. In order to ensure that she achieves stability and maturity in her thinking and is able to deal with complex emotions, it is necessary that she is in the company of her mother as well, for some time. This Court cannot turn a blind eye to the fact that there have been strong feelings of bitterness, betrayal, anger and distress between the appellant and the respondent, where each party feels that they are 'right' in many of their views on issues which led to separation. The intensity of negative feeling of the appellant towards the respondent would have obvious effect on the psyche of Saesha, who has remained in the company of her father, to the exclusion of her mother. The possibility of appellant's effort to get the child to give up her own positive perceptions of the other parent, i.e., the mother and change her to agree with the appellant's view point cannot be ruled out thereby diminishing the affection of Saesha towards her mother. Obviously, the appellant, during all this period, would not have said anything about the positive traits of the respondent. Even the matrimonial discord between the two parties would have been understood by Saesha, as perceived by the appellant. Psychologist term it as 'The Parental Alienation Syndrome'[4]. It has at least two psychological destructive effects:



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(i) First, it puts the child squarely in the middle of a contest of loyalty, a contest which cannot possibly be won. The child is asked to choose who is the preferred parent. No matter whatever is the choice, the child is very likely to end up feeling painfully guilty and confused. This is because in the overwhelming majority of cases, what the child wants and needs is to continue a relationship with each parent, as independent as possible from their own conflicts.

(ii) Second, the child is required to make a shift in assessing reality. One parent is presented as being totally to blame for all problems, and as someone who is devoid of any positive characteristics. Both of these assertions represent one parent's distortions of reality.

17. The aforesaid discussion leads us to feel that continuous company of the mother with Saesha, for some time, is absolutely essential. It may also be underlying that the notion that a child's primary need is for the care and love of its mother, where she has been its primary care giving parent, is supported by a vast body of psychological literature. Empirical studies show that mother infant bonding begins at the child's birth and that infants as young as two months old frequently show signs of distress when the mother is replaced by a substitute caregiver. An infant typically responds preferentially to the sound of its mother's voice by four weeks, actively demands her presence and protests her absence by eight months, and within the first year has formed a profound and enduring attachment to her. Psychological theory hypothesizes that the mother is the center of an infant's small world, his psychological home base, and that she must continue to be so for some years to come. Developmental psychologists believe that the quality and strength of this original bond largely determines the child's later capacity to fulfill her individual potential and to form attachments to other individuals and to



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3. The learned Counsel for the Respondent had submitted that if there is psychological counseling in the Family Court, it can be safely ordered Psychologist/Psychiatrist to assess the child. The learned Counsel for the Respondent vehemently objected to the line of the argument of the learned Counsel for the Petitioner that the Civil Revision Petition itself filed to set aside the order in I.A.No.6703 of 2018 in I.A.No.559 of 2017 in O.P.No.4496 of 2017. While so, keeping this Petition as pending, the Petitioner is attempting to modify the Order passed by the learned Additional Judge – V, Family Court, Chennai in I.A.No.6703 of 2018 in I.A.No.559 of 2017 in O.P.No.4496 of 2017 which cannot be allowed. The only intention of the Petitioner is dragging the proceedings and claiming the custody of the child. When the I.A.No.6703 of 2018 in I.A.No.559 of 2017 in O.P.No.4496 of 2017 the learned V – Additional Judge, Family Court had passed orders, instead of complying the condition, the Petitioner had approached this Court seeking to modify the Order passed in I.A.No.6703 of 2018 in I.A.No.559 of 2017 in O.P.No.4496 of 2017 regarding surrender of the



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minor child for psychological assessment based on the appointment of Psychologist/Psychiatrist at Family Court, Chennai.

4. On perusal of the Petition and the Order passed by the learned Family Judge, it is to be presumed that instead of interim custody, this Court had granted visitation right, wherein the Petitioner was granted visitation rights to take the child with them and the Mother used to make representation that “Because of you, he is crying and he does not want to come with you”. Therefore, the Petitioner suspects that the mother had influenced the child. Therefore, the Petitioner seeks to psychological counseling, so that the minor child will not be having animosity or reservation serving on the Petitioner herein. Considering the age of the minor child, it is for the necessity of the minor child as well as the Petitioner/Husband that the child is subjected to psychological counseling to free the mind from the over-lock created by the mother of the child/Respondent.

4.1. If the psychological counseling available on the roles of the



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Family Court, in such circumstances, the Petitioner is directed to produce the minor child before the Psychologist/Psychiatrist attached to the Family Court, to assess the minor child of the Petitioner and the Respondent to remove the mental block if found in the child regarding the animosity in the mind of the minor child if any diagnosed by the Psychologist/Psychiatrist available on the rolls of the learned Family Court, Chennai.

In the result, this ***Civil Revision Petition is allowed.***

The Petitioner is directed to produce the child before the Family Court, Chennai, to be interviewed by the Counselors and advice accordingly for the better health of the child. Consequently, connected Miscellaneous Petition is closed. No costs.

22.09.2022

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Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order



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1. The learned Additional Judge – V,
Family Court, Chennai.
2. The Section Officer,
V.R.Section,
High Court, Madras.



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This Civil Revision Petition is listed under the caption "for being mentioned" at the instance of the learned Counsel for the Petitioner.

2.The learned Counsel for the Petitioner submitted that in paragraph 4(1) and in the last paragraph of the order passed by this Court in C.R.P.(PD)No.1315 of 2022, dated 22.09.2022, inadvertently instead of directing the Respondent, the Petitioner was directed to produce the minor child before the Family Court, Chennai.

3.In the light of the submission made by the learned Counsel for the Petitioner, paragraph 4.1. and the last paragraph of the order, dated 22.09.2022 are modified as follows:

"4.1.If the psychological counseling available on the roles of the Family Court, in such circumstances, the Respondent is directed to produce the minor child before the Psychologist/Psychiatrist attached to the Family Court, to assess the minor child of the Petitioner and the Respondent to remove the mental block if found in the child regarding the animosity in the mind of the minor child if any diagnosed



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WEB COPY *by the Psychologist/Psychiatrist available on the rolls of the learned Family Court, Chennai."*

"The Respondent is directed to produce the child before the Family Court, Chennai, to be interviewed by the Counselors and advice accordingly for the better health of the child. Consequently, connected Miscellaneous Petition is closed. No costs."

4.Registry is directed to carry out necessary corrections and issue fresh order copy to both the parties.

02.11.2022

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Pre- delivery Order made in
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