

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

CRM-M-17756-2022

Date of Decision: 28.4.2022

Nemi Chand

..... Petitioner

Versus

Jyoti

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Ankur Lal, Advocate, for the petitioner.

Rajesh Bhardwaj, J.

The petitioner has approached this Court praying for quashing of the impugned order dated 1.10.2021 passed by the learned JMIC, Palwal, whereby, the petitioner was directed to hand over the custody of his two school going children to the respondent from 2.10.2021 till 15.10.2021; order dated 16.3.2022 passed by the learned Sessions Judge, Palwal upholding the order dated 1.10.2021 passed under Section 21 of the Protection of Women from Domestic Violence Act, 2005 (for short, 'the Act') directing to hand over the custody of the children to the respondent from 2.10.2021 till 15.10.2021; and the order dated 18.4.2022 passed by the learned JMIC, Palwal again directing the petitioner to hand over the custody of the children to the respondent from 21.4.2022 till 6.5.2022.

Learned counsel for the petitioner has contended that the petitioner is the father of the children, whereas, the respondent is the mother. Due to matrimonial discord, both the children are living with the petitioner. He contends that the respondent-wife is living in Palwal and does not have any source of income and she is not in position to provide better facilities to the children, hence, the welfare of both the children are with the

petitioner-father. He contends that both the children are school going and hence, the view taken by the courts below is against the interest of the children and the same deserves to be set aside.

Heard.

After hearing learned counsel for the petitioner and perusing the record, it is apparent that the relationship between the petitioner and the respondent is not in dispute. The respondent-wife filed the application under Section 21 of the Act for grant of temporary custody of the minor children to her, who are of the age of 6 and 10 years. After hearing, temporary custody of the children was granted by the learned JMIC from 2.10.2021 to 15.10.2021 in the presence of the Protection Officer vide order dated 1.10.2021. The same was challenged by the petitioner-husband by way of filing appeal under Section 29 of the Act, which was dismissed by the learned Sessions Judge, Palwal vide order dated 16.3.2022. The precise ground of assailing the orders by the petitioner is that the welfare of the children is the paramount consideration and hence, the orders passed by granting temporary custody for the period mentioned above is not in favour of the children. This Court is unable to countenance with the same. Both the children are of tender age and the respondent is none other than the mother of the children. Both the courts below have taken into consideration the respective issues raised by both the parties and hence, granted the temporary custody of the children to their mother for the period from 21.4.2022 to 6.5.2022. The Court cannot ignore the fact that the children are of tender age and the respondent is their mother. Being in the company of the mother for limited period by no stretch of imagination can be said to be against the welfare of the children. This Court finds no merit in the arguments raised by

learned counsel for the petitioner and thus, there being no infirmity in the order passed by the learned courts below, the present petition is hereby dismissed.

28.4.2022
sharmila

(RAJESH BHARDWAJ)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No