

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

**CRM-M-47741-2021
Date of Decision: 24.02.2022**

Kamlesh

...Petitioner

Versus

Kamlesh Rani and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

Present: Mr. N.K. Malhotra, Advocate,
for the petitioner.

Mr. Vikrant Pamboo, DAG, Haryana.

[The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court.]

SANT PARKASH, J.

When this matter came up for hearing on 09.02.2022, following order was passed by this Court:-

“The instant petition has been filed under Section 482 Cr.P.C. seeking quashing of impugned order dated 25.02.2019 (Annexures P-2) passed by learned Sub Divisional Magistrate, Rohtak and order dated 02.09.2019 (Annexure P-3) passed by learned Sessions Judge, Rohtak.

In the reply filed on behalf of the State, it has been mentioned that the child refused to accompany her mother and after recording the statement of the child, the District Welfare Committee passed the order dated 21.07.2017 i.e. Annexure R-1 attached with the reply. It has been duly mentioned in the said order that on account of the refusal of the minor child, the visiting rights for once in a week at an appropriate place were granted to the present petitioner.

In view of the circumstances explained above, it would be appropriate if notice to respondent No.1 be issued with direction to produce the minor child through video conferencing for an interview by the Court itself.

Notice of motion for 21.02.2022 to respondent No.1.

Dasti as well.”

In compliance of the order dated 09.02.2022, respondent No.1 is present through video conferencing.

I have interacted with the minor, who is presently in custody and care of respondent No.1 (grandmother of minor). She is intelligent/mature enough to understand her well being. I have put various questions to minor to enquire about her willingness to stay with either of the parties. The minor, who is 16 years of age, flatly refused to go with her mother, i.e., the petitioner, and states that she wants to reside with her grandmother-respondent No1.

Learned counsel for the petitioner submits that both the impugned orders are not sustainable because of the reason that the order dated 10.07.2017 has never been complied with. He further submits that when the present petitioner, who is natural guardian of the minor, is alive, no other person can claim the custody of the minor child.

On the other hand, learned counsel for the State submits that though vide order dated 10.07.2017 of the Sub Divisional Magistrate, Rohtak a direction was issued to hand over the custody of minor, namely, Sneha, to her mother, i.e. petitioner, but the minor was adamant and had flatly refused to go with her mother. In these circumstances, custody of the minor was not handed over to her mother-petitioner. He further submits

that there is no patent illegality in the orders passed by the courts below.

This Court has heard the learned counsel for the parties and perused the case file.

Admittedly, there is an order dated 10.07.2017 passed by the Sub-Divisional Magistrate, Rohtak, wherein a direction was issued to hand over the custody of the minor daughter (Sneha) to her mother (petitioner). When the compliance of the above-said order has not been made, the petitioner moved a contempt application, which was dismissed vide order dated 25.02.2019 (P-2). Aggrieved by the said order, the petitioner preferred an appeal, which was also dismissed by the learned Sessions Judge, Rohtak vide his order dated 02.09.2019 (P-3), being not maintainable.

In pursuant to order dated 15.11.2021 passed by this Court, status report has already been filed. On close perusal of the status report, it would be revealed that in compliance of the order dated 10.07.2017, a direction was issued to hand over the custody of the minor daughter, Sneha, to her mother-petitioner. It would further be revealed that when the Investigating Officer tried to hand over the custody of minor to her mother-petitioner, she had refused to go with her mother and started crying. Thereafter, the minor (Sneha) was produced before the Child Welfare Committee, Rohtak, where she was also adamant not to go with her mother. Thus, it cannot be said that the order dated 10.07.2017 has not been complied with. It would also be revealed that the petitioner-mother had left the minor when she was only 03 years old and lived separately at her parental home at Salara Mohalla, Rohtak, whereas the minor daughter had been residing with her grandparents at Panipat. She had seen her mother

after a long period of 07 years and even the child did not recognize her. The Child Welfare Committee has passed a detailed order that the temporary custody of the minor shall be given to her grandparents considering the welfare of the minor child, as envisaged under Section 3(4) and Section 2 (28) of the Juvenile Justice Act, 2015.

Keeping in view the facts and circumstances of the case, this Court is of the view that the duty of a court exercising its *parens patraie* jurisdiction as in cases involving custody of minor children is all the more onerous. Sentiments and welfare of the minor are supreme consideration which cannot be ignored. The Court should take into consideration the preference of the minor child to stay with either parent or grand parent. In the case in hand, the minor child does not intend to go with her mother and wanted to stay with grand parents. Thus, this Court is of the view that no interference is made out in the impugned orders.

Learned counsel for the petitioner vehemently argued that strict action be taking against the erring police official, who did not carry out the order dated 10.07.2017 of the learned Sub Divisional Magistrate, Rohtak for handing over the custody of minor to the present petitioner.

This submission of learned counsel for the petitioner is devoid of merit. Glancing through the file, it would be revealed that even a contempt petition was filed by the present petitioner which was dismissed vide order dated 25.02.2019 (P-2). Moreover, the compliance of the said order could not be made on account of the refusal of the minor daughter of the petitioner to accompany her.

Finding no merit in the instant petition, the same is dismissed

with liberty to the petitioner to approach an appropriate forum under relevant provisions of law.

24.02.2022
mks

(SANT PARKASH)
JUDGE

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO