

31.08.2023

Item No.33
Ct.No.34
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 2754 of 2023

**Rajib Gain
versus
The State of West Bengal & Anr.**

In Re: An Application under Sections 397/401 read with Section 482 of the Code of Criminal Procedure.

Mr. Prantick Ghosh,
Mr. Siddhartha Sarkar,
Mr. Prasad Bhattacharyya,
Mr. Bitan Das ... For the Petitioner.

Mr. Prasun Kumar Datta,
Mr. Nirupam Dhali ... For the State.

Mr. Anjan Dutta,
Mr. Tamal Ghosh ... For the Opposite Party No.2.

Report dated 31.08.2023 submitted by Mr. Datta, learned advocate appearing for the petitioner be kept on record.

The said report reflects that the girl child is with the present petitioner being Rajib Gain. The child, I find, is three and a half years old. There is a matrimonial dispute between the parents of the child, while the mother/opposite party no.2 states that the petitioner had by false and fraudulent representation took away the child, but on the other hand the mother has also invoked Section 97 of the Code of Criminal Procedure before the learned Sub-Divisional Magistrate, Basirhat for recovery of the child. Presently the child is with a natural guardian. The mode and manner in which the provisions of Section 97 of the Code of Criminal Procedure were invoked for recovery of child, is not acceptable to this Court. Accordingly, the order passed by the learned Sub-

Divisional Magistrate, Basirhat in M.P. Case No. 232 of 2022 dated 08.12.2022 affirmed by the learned Additional District and Sessions Judge, Fast Track Court-I, Basirhat in Criminal Revision No. 58 of 2022 is hereby set aside.

The opposite party no.2/mother/wife will be at liberty to meet the child twice in a week. If required, information would be sent to the jurisdictional police station who would allow a lady constable to be accompanied for preventing any untoward incident which may happen at the residence of the petitioner/Rajib Gain.

The opposite party no.2 viz. Khadija Bibi would be at liberty to invoke the jurisdiction of the civil court for custody of the child.

The concerned civil court would in the facts and circumstances of the case, take into account that it is a girl child aged below five years and thereafter take a decision within a period of 45 days of filing of such application.

With the aforesaid observations, the revisional application being CRR 2754 of 2023 is disposed of.

Pending connected application, if any, is consequently disposed of.

All parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)