

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 84 OF 2023

AMBADAS LAXMAN GAVHANE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Petitioner : Mr. Markad Dattraya R.

APP for Respondent No.1/State : Mr. S.R. Yadav-Lonikar

Advocate for Respondent No.2 : Mr. Sudheer Ramdas Zambare

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CORAM : KISHORE C. SANT, J.

DATE : 20th MARCH 2023.

Per Court :

1. In this petition, a challenge is to an order dated 31.12.2022 passed by the learned Judicial Magistrate First Class, Shrigonda, Dist. Ahmednagar, wherein the custody of a minor daughter, aged around five years is directed to be given to the respondent no.2/wife, who has filed the proceeding under the Domestic Violence Act in the Court of learned JMFC, Shrigonda. The order is assailed mainly on the ground that the custody of child i.e. daughter was always with the petitioner. The wife has filed such application after more than two and half years after leaving her husband.

2. The learned Advocate for the petitioner states that thus now handing over custody will only disturb the child.

3. The learned Advocate for the respondent no.2 vehemently opposed the petition stating that the child was below five years, when the application was filed and the custody was rightly given to her by the learned Magistrate. He further submits that though it is expected of the petitioner to allow respondent no.2 to see the child and give access to her, still he is not even allowing to meet the child.

4. This Court after going through the impugned order and the submissions feels that at this stage directing to hand over the custody would amount to disturbing the child. Instead care of the interest of the parties can be taken by directing learned JMFC, Shrigonda to decide the Criminal M.A. No.332/2020 pending before it, as early as possible and preferable within six months from today. In the meantime, respondent no.2 has made a grievance that she is not allowed to see her child. This Court asked the learned Advocate for the petitioner as to whether his client would allow the mother to see her child? On this, both the parties took instructions from their clients and submitted that

temporary arrangement can be made, thereby the respondent no.2/wife can see the child.

5. Pending main proceeding, interim arrangement can be made that the child will be taken on every Friday evening the following place of common relation of both the parties. The husband will hand over custody of the child to the mother and the child will stay with the mother on every Saturday and Sunday. Either Sunday evening or Monday morning, the child can be again brought to the same place of where the husband will take the child with him. So that the child can attend the School. The parties are expected to do this exercise peacefully.

Address of relative of respondent no.2
Dattatraya Bhimraj Jadhav
R/o - Shendi - Polkhardi
Tal & Dist. Ahmednagar
Mobile No.9096456970

6. The parties are put to notice that failure on their part in doing this exercise will be a relevant consideration while deciding the main matter before the learned JMFC, Shrigonda.

7. With this, the Writ Petition stands disposed off.

[KISHORE C. SANT, J.]

Najeeb.