

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO. 1265/2021

Sau. Priti w/o Kapil Jain and another
.Vs.

Kapil Virchand @ Virendra Jain and ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mrs. S.W. Deshpande, Advocate for the applicant
Mr. Sawan Alaspurkar, Advocate for the non-applicants.

CORAM: G.A. SANAP, J.
DATE : 03.04.2023

1. Heard finally with the consent of learned
Advocates for the parties at the admission stage.

2. In this application filed under Section 482 of the
Code of Criminal Procedure, challenge is to the order dated
25.10.2021 passed by the learned Additional Sessions
Judge, Amravati whereby, the appeal filed by the
applicant-wife against the order of Judicial Magistrate First
Class Court No.13, Amravati came to be dismissed. Learned
Judicial Magistrate First Class, Court No.13, Amravati by

his order dated 13.08.2021 had partly allowed the application at Exh.15 and granted visitation right to the non-applicant No.1-husband subject to the terms and conditions set out in the said order.

3. The non-applicant No.1 made the application at Exh.15 and prayed for visitation rights of his daughter the applicant No.2-Nayra. The proceeding as per the provisions of Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short “D.V. Act”) has been filed by the applicant No.1 for herself and on behalf of the minor daughter the applicant No.2-Nayra. In the said D.V. act proceedings, the applicant Nos.1 and 2 have prayed for certain reliefs. According to the non-applicant No.1, the applicant No.1 left his house behind his back, without informing him. The non-applicant No.1 and his parents i.e. non-applicant Nos.2 and 3, have been denied the company of the daughter. The daughter is completely disconnected from them by the applicant No.1. The

applicant No.1 did not allow them to meet the daughter. The daughter, therefore, would not recognize her father and grand parents in future. It is further stated in the application filed by the non-applicant No.1 that the applicant No.1 was intending to give Nayra in adoption to her elder brother. On these averments the non-applicants prayed for visitation rights.

4. The applicant No.1 opposed this application. According to the applicant No.1, the non-applicants have mentally and physically tortured her. They forced her to leave matrimonial house. On the complaint of the applicant No.1 a case has been registered against the non-applicants. The applicant No.1 has taken shelter with her mother. The non-applicant No.1 has threatened to take away the daughter from her custody.

5. The learned Magistrate after granting an opportunity of hearing to the parties and taking into

consideration the interest of minor girl, partly allowed the application. The applicants feeling aggrieved by this order filed the appeal under Section 29 of the D.V. Act. The appeal came to be dismissed. The applicants have therefore, come before this Court.

6. I have heard Mrs. S.W. Deshpande, learned Advocate for the applicants and Shri Sawan Alaspure, learned Advocate for the non-applicants. Perused the record and proceedings.

7. It appears that there is dispute between the husband and wife. The parents of the husband with other relatives have been made non-applicants in the D.V. Act proceedings. The applicants have prayed for multiple reliefs in the D.V. Act proceedings. In the said proceedings, the non-applicant No.1 made the application and prayed for visitation right to the daughter. It was partly allowed. The operative part of the order needs to

be reproduced to understand the direction and the precautions taken to safeguard interest of the minor girl.

It reads thus:-

- “ i) The application is partly allowed.*
- ii) The Applicant No.1 shall drop the Applicant No.2 (Nayra) at the house of the Non-Applicant No.1 on every Sunday at 11.00 AM and can pick her up at 5.00 PM.*
- iii) The Non-Applicant No.1 shall pay the travel expenses of the applicants on the very next date in the Court.*
- iv) The applicant is directed to introduce Nayra with the Non-Applicant No.1 to 3 through video call on every Saturday between 6.00 pm to 7.00 pm, so that she be well acquainted with her father and grandparents and feel comfortable.*
- v) The Applicant No.1 is directed to give Nayra’s medical history, if any, to the Non-applicant No.1, so that she shall be taken care of. The Applicant No.1 shall give the necessary things or medicines, if any, alongwith Nayra during visitation hours.*

vi) *The Non-Applicant No.1 is directed to make video call to the Applicant No.1 for atleast half an hour during visitation hours, until the child feels comfortable.*

Vii) *The Non-Applicant No.1 being a medical representative shall take care of all the necessary measures to keep the child away from covid-19 infection.”*

8. It is to be noted that during the pendency of this application the parties have tried to settle their dispute. Learned Advocate for the applicants submitted that the applicant No.1 may not have serious objection for visitation right of the non-applicant No.1 to the daughter. However, learned Advocate submitted that the order dated 13.08.2021 was passed during Covid-19 pandemic period. It is submitted that now the situation has been restored to normalcy. It is submitted that therefore, the place of visit may be changed from the house of non-applicant No.1 to the Court premise of Family Court at Amravati

9. The learned Advocate for the non-applicant No.1-husband submitted that learned Magistrate as well as learned Additional Sessions Judge, Amravati has considered this aspect in great detail. It is pointed out that the learned Additional Sessions Judge, for the reasons recorded in his order has approved the place of visit fixed by the learned Judicial Magistrate First Class. Perusal of the order would show that learned Judge has kept in mind interest of the minor girl while deciding the place for visit namely the house of the non-applicant No.1. The non-applicant Nos. 2 and 3 are the parents of the non-applicant No.1. The courts below have taken into consideration the fact that CCTV has been installed at the house of the non-applicant No.1. The courts below have noted that interest of the minor girl would be protected at the house of non-applicant No.1 because the non-applicant No.1 is a medical representative.

10. On going through the record, I am of the view

that the place of visit fixed by the learned Magistrate being the house of non-applicant No.1 is the best possible place. Therefore, I do not see any substance in the application. The right of visitation of daughter cannot be denied to the non-applicant No.1.

11. In the facts and circumstances of the case, I do not see any substance in the application. The application is accordingly dismissed.

(G. A. SANAP, J.)

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