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CRP Nos.20 & 868 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2023

CORAM:

THE HONOURABLE Mr. JUSTICE V.LAKSHMI NARAYANAN

CRP Nos.20 & 868 of 2020
and C.M.P.No.4638 of 2020

K.S.Sindhu ... Petitioner in C.R.P.No.20 of 2020

K.Pavithran ... Petitioner in C.R.P.No.868 of 2020

Vs

K.Pavithran ... Respondent in C.R.P.No.20 of 2020

K.S.Sindhu ... Respondent in C.R.P.No.868 of 2020

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decretal order dated 04.12.2019 made in I.A.No.8 of 2019 in G.W.O.P.No.15 of 2018 on the file of the learned Family Judge, Namakkal.

In C.R.P.No.20 of 2020

For Petitioner : Mr.N.Manoharan
For Respondent : Mr.P.M.Duraisamy

In C.R.P.No.868 of 2020

For Petitioner : Mr.P.M.Duraisamy
For Respondent : Mr.N.Manoharan



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COMMON ORDER

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This is truly an unfortunate case, which arises in a Guardian and Wards Act proceeding. For the sake of convenience, the parties will be referred to as the petitioner or the respondent as per C.R.P.No.20 of 2020.

2. The petitioner is a mother and the respondent is the husband. The mother impugns the order in I.A.No.8 of 2019 in G.W.O.P.No.15 of 2018 on the file of the Family Court at Namakkal. The father impugns the very same order in C.R.P.No.868 of 2020.

3. The petitioner married the respondent on 02.07.2014. It was a marriage arranged by the parents and not a marriage out of choice. From the wedlock, a girl child was born on 01.05.2015. She was named Nakshatra. On account of the act of the father, the girl remains as far as away from the mother as a “Nakshatra” or a “Star”.

4. The allegation of the respondent is that the mother deserted the matrimonial home together with the child, who was then but 2 ½ years old on 08.03.2018. It is the case of the petitioner that she did not abandon the child



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but was thrown out unceremoniously by the husband on that date. On the very next day, the father of the petitioner and her relatives went to enquire about the matter in the house of the respondent. According to the respondent, it resulted in such a commotion that he was constrained to give a police complaint on 14.03.2020. The police refrained to interfere with the matter as it was a civil dispute.

5. Surprisingly without waiting for any further time for reconciliation, in an action as quick as quicksilver, a petition was lodged in H.M.O.P.No.85 of 2018 on the file of Sub Court, Tiruppur. The respondent staking claim to the guardianship of the child filed G.W.O.P.No.3 of 2018 before the Family Court at Erode. As is usual, at this stage, the matter wound up before this Court, by way of three transfer petitions. They invoked the provisions of Section 24 of Civil Procedure Code. By an order passed by this Court on 28.09.2018 in Tr.C.M.P.No.476 of 2018 batch, the proceedings pending before the Sub Court, Tiruppur and Family Court, Erode, stood transferred to the file of the Family Court at Namakkal.

6. Pursuant to the transfer, G.W.O.P.No.3 of 2018 was re-numbered as G.W.O.P.No.15 of 2018 before the Family Court. Pending these proceedings,



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the petitioner took out an application in I.A.No.8 of 2019 seeking the following reliefs :-

"to pass an order granting permission to keep her daughter from 08.00 a.m. On every Saturday till 6.00 p.m., on every Sunday and further directing the respondent to given custody of her daughter in any public place as desired by this Hon'ble Court at Tirupur and pass such other suitable and favourable orders and thus render justice."

7. To this application, a counter was filed finally arguing two points.

(i) that the petitioner never took care of the minor child even when she was staying in the matrimonial home and

(ii) the petitioner is suffering from serious mental disabilities and is incapable for taking care of the child. In fact, it was alleged that the petitioner is suffering from disorderly thought and mental retardation for more than three years.

8. The learned trial Judge after receipt of the counter and additional counter took up the application for disposal. By an order dated 04.12.2019, he granted visitation right to the mother. He directed that the child be produced before the Perumal Temple situated at Eswaran Kovil Street at



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Tiruppur. He also fixed the time (i.e) on every Sunday between 10.00 a.m., to 01.00 p.m.

9. Mr.P.M.Duraisamy, learned counsel appearing for the respondent submitted that subsequently the order was modified as between 3 p.m to 5 p.m on every Saturday, for the child be produced, before the Mediation Center attached to the District Court, Tiruppur.

10. Now, Let us to the other proceedings which was initiated by the husband. The husband took out an application in I.A.No.2 of 2019 in G.W.O.P.No.15 of 2018 seeking for a direction to the petitioner to undergo medical examination before the Medical Board consisting of expert Doctors. The learned trial Judge dismissed the application by way of an order dated 25.03.2019.

11. Seemingly aggrieved by the said order, an appeal was preferred before this Court in C.M.A.No.2274 of 2019. The said appeal was allowed on 03.02.2022. By this order, the petitioner/wife was called upon to appear before the Medical Board to undergo the medical examination to ascertain whether she is actually suffering from any mental disorders. As there were no



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medical colleges in Namakkal District, the Medical Board of Erode Government Medical College and Hospital was directed to constitute a board.

12. In compliance with the orders of this Court, the petitioner presented herself before the Government Erode Medical College and Hospital at Perundurai. A team of Doctors constituted the board. They were:

- (i) Associate Professor & HOD, Department of Psychiatry
- (ii) Assistant Professor in Psychiatry
- (iii) Assistant Professor
- (iv) Professor of CTS & Medical Superintendent
- (v) Associate Professor, Department of Obstetrics and Gynaecology

After an examination of the petitioner, they prepared a report. The report reads as follows:-

"Mrs.Sindhu is not suffering from any psychiatric illness at present including bipolar mood disorder and personality disorder."

13. This report, having gone against the respondent, he was not satisfied with the same. Therefore, the matter came back before this Court on 25.08.2022.



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14. Mr.P.M.Duraisamy, learned counsel appearing for the respondent had submitted that the report of the Medical Board of the Erode Medical College is not satisfactory as it had been issued by the Dean of the Medical College. It was also alleged that it did not contain the assessment of the person subjected to examination by the experts. He also argued that the opinion of the experts is not as per the provisions of the Mental Health Act.

15. Concurring with the view made by Mr.P.M.Duraisamy, the petitioner was directed by this Court to appear before the Director of Institute of Mental Health, Kilpauk, Chennai.

16. The petitioner/wife underwent the test by fire at the instance of the husband once more. She appeared before the Medical Board and was examined by the following Doctors:-

- (i)Dr.Poornachandrika MD (Psy), DCH
Director and Professor of Psychiatry, IMH,
Chairman
- (ii)Dr.Saravana Jothi M.D(Psy)
Professor of Psychiatry, IMH,
Member
- (iii)Dr.Smitha Ruckmanim Phil, Ph.D,
Professor & HOD,
Department of Clinical Psychology, IMH
Member



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(iv) Dr. S. Neelakandan MD (Psy), DCH
Senior Assistant Professor Psychiatry, IMH
Member.

After a detailed examination, a report was submitted stating as follows:-

"The concerned client Mrs. K. S. Sindhu, daughter of Mr. K. Selvaraj is not having clinical evidence of suffering from any mental illness or personality disorders at present and her mental status is stable."

17. This report takes away the sheet anchor of the case of the respondent. According to him, the petitioner/wife is suffering from mental illness and therefore, she is incapable for taking care of the child. As many as, 9 expert Doctors have examined the petitioner, of which, 4 are experts related to mental health. None of them found any mental ailment with the petitioner.

18. Now, I have to get back to the narration regarding the child. On account of the alienation from the mother, the child on being produced before the Court had exhibited negative feelings towards the petitioner/mother and her family. This was recorded by this Court on 21.02.2023. Therefore, this Court ordered the child to be taken to a Child Psychiatrist either at Tiruppur or Coimbatore.



19. The child was taken to a Psychiatrist at Coimbatore. Dr.K.Selvaraj, Professor of Psychiatry & Chief Consultant of Vazhikatti, Mental Health Center and Research Institute examined the child. Though he prefaces his report saying, it is only an interim report based on the single day observation, he came to a conclusion that the child needs the Assistance of a Child Psychiatrist, either for psychotherapy or for any evaluation. He has suggested that the following institution be approached for the said purpose:-

(i)Child Psychiatry Unit, National Institute of Mental Health and Neurosciences (NIMHANS), Bangalore

(ii)Child Psychiatry Unit, Christian Medical College, Vellore

(iii)Child Psychiatry Unit, Institute of Obstetrics and Gynecology and Government Hospital for Women and Children, Egmore, Chennai.

20. The report also shows that she performed the assessments with her father sitting in her visual field outside the room. It further states that the child suffers from separation anxiety disorder i.e., anxiety for separation from family members like father and paternal grandparents. The conclusion was that this condition was due to the emotional impact that the child suffers from dysfunctional family. The recommendations read as follows:-



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"1.To repeat CAT after 4 to 6 weeks as stories has fewer content.

2.Needs further evaluation to confirm clinical range of separation anxiety disorder symptoms.

3.Parental education and training."

21. Though this report was submitted on 27.02.2023 suggesting psychotherapy to the child and follow up, it has not been done sofar.

22. I have to record that the father had taken the child to the Child & Adolescent Psychiatry Unit, Department of Psychiatry, Christian Medical College, Vellore. The Christian Medical College, Vellore also suggested that that child should come for further psychological assessments and further management. Here too, they found that the child's behaviour changed when the father was outside her line of vision. A control projection test was conducted for the child and it was found that she avoided parts relating to the mother and was extremely agitated. The final recommendation is as follows:

"Nakshatra is currently not emotionally equipped to handle the situation of being forced to meet the mother. Repeated exposure to this traumatic situation could disturb her psychologically. It is recommended that Nakshatra be given good psychological support and be prepared in a



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graded manner in the best interest of the child's emotional
needs."

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23. Both the reports show that the child is suffering from parental alienation syndrome. The mother, being away from her, she has been alienated from her. Therefore, if any orders were to be passed on interim custody, the psychiatrists have given an opinion that it might result in a traumatic situation. I have to take this into consideration.

24. While dealing with the case of child custody, I am not concerned about the parents but what is the best interest of the child. It is unfortunate that though the father had been aware as early as in February 2023 that the child requires psychotherapy, till date, the same has not been given to the child. This is because of the report says the child is comfortable in the present setting and it serves the interest of the father that he does not give her any therapy. In case therapy is given to the child, she would understand the necessity of a mother, especially when she is a female child and this might not be in the interest of the father.



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25. I commenced this order stating that it is an unfortunate case and these reports confirms my opinion. This is because the child has been used as a pawn in the litigation between the father and the mother. I will hold the father for the situation because the child has been with him from 08.03.2018, till date. Infact going through the reports confirm the facts that the child has developed a thought of hurt against her maternal side. This is not conducive in the interest of the child growing up to be a responsible citizen of this Country. Therefore, dealing with this interim application for guardianship under Section 26 of Hindu Marriage Act, I also propose to give a direction to the father to take the child for psychotherapy so that her trauma is addressed and the child heals from the mental injuries caused to her.

26. As narrated above, two grounds were projected against the petitioner/mother. One is that she was mentally ill and the second ground is that she did not take care of the child during the time she was staying in the matrimonial home. Insofar as the first ground is concerned, as I have already found two expert panels have come to a conclusion that the mother is perfectly alright. Insofar as the second ground is concerned, the learned Family Judge has returned a finding stating that the father has miserably failed to prove the said allegation. Therefore, both the arguments of the



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respondent against the petitioner/mother has to fail and be buried in the deep sea. That now brings to me the order that I have to pass.

27. I feel production of a child in the Court itself is traumatic. It is a strange setting for a child studying in 3rd standard. Therefore, the meeting of the child at the Mediation Center might not be conducive for development of a good relationship between the mother and the daughter. It is here that I have to appreciate the stand taken by both Mr.P.M.Duraisamy and by Mr.N.Manokaran. On the suggestion of both of them and in the light of the above conclusion, I direct as follows:

(i) The order and decretal order of the learned Family Judge, Namakkal in I.A.No.8 of 2019 in G.W.O.P.No.15 of 2018 stands confirmed;

(ii) The respondent/father shall take his minor daughter Nakshatra for psychotherapy either at Coimbatore or the three places suggested by Dr.K.Selvaraj and ensure that her anxiety and maternal alienation are addressed at the earliest and so as to enable her to grow as a normal child;

(iii) the respondent/father shall produce the child on alternative Saturday between 4 p.m to 6 p.m at the house of his great grandfather Mr.C.K.Kuppusamy, who is a former member of the Lok Sabha, at Tiruppur



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and on the next Saturday, at the play area situated at Poppys Hotel, Tiruppur.

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(iv) For a beginning, the child should be produced at the house of the respondent's great grandfather Mr.C.Kuppusamy, situated at Tirupput at 4 p.m., on 16.09.2023. Similarly, the child shall be produced for visitation by the mother on 23.09.2023 in the play area situated at Poppys Hotel, Tiruppur. The same arrangement shall be followed for every alternative week i.e., for one Saturday, the child should be produced at the house of the paternal grandparents house of the respondent and on the next Saturday, the child should be produced at Poppys Hotel, Tiruppur.

(v) At the time of visitation, the respondent/father shall keep away and the petitioner/mother, with or without her parents, shall have free access to the child.

(vi) The learned Family Judge, Namakkal, is requested to take G.W.O.P.No.15 of 2018 being tried along with H.M.O.P.Nos.611 and 620 of 2018 and dispose of the same within a period of nine months from the date of receipt of a copy of this order.

28. This is only an interim arrangement in order to ensure that the child and the mother do not suffer and they have the company of each other atleast for few hours in a week. After undergoing the psychotherapy, if the



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situation of the child improves, it is always open to the parties to this revision to move for appropriate modification.

29. With the above directions, these Civil Revision Petitions are disposed of.

15.09.2023

Index:Yes/No
Speaking order/Non-speaking order
vkr

To
1. The Family Judge, Namakkal.



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V.LAKSHMINARAYANAN,J.,

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