



O.P.No.617 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **05.09.2023**

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

O.P.No.617 of 2021

and

A.No.3467 of 2021

Anand Vaidyanathan

... Petitioner

Vs.

Vidya Ramakrishnan

... Respondent

PRAYER: Original Petition filed under Sections 3, 7 to 10 and Section 25 of the Guardian and Wards Act r/w Order XXI Rule 2 and 3 of the Original Side Rules, prays to grant permanent custody of the minor female child, named Sahana Anand born on 23.12.2012 and currently aged about 8 years to the petitioner; and the petitioner be appointed as the guardian of the person of the minor female child, named Sahana Anand born on 23.12.2012/

For Petitioner : Ms.Geeta Ramaseshan

For Respondent : Mr.A.Abdul Rahim

ORDER

This Original Petition has been filed seeking permanent custody of the minor female child, named Sahana Anand born on 23.12.2012 and also



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appoint the petitioner as the guardian of the person of the minor female child Sahana Anand.

2.The averments in the Petition are as follows:-

The petitioner is the father of the minor child Sahana. The respondent is her mother. The marriage between the petitioner and the respondent had taken place on 23.02.2011. Out of their wedlock, child Sahana was born on 23.12.2012. Both the petitioner and the respondent are entrepreneurs. The relationship between the couple got strained from December 2019 and from then onwards, they started to live separately. The minor child Sahana was under the custody of the respondent at the respondent's mother's place and the petitioner was not allowed to meet his daughter. Even for special occasions, the petitioner was not allowed to meet the child and the petitioner is missing the company of his only daughter. Because of the respondent, the child is deprived of father's affection and that had created negative impact on the child. Hence the petitioner had filed this Petition seeking permanent custody of the female child Sahana and to appoint himself as the guardian of the child.



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3. The learned counsel for the respondent submitted that the petitioner

has no bonding with the child. He did not show any interest in the studies and her upbringing. He used to be extremely angry when the child interrupts him or the respondent while they were at work. The petitioner has some strange habits and he would talk only if the mobile phones are kept away in another floor or in a room. If the child brings the phone to his room, he will behave madly gnashing his tooth and shout. He becomes uncomfortable when he sees police man or police vehicle. He has also sleep issues and he would sleep during hard hours and for too longer time. His behaviour has embarrassed the respondent. Only after some time, the respondent came to know that the petitioner is having mental issues for which he is on medication.

3.1. The petitioner was in the habit of using Risperidone which is an antipsychotic medicine used to treat Schizophrenia and Bipolar Disorder. The respondent got shocked to know later that the petitioner had bipolar disorder with a co-morbid delusional disorder. His activities did not change, but in fact had got worsened. He suffers from mental health problems and giving the child's custody to the petitioner will endanger her life. In fact, the petitioner was held in detention for six months at Unites States of America.



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Since the petitioner has criminal past and has also exhibited violence against the child, the custody cannot be given to him and that would affect the safety of the child and hence, this Original Petition should be dismissed.

4. Despite the petitioner has filed the Petition for seeking custody and guardianship of the minor child Sahana, during the pendency of the proceedings, he had given up the custody and guardianship but insisted only to grant visitation right.

5. Considering the peculiar situation of the case, the Court thought it fit to have some interaction with the child and the couple to know whether the visitation right as requested by the petitioner be in the best interest of the child. The child Sahana was present along with her parents on 03.08.2023 in the Hon'ble Judge's Chamber. While the parents were accusing each other for their failure of their marriage and the factors that had caused to face this proceedings, the minor child had expressed her concerns. The child Sahana was matured to her age and she appeared to be very brilliant and some times over and above her age. The child has a good understanding of her situation and how she is placed between her parents. She had preferred to be with her mother and that was expressed by her in



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unequivocal terms. The child for the reasons outspoken by her, do not prefer to be with the father even during visitation. Though the child's decision in the matters of custody cannot be the ultimatum in deciding the matter, but her wishes and preference cannot be ignored, if it is her best interest.

6. The psychological condition of the child should also be considered while passing any order for visitation. By the order of the Court, if the child is forced, that would only aggravate her disinclination to meet her father. In view of the extraordinary situation noticed in the present case and its impact on the child, I felt it is appropriate to get an expert report on the present mental health status of the petitioner. The respondent was also insisting to produce such a report before passing any order for visitation. But the petitioner has not subjected himself for any such psychological evaluation and filed a report.

7. In such circumstances without dwelling much upon the mental health of the petitioner but taking into consideration of the preference and the concerns expressed by the child to me privately, I feel it is appropriate not to give any order for visitation in the present situation. The materials placed before the Court would convince that the minor child should be



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allowed to be made in the custody and guardianship of the respondent,
nothing more is required to be added.

8. In the result, this Original Petition is dismissed. Consequently, the application filed seeking interim custody of the minor child Sahana, is also dismissed.

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Index :Yes/No
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R.N.MANJULA, J.

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