

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.124

Case No. : CR-444-2023 (O&M)

Date of Decision : August 07, 2023

Pooja		Petitioner
vs.		
Kapil Bhambu		Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. Arvind Mittal, Advocate
for the petitioner.

Mr. Ankur Sidhar, Advocate
for Mr. Rajesh Khandelwal, Advocate
for the respondent.

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GURBIR SINGH, J. :

1. **CM-13679-C-II-2023** : This is application under Section 151 CPC for placing on record copy of respondent's marriage card as Annexure P-9.

2. In view of the averments made in the application, the same is allowed and copy of marriage card of the respondent is ordered to be taken on record as Annexure P-9. The application stands disposed of.

3. **Main Case** : Challenge in this revision petition is to order dated 05.08.2022, passed by learned Principal Judge, Family Court, Hisar whereby application moved by the petitioner in petition under Section 25 of the Guardians and Ward Act, 1890 (as amended upto date), for interim

custody of her minor daughter aged 5 years and visitation rights, has been dismissed.

4. Learned counsel for the petitioner submits that on 23.01.2023, when notice of motion was issued in the present petition, the petitioner did not press the instant revision petition with regard to claim for interim custody and confined the prayer only to the visitation rights in order to meet her minor daughter, keeping in view the fact that she had re-married.

5. It has been further submitted by learned counsel for the petitioner that on 19.03.2023, the respondent too has married, as established by the marriage card (Annexure P-9), placed on the record. Now, there is change of circumstances after filing of the petition. Therefore, the petitioner wants to claim interim custody of her minor daughter. It is further submitted that modification/review of the consent order can be sought by a party, in case of change of circumstances.

6. Learned counsel for the petitioner has also submitted that it is the admitted fact that at the time of dissolution of marriage between the parties by mutual consent, custody of minor was given to the respondent but now, circumstances have changed. The welfare of the child is not being looked after properly and minor child also been withdrawn from school. In such circumstances, application for modification of such consent order is maintainable. Reliance has been placed on Ashish Ranjan vs. Anoop Kumar Tondon reported as (2010) 14 Supreme Court Cases 274.

7. Learned counsel for the respondent has opposed the instant

petition by submitting that decree under Section 13-B of the Hindu Marriage Act, 1955 was passed as per mutual consent of both the parties. The petitioner, at that time, with her sweet will and without any pressure, agreed to give custody of the minor to the respondent. The petitioner has re-married. She would not be able to look after her minor child properly. Therefore, this petition deserves dismissal.

8. Heard.

9. In view of the aforesaid facts and circumstances, it is admitted position that custody of the minor daughter was given to the respondent and custody of child is with him. The respondent has re-married and there is total change in circumstances, which are required to be considered for deciding the custody and visitation rights of the minor child. In case **Ashish Ranjan** (*supra*), Hon'ble Apex Court held that modification/review of consent order regarding child custody can be sought by party under changed circumstances which rendered consent order wholly unworkable. Such application is maintainable.

10. Both counsel appearing for the parties have submitted that the impugned order be set aside and the case be remanded for a fresh decision.

11. Keeping in view the above discussion, the impugned order dated 05.08.2022, passed by learned Principal Judge, Family Court, Hisar is set aside, with a direction to the Court to decide the petition afresh, by taking into consideration changed circumstances, without being influenced by any observations made herein above.

12. The parties, through their counsel, are directed to appear before the Family Court on 04.09.2023, where their petition shall be decided within a period of one month positively.

13. Pending applications, if any, shall stand disposed of along with this judgment.

August 07, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.