

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-19458-2015**Date of Decision: 23.01.2023**

Bharat Bhushan Soni & Anr.

... Petitioners

VS.

State of Punjab & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. AS Nabhewala, Advocate for the petitioners

Mr. Mohit Chaudhary, AAG Punjab

Mr. KS Kahlon, Advocate for respondent No.3

Sandeep Moudgil, J.

The petitioners seek quashing of the FIR No.5 dated 15.05.2015, under Sections 363/406/420/120-B IPC, registered at Police Station NRI, Gurdaspur.

Brief facts of the case are that petitioner No.1 is the father-in-law and petitioner No.2 is the mother-in-law of complainant-respondent No.3. Jimmy Soni is the son of the petitioners. He was in relationship with respondent No.3 and got married with her on 03.07.2002. On 10.10.2022, Jimmy Soni went to Canada and thereafter shifted to USA and obtained permanent residency (PR). Respondent No.3 was also granted spouse Visa and as such went to USA in 2009. The couple came back to India and out of their wedlock, one male child, namely, Daksh was born on 17.02.2011. Jimmy Soni went back to USA on 13.07.2011. Thereafter, relations between respondent No.3 and the son of the petitioners, Jimmy Soni started straining. Respondent No.3 was allegedly desirous, ambitious and under the garb of

freedom, joined B.Ed. course and she also did Ph.D. and during this time, she left the minor child in the custody and care of Jimmy Soni, who came back to India to save his relationship. The petitioners are running a private school at Phagwara. Respondent No.3 started misbehaving and acting cruel towards the petitioners and even threatened the petitioners to implicate them in some false case. The petitioners, unable to bear insults, humiliation, misconduct at the hands of respondent No.3, disinherited their son Jimmy Soni and respondent No.3 from the movable and immovable properties on 06.01.2014 (Annexures P2 & P3).

The petitioners, thereafter on 29.09.2014, filed a civil suit (Annexure P4) for mandatory injunction against respondent No.3, for stopping her to use the house of the petitioners in Hadiabad, Phagwara, District Kapurthala which was in illegal possession of respondent No.3. It is stated that since petitioners are living separately from their son and his wife, they have no knowledge of matrimonial dispute between them.

On 05.03.2015, respondent No.3 filed a complaint to Women Cell, SP, Phagwara against Jimmy Soni along with the petitioners and other members of the family. The police investigated the matter and found the allegations of demand of dowry and mental torture to be false. The respondent No.3 again filed a similar complaint on 17.03.2015 with IG, NRI Cell, Mohali which was forwarded to SSP, Kapurthala and since respondent No.3 refused to join the investigation at the office of SSP, Kapurthala, eventually, the present FIR No.5 dated 15.05.2015 was filed against Jimmy Soni-husband, present petitioners and found the allegations against Jiwan

Parkash Soni (maternal uncle), Parveen Bansal (maternal aunty), and Geetika Bansal (maternal uncles' daughter) were false.

Learned counsel for the petitioners contends that the petitioner No.1 & 2 are the parents-in-law of respondent No.3 who is married to Jimmy Soni and out of the said wedlock, minor child Daksh was born. It is contended that the minor child, who is now aged 11 years, is in lawful custody of the petitioners and that respondent No.3, instead of resorting to taking civil proceedings for return of custody, if any, has filed the present criminal complaint.

It is further contended that since the coupled performed love marriage on 03.07.2002 and the allegations of mental and physical torture to the respondent No.3 by the petitioners which happened on 20.02.2015 besides other allegations of demand of dowry, misappropriation of jewellery, misuse of money etc. after a period of 13 years of marriage, is nothing but an act of arm-twisting and false story blatantly concocted for implicating the petitioners, who have nothing to do with the matrimonial tussle between their son and her wife – respondent No.3.

Notice of motion was issued on 16.06.2015 and on 25.02.2016, the proceedings in the FIR *qua* the petitioner were stayed. This Court was informed that regarding custody of minor child, a petition is pending before the Civil Judge (Sr.Divn.), Phagwara. The minor child along with his grandparents – the petitioners, was produced before this Court on 19.07.2022 and during interaction, the minor child expressed his lack of willingness to meet or to go along with his mother-respondent No.3.

Reply dated 17.12.2015 has been filed by respondent No.3 stating that the petitioners have no moral values for her, and the petitioners have forcibly deprived their grandson from the love and affection of respondent No.3. The respondent No.3 reached USA Alameda County and contested the divorce case filed by the petitioners in her absence as the petitioners have destroyed the documents of respondent No.3 such as passport, PAN card, Green card etc. before absconding from the country with the minor child. Respondent No.3 stated that she somehow managed to reach US Alameda County and represented herself before the court where a case of custody of minor child and a divorce case was filed by the son of the petitioners trying to suppress the true facts that he has put her in a situation of forcible detention by destroying the aforementioned documents. It is averred that the petitioners have committed felony by abusing the process of law and the court in Alameda County has passed the order dated 17.11.2015 (Annexure R-3/1) that the minor child should not be removed from the county and also an emergency custody orders have been passed in favour of respondent No.3 which entitles her to full and sole legal custody of the minor child who is also US citizen.

On 22.12.2022, this Court was informed that as per directions of this Court, the child was made available for meeting with respondent No.3 – his mother. This Court made an endeavour and interacted in Chamber, with the minor child – Daksh, aged 11 years and had a lengthy session with the minor child for preparing him mentally to have a telephonic conversation with her mother in order to explore the chances of connecting the child to the mother.

Today, learned counsel for the petitioners informed this Court that in compliance to the order dated 22.12.2022, the minor child was made available for meeting with his mother over lunch.

This Court again interacted with the minor child in Chamber. He expressed his unwillingness to join his mother – respondent No.3 and stated that he would not leave the company of his grandparents.

I have heard learned counsel for the parties and gone through record and the averments, oral as well as document, advanced on behalf of the parties.

The statutes governing the custody of a minor principally are the Guardians and Wards Act, 1890 and the Hindu Minority and Guardianship Act, 1956. Section 7 of the Guardians and Wards Act, 1890 (in short the 1890 Act) gives power to the Court to order for appointing a guardian of his person or property, or both, or declaring a person to be such a guardian, for the welfare of a minor. Section 8 of the 1890 Act provides that no order under Section 7 will be made except on the application of the person desirous of being, or claiming to be, the guardian of the minor or any relative or friend of the minor or the Collector of the district, in which the minor ordinarily resides or in which he has property, or the Collector, having authority with respect to the class to which the minor belongs. Further, Section 17 of the 1890 Act enjoins upon the Court to have due regard to the personal law of the minor and specially take note of the circumstances which point towards the welfare of the minor in either appointing a guardian or declaring a guardian. If the minor is old enough to form an intelligent preference, the Court may be justified to consider that preference also in coming to the final conclusion.

The Hindu Minority and Guardianship Act, 1956 (in short, the 1956 Act) was enacted as a law complementary to the Guardians and Wards Act, 1890. The definition of word 'minor' as per the 1956 Act is “*to be a person who has not completed the age of eighteen years*”. 'Natural guardian', according to this Act, means “*any of the guardians mentioned in Section 6*”. Section 6 says that the natural guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in the joint family property) are - (a) in the case of a boy or an unmarried girl, the father, and after him, the mother, provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother. Section 13 of the Act lays down that in the appointment or declaration of any person as guardian of Hindu minor by a Court, the welfare of the minor shall be of the paramount consideration.

A comparative reading of the above-reproduced provisions of the two Statutes coupled with the Statement of Object and Reasons, make it clear that the welfare of the minor is of predominant consideration and the legal rights of a person claiming to be the ‘guardians’ or claiming to be ‘entitled to the custody’ would play a very insignificant role in the determination by the Court.

In a **Rajeswari Chandrasekar Ganesh v. State of Tamil Nadu & Ors., 2022 SCC Online SC 885**, the Apex Court in deciding a petition seeking right of habeas corpus in a matter relating to custody of a child discussed the principles relating to custody of a child in detail by referring to a catena of Indian and Foreign decisions. In the said decision, the Apex court observed that while considering the competing claims of guardianship, the

test would be to see what would best serve the welfare and interest of the child. It was also observed that, in all circumstances, the overall social and mental welfare of the minor child would prevail over the legal rights of the competing parties.

The dominant matter for the consideration of the Court is the welfare of the child. But the welfare of a child is not to be measured by money only, nor by physical comfort only. The word 'welfare' must be taken in its widest sense. The moral and religious welfare of the child must be considered as well as its physical well-being. Nor can the ties of affection be disregarded.

The question as to what would be the dominating factors while examining the welfare of a child was considered in **Walker v. Walker & Harrison, 1981 New Ze Recent Law 257** and it was observed that:-

"Welfare is an all-encompassing word. It includes material welfare; both in the sense of adequacy of resources to provide a pleasant home and a comfortable standard of living and in the sense of an adequacy of care to ensure that good health and due personal pride are maintained. However, while material considerations have their place they are secondary matters. More important are the stability and the security, the loving and understanding care and guidance, the warm and 18 compassionate relationships that are essential for the full development of the child's own character, personality and talents." (emphasis supplied) In a matter of the child custody the court is exercising parens patriae jurisdiction. The Court is required to give due weight to the ordinary comfort of the child, contentment, intellectual, moral and physical development, health, education and general maintenance, and the favourable

surroundings. The Court is not bound either by statutes nor by strict rules of evidence nor procedure or precedent. In deciding the issue of custody, the paramount consideration should be the welfare and well-being of the child.

It is the duty of the Court to ensure that the child is required to be kept away from negative influences and stressful atmosphere. The Court has a special responsibility to consider the welfare of the minor and to protect the minor's interest.

The word "welfare" used in Section 13 of the Hindu Minority and Guardianship Act, 1956 has to be construed literally and must be taken in its widest sense. The moral and ethical welfare of the child must also weigh with the court as well as its physical well-being. Though the provisions of the special statutes which govern the rights of the parents or guardians may be taken into consideration, there is nothing which can stand in the way of the court exercising its *parens patriae* jurisdiction arising in such cases. A child does not fully understand who the biological father is or who is biological mother. Child only understands his or her need, satisfaction and emotional comfort and gratification.

Coming to the merits of the case, this Court had a brief interaction with the minor child in my Chamber. The child seemed bit nervous but was open for suggestion. He appeared to be quite intelligent. When asking whether he wanted to go to his mother and to stay with her, he unequivocally refused to go with her and also stated that he was very happy with his grandparents and would like to continue to stay with them. The Court initially made the child comfortable with the court ambience and made the child chuckle by normal conversation.

In *State of Karnataka v. L. Muniswamy and others*, AIR (1977)

SC 1489 the Supreme Court while referring to Section 482 CrPC, held that:-

“7. In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.”

The Apex Court further observed that the considerations justifying the exercise of inherent powers for securing the ends of justice naturally vary from case to case and a jurisdiction as wholesome as the one conferred by Section 482 ought not to be encased within the straitjacket of a rigid formula.

In the light of the above discussions, this Court is of the considered view that there is no merit in the allegations leveled by respondent No.3 inasmuch as the dispute, if any, has been sought to be given a criminal colour, which cannot be accepted, at any rate. Moreover, allowing the criminal proceeding to continue in the present case, would be an abuse of the process of the Court and that the ends of justice require that the proceeding ought to be quashed.

Accordingly, this petition is allowed and the FIR No.5 dated 15.05.2015 and all other subsequent proceedings arising therefrom, stands quashed.

23.01.2023
V.Vishal

- 1. *Whether speaking/reasoned?*
- 2. *Whether reportable?*

(Sandeep Moudgil)
Judge

Yes/No
Yes/No