2023:PHHC:154589

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-3618-2022(O&M)
Date of Decision: December 04, 2023

Savita

...Petitioner

Versus

Ved Parkash and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Shadab Ahmad, Advocate
for the petitioner.

Mr.Navjot Singh, Legal Aid counsel
for respondent No.1.

None for respondent No.2.

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ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 31.03.2022 passed by learned Addl. Principal Judge, Family Court, thereby, denying the interim custody of the minor girl child '**H**' to both the parents, though, granting visitation rights to the mother.

It is essential to note that both the parents i.e. Ved Parkash (father) and Savita (mother) filed respective petitions under Guardians and Wards Act to seek custody of their minor child '**H**' (girl).

The facts, culled out from the paperbook are as follows:-

That, petitioner-Savita got married to respondent No.1-Ved Parkash

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on 15.05.2011 and from their wedlock, a girl child '**H**' was born on 30.04.2012. At the time of filing of the petitions, the girl child was 9 years old and at present, she is about 12 years old.

Unfortunately, matrimonial dispute arose between the parents and they are residing separate. Thereupon, rival petitions were filed under the Guardians and Wards Act for seeking custody of the minor child '**H**'. From the facts, as spelt out from the petitions, so filed by the rival parties, as well as so reiterated in the impugned order, it is evident that there are allegations and counter allegations about bad behaviour and conduct of the both the parents. While giving the minute details about the alleged bad behaviour of the parents, against each other, learned Addl. Principal Judge, Family Court, directed the custody to be continued with shelter home-Ashiana, Panchkula, but however, visitation rights were given to the mother i.e. for three hours, on every Sunday, from 10.00 am, till 1.00 pm.

Feeling aggrieved, the petitioner Savita (mother) filed the present revision petition. However, respondent No.1-Ved Parkash (father) did not initiate any steps to challenge the denial of interim custody or visitation rights to him.

In pursuance of notice issued, respondent No.1 made appearance.

Learned counsel for the parties heard.

Amidst matrimonial discord, there is unfortunate tussle between the parents, with regard to seeking interim custody of minor child '**H**'. Prior to the filing of the petitions for seeking custody, there was bout

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of litigation, due to matrimonial discord and in the process, with the intervention of CWC (Child Welfare Committee), the minor child '**H**' landed in shelter home Ashiana, Panchkula.

Before proceeding further, at the very outset, it may be stated that in the matters involving the question of custody of a child, it has to be borne in mind that the question '**what is the wish/desire of the child**' is different and distinct from the question '**what would be in the best interest of the child**'. Certainly, the wish/desire of the child can be ascertained through interaction but then, the question as to '**what would be in the best interest of the child**' is a matter to be decided by the Court taking into account all the relevant circumstances. When the couples are at loggerheads and want to part their ways, they may level extreme allegations against each other, so as to depict the other unworthy, to have the custody of the child. In such circumstances, the Hon'ble Supreme Court in decision rendered in ***Rohith Thammana Gowda vs. State of Karnataka and others, 2022 (3) RCR (Civil) 819***, has made an observation, which is reproduced, as herein given:-

> *"xxx…..we are of the view that for considering the claim for custody of a minor child, unless very serious, proven conduct which should make one of them unworthy to claim for custody of the child concerned, the question can and shall be decided solely looking into the question as to, 'what would be the best interest of the child concerned'. In other words, welfare of the child should be the paramount consideration. In that view of the matter we think it absolutely unnecessary to discuss and deal with all the contentions and allegations in their respective*

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pleadings and affidavits."

In this context, it is important to keep in mind that the minor child '**H**', at present, is residing in shelter home Ashiana, Panchkula, away from her parents. So far as, the custody of the girl child in the shelter home is concerned, obviously, it could only be a temporary resort. After some time, no child can be comfortable at that place, if he/she is otherwise having both the parents. Considering the ills prevalent in the society, the chances of deviation from the normal path of the child or her being misused or put to some wrong path, as such, cannot be ruled out, unless and until, a very strict vigil is there. At the same time, strict vigil will have its own implications/consequences, upon the upbuilding of the personality of the girl child '**H**', who is at formative stage of life. As observed by the Courts, time and again, welfare of the child is of utmost importance, to be considered while deciding, even the question of interim custody. While adjudicating on the aspect of welfare of the child, the age of the child is also to be taken into consideration. Herein, the child is about to enter the teenage. It is a matter of common knowledge that at this stage, mother is the best friend, guide and mentor for the growing girl child.

Keeping in view the aforesaid scenario, a conscious attempt is made by this Court not to dilate on the allegations and counter allegations, against each other by father and mother, lest it may hamper not only the case made by both the parties, but it shall also not be in the interest of the child.

Suffice to make mention that during the course of submissions

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made by learned counsel, it came forth that divorce petition was filed by petitioner-Savita against respondent No.1-Ved Parkash and the same has since been granted. Placing reliance upon the FIR got lodged by the petitioner against one Tarun, on the allegations of rape and thereafter, having not supported the version, which resulted into acquittal of Tarun, respondent No.1 alleged about illicit relationship existing between Tarun and the petitioner and assert about minor child '**H**' to be not safe, in the custody of the petitioner.

However, there may be several circumstances, on the basis whereof, the petitioner may have left the matrimonial house and if however, she lodged FIR and thereafter, not supported the version, the same will not *ipso facto* lead to the conclusion about her immorality. This matter, still has to be adjudicated by the Family Court, on the basis of the evidence, coming forth. The moral judgment reflected in such an order would defeat the objective of enquiry in the matter of child custody.

As already observed above, in a matter related to child's custody, welfare aspect has to be considered first and priority be given to the same. A man or a woman may be bad for someone in a contextual relationship, that does not necessarily mean that the person is bad for his/her child. A mother may be morally bad in the societal sense, but that mother may be good for the child as far as welfare of the child is concerned. The so called morality is created by society based on their own ethos and norms and should not necessarily reflect in a contextual relationship between a parent and child.

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Likewise, there may be behavioural problems with the father, as a result whereof, he was not able to make adjustments with his own family members, as observed in the impugned order. May it be so, the same also warrants scrutiny, on the basis of the evidence, coming on record, at a later stage. The mother may be bad for the father or vice-versa, but mother can be good for the child. These are the matters to be adjudicated after adducing of the evidence. Definitely, stay in the shelter home is not as congenial as being with parents. The Court, therefore, will have to examine, how far the child is protected, when custody is given to either parent.

In the case in hand, the mother is a well educated lady having post-graduate degree and is working mother. In these circumstances, she also has financial independence and can take care of the child.

Keeping in view the facts and circumstances aforesaid, more particularly, considering the age of the child '**H**', it is an appropriate call of the time to handover the interim custody of the minor child '**H**' to petitioner Savita(mother). However, in view of the fear being expressed of doing any harm, at the behest of Ved Parkash, as spelt out from the paperbook, learned Family Court is requested to keep a tab on the well-being of the minor child '**H**', while taking appropriate assistance from the Secretary, District State Legal Authority and shall be at liberty to take any further steps to secure well-being of the girl child, while in the interim custody of the mother, during the pendency of the main petitions.

In the light of the aforesaid conclusion, the custody of minor child '**H**' be handed over to petitioner-Savita, by the concerned authorities

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of shelter home-Ashiana, Panchkula, after completing all the necessary formalities. However, the Registry is directed to send the copy of the order to the Incharge, Ashiana Children's Home, Panchkula, for necessary compliance.

In view of the aforesaid terms, the revision petition stands allowed.

However, the aforesaid observations are circumscribed only for the purposes of making purely temporary arrangement, considering the welfare of the child and therefore, learned Addl. Principal Judge, Family Court, shall proceed further to decide the main petition expeditiously, after parties adduce evidence, without being influenced by any observation, made herein above.

December 04, 2023 **(ARCHANA PURI)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**

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