



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

1030 CRIMINAL REVISION APPLICATION NO. 317 OF 2023

Karansinh Ganeshsinh Thakur & othersApplicants

VERSUS

Kavita W/o Karansinh Thakur & anotherRespondents

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Mr. B. K. Patil, Advocate for Applicants.

Mrs. M. N. Ghanekar, APP for the State.

Mr. J. J. Patil, Advocate for Respondent No. 1.

CORAM : S. G. MEHARE, J.

DATE : 3rd SEPTEMBER, 2024.

PER COURT :

1. Heard learned counsel for the Applicants and learned counsel for the Respondents.

2. Applicant/husband has impugned the order of the Judicial Magistrate First Class, Jalna in D.V. Cri. Case No. 33/2023 dated 22.06.2023 and the order of the Appellate Court passed in PWDVA No. 07/2023 dated 02.08.2023.

3. Learned counsel for the Petitioner submits that the learned Judicial Magistrate First Class has passed the order mechanically. Ex-parte order granting interim custody of the

children is without any reason. Therefore, it was legally defective. He also argued that the Applicant appeared before the Trial Court, filed his affidavit-in-reply. However, there was no satisfactory progress in the proceeding. Similarly, learned Additional Sessions Judge, Jalna, also did not consider that the order was without reasons. There was no specific pleadings in the petition that the custody of children was in danger. The Applicant had explained the circumstances in which the matrimonial dispute arose and Respondent left the children. He prays to quash and set aside both the impugned orders.

4. Learned counsel for the Respondent/wife submits that the children were 2 ½ years old at the time of filing of the petition. Legally the custody of a child below 5 years is with the mother. The children are safe in her custody. The Respondent was driven away from the house without any justiciable cause. Serious allegations have been levelled against the father-in-law who was the cause to disturb the matrimonial life.

5. Perused the impugned orders. The core question that ought to have been considered was whether the impugned order of learned Magistrate was reasoned while passing ex-parte order. The

order of the learned Magistrate is without any reason. Not a single line of reasons has been mentioned. Therefore, it could be said that it is a mechanical order passed without application of mind. It is like a man without soul.

6. Learned Additional Sessions Judge, Jalna, also did not consider this material aspect. It is well known that every order must assign a reason. Without reason no one can arrive at a concrete decision. So, apparently, the impugned order passed by learned Judicial Magistrate First Class, Jalna is illegal and without application of mind. Hence, the same deserves to be quashed and set aside. Consequently, the order of learned Additional Sessions Judge, Jalna, also goes away. Hence, the following order :-

ORDER

(i) Application is allowed.

(ii) The order dated 22.06.2023_ passed by learned Judicial Magistrate First Class, Jalna, in D.V. Cri. Case No. 33/2023 and the order dated 02.08.2023, passed by learned Additional Sessions Judge, Jalna, in PWDVA Appeal No. 07/2023 are quashed and set aside.

(iii) The case is remitted to the Court of learned Judicial Magistrate First Class, Court No. 2, Jalna, for deciding the issue of interim custody of the children on merit.

(iv) If both the parties cooperate with the Court, the Court should make an endeavour to dispose of the matter at the earliest.

(v) Both parties should appear before the learned Judicial Magistrate mentioned above on 20.09.2024 at 11.30 am.

(vi) No order as to costs.

(vii) R & P be returned to the Court of Judicial Magistrate First Class, Court No. 2, Jalna.

(S. G. MEHARE)
Judge