



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

917 CRIMINAL WRIT PETITION NO. 1647 OF 2024

PRADEEP MERSIN PAWARA

VERSUS

NIRYA PRADIP PAWARA

...

Mr. Amit Shashikant Savale, Advocate for the Petitioner

CORAM : Y. G. KHOBRADE, J.

Dated : 17th October, 2024

PER COURT :-

1. Heard Mr. Savale, the learned counsel for the Petitioner at length.
2. By the present petition, the petitioner challenges the order dated 26.08.2024 passed by the learned Additional Sessions Judge, Shahada in Criminal Appeal No. 08 of 2023, arising out of order dated 17.03.2023 passed below Exh.12 in Criminal M.A. No. 365 of 2022 by the learned Judicial Magistrate.
3. The Petitioner and Respondent are husband and wife. The Respondent is the original applicant and the petitioner is the original non-applicant in Criminal M.A. No. 365 of 2022 filed u/s 12 of the Prevention of Woman from Domestic Violence Act, 2005 (in short D.V. Act). It alleged that, their marriage solemnized on

04.06.2015 as per the customs and rites prevailing in their society. Out of marital relation, they are blessed with two children. Respondent wife filed a proceeding under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (D.V. Act) bearing Criminal M.A. No. 365 of 2022. The Respondent also filed Application Exh. 12 seeking custody of minor daughter Arpita, aged about 5 years, under section 21 of the D.V. Act. The Petitioner filed reply and resisted said application.

4. On 17.03.2023, the learned JMFC, Court No. 1, Shahada passed an order holding that the minor daughter is 5 years old and considering provisions of section 21 of the D.V. Act, custody of the minor daughter with the respondent mother is necessary. Being aggrieved by said order, the Petitioner husband filed an appeal bearing Criminal Appeal No. 8 of 2023. On 26.08.2024, the learned Additional Sessions Judge, Shahada passed the impugned order holding that, the minor daughter was not residing with her father i.e. petitioner but he forcefully taken custody of the minor daughter from her mother i.e. respondent. The respondent mother is well educated and ready to provide education to her daughter at Shahada. Therefore, considering the age of the daughter and need of company of mother, dismissed

the appeal instituted by the present petitioner.

5. The learned counsel appearing for the Petitioner canvassed in vehemence that the Petitioner is a teacher and is in better position than his wife to provide quality education to the minor. So also, he can nurture and up-bring the minor. It is further canvassed that, the Respondent wife left for her parental house and since then child residing with the petitioner. The petitioner never snatch the child from custody of the Respondent wife. Therefore petitioner is entitled for custody of the minor child

6. The learned counsel for the petitioner further canvass that, since beginning the minor daughter and son are staying with the Petitioner, however, both the Courts below failed to consider the welfare of the minor child, which is paramount consideration while deciding the issue in respect of custody of the minor.

7. To buttress these submissions, the learned counsel for the Petitioner placed reliance on **Swapnil Bhajandas Kamble Vs. Sau. Manisha, (2022) All MR (Cri) 2296**, wherein it is held that, the welfare of minor is a prime consideration for adjudicating the issue of custody. The Court is not bound by mere legal rights of the parties but the factual circumstances relating to the welfare of

child would take the precedence.

8. It further relied on case of **Col. Ramneesh Pal Singh Vs. Saugandhi Aggarwal (2014) INSC 397**, wherein the Hon'ble Supreme Court, in Paragraph No. 12, framed guidelines in respect of custody of minor children, as under:

"12. Accordingly, in view of the aforesaid, not only must we proceed to decide the present lis on the basis of a holistic and all encompassing approaching including inter alia (i) the socioeconomic and educational opportunities which may be made available to the Minor Children; (ii) healthcare and overall well being of the children; (iii) the ability to provide physical surrounding conducive to growing adolescents but also take into consideration the preference of the Minor as mandated under Section 17(3) of the Act. Further, we are equally conscious that the stability of surrounding(s) of the Minor Children is also a consideration to be weighed appropriately."

9. In case in hand, it prima facie appears that due to domestic violence raised at the hands of the Petitioner, the respondent wife was residing at her parental house with her minor daughter. The respondent specifically alleged that when she was carrying six months pregnancy, the petitioner visited at her parental house and quarreled with her and took her minor son Kunal with him. The

Respondent wife specifically alleged that, on 06.11.2022 the present Petitioner, with his father, visited at her parental house and quarreled with her and taken away the minor daughter Arpita with him.

10. No doubt, the Petitioner filed reply at Exh.14 and contended that the Respondent herself given custody of minor daughter to him and since then, the minor daughter Arpita is admitted in Anganwadi of Zilla Parishad School at Rajbar and if custody of minor is given to the respondent, certainly the education of the minor will suffer.

11. On 17.03.2023, the learned trial Court passed the order and directed the present petitioner to handover interim custody of minor daughter Arpita to the Respondent mother as early as possible but instead of handing over custody of the minor, the petitioner enrolled name of the minor with Anganwadi. On 26.08.2024, the learned Sessions Court passed the impugned order holding that the minor was forcefully taken by the present petitioner and the respondent mother is well educated and capable to provide education to the minor daughter.

12. No doubt, in the matter of custody of minors, the welfare of

the minor child is the paramount consideration. In the present case, the respondent mother appears to be well educated and though the present applicant is a teacher, but the respondent is also capable and competent to provide necessary education to the minor. The Respondent being a natural mother of the child can take every care and welfare of the minor child.

13 Section 21 of the D.V. Act provides that at any stage of hearing of the matter, temporary custody of minor child can be granted in favour of the aggrieved person, if it is found necessary. Therefore, considering provision of law as well as case laws cited supra, coupled with submissions advanced on behalf of the petitioner, I do not find any substance even to issue notice to the respondent. So also do not find any merit to interfere with the findings recorded by both the courts below.

10. In view of the above the writ Petition is dismissed.

(Y. G. KHOBRAGADE, J.)