



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 121 OF 2024

Pradipkumar s/o Padamsingh Chavan,
Age : 41 years, Occu : Service,
R/o. Kapuswaadi, Tq. Jamner,
Dist. Jalgaon.

... Applicant

Versus

Aarti w/o Pradipkumar Chavan,
Age : 31 years, Occu : Household,
A/p. Jamthi, Tal. Soygaon,
Dist. Aurangabad.

... Respondent

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Mr. Bharat S. Doifode, Advocate for the Applicant.
Mr. A. V. Sonawane, Advocate for the Respondent.
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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 21.11.2024

Pronounced on : 25.11.2024

ORDER :

1. Revisionist hereby takes exception to judgment and order passed by learned Additional Sessions Judge, Aurangabad in PWDVA Appeal No. 27 of 2023 dated 19.10.2023 dismissing the appeal arising out of order passed below application Exhibit 8 bearing Criminal M.A.No. 134 of 2022 by learned JMFC, Soygaon.

2. Learned counsel pointed out that parties are husband and wife. Out of their wedlock, they have a son. Learned counsel pointed out that present respondent wife due to matrimonial discord, instituted proceedings under Protection of Women from Domestic Violence Act. She levelled false allegations and took away custody of son who was already in the custody of revisionist. He was taking proper care and provided with all necessary education and needs. By filing application Exhibit 8, she sought custody. That, learned trial court did not consider that appellant had sufficient means and income to provide for all needs of the minor. Welfare of the minor, which is of paramount importance, was taken care of. However, merely considering the age, learned trial court has directed handing over custody to wife. There is improper appreciation at the hands of both, learned JMFC, as well as first appellate court, and hence instant proceedings with prayers for setting aside orders dated 27.02.2023 and 19.10.2023 respectively.

In support of his submissions, learned counsel relied on following rulings :-

- (i) *Nil Ratan Kundu and Anr. v. Abhijit Kundu, reported in 2008 AIR SCW 5769;*
- (ii) *Swapnil Bhajandas Kamble v. Sau Manisha w/o Swapnil Kamble, reported in 2022 ALL MR (Cri) 2296.*

3. Above application is strongly contested by learned counsel for respondent, who pointed out that there was maltreatment and harassment in the backdrop of dowry demand. That, husband suspected the paternity of respondent child itself. That, husband was addicted to liquor and as such, the child was not being brought up in conducive atmosphere. As she was driven out and custody of the minor, who was barely 5 years of age, was forcibly retained, wife was constrained to initiate proceedings before learned JMFC. It is pointed out that after hearing both parties, as well as papers, learned JMFC directed handing over custody to mother, which was in the best interest of the child. It is pointed out that even first appellate court completely appreciated the cases advanced by each side and upheld the lower court's order. For all above reason, learned counsel submits that there is no need to disturb the well reasoned findings of both courts.

In support of his submissions, learned counsel seeks reliance on following rulings :-

- (i) *Githa Hariharan (Ms) and Anr. v. Reserve Bank of India and Anr. reported in (1999) 2 SCC 228;*
- (ii) *Purvi Mukesh Gada v. Mukesh Popatlal Gada and Anr. reported in (2017) 8 SCC 819;*
- (iii) *Sardar Bhupendra Singh v. Smt. Jasbir Kour, reported in 2000 SCC OnLine MP 84;*

4. After considering the submissions of both sides and going through the papers, it appears that parties are husband and wife and are married but separated due to matrimonial discord. They also have a son who is now bone of contention as both are involved in tug of war for custody of the minor. Neither of them dispute that at the time of proceedings, minor was 5 years of age. Wife has alleged that husband is alcoholic and affidavit is placed on record contending that there was utter negligence of the child while he was in Kindergarten during his stay with his father. There are also allegations of husband currently in the company of widowed sister in law. Though these are mere allegations, it is pertinent to consider that minor is barely 5 to 6 years of age. Law is fairly settled that welfare of the child is of paramount importance. Law is also settled that mother is the best guardian and custodian in cases of children of tender age. Allegations of addiction to liquor are not refuted. Statement has been made across the bar by learned counsel for respondent that, there is ample evidence about husband having such vices. Wife seems to have succeeded in securing maintenance. Taking overall view of the above facts and circumstances and more particularly, the tender age of the boy, mother is the proper person to provide necessary care and to meet necessary needs of a child of tender age. No infirmity is brought

to the notice in the order passed by either learned JMFC or first appellate court so as to grant and consider any relief in revision. Facts in cases relied are distinct and hence cannot be taken aid off. Hence, following order is passed:

ORDER

The Criminal Revision Application is dismissed.

[ABHAY S. WAGHWASE, J.]

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