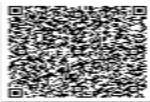


2024:PHHC:075449-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-2051-2024 (O&M)
Date of decision: 22.05.2024

MANMOHAN SINGH ...Appellant

Versus

BALWINDER KAUR ..Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MS. JUSTICE KIRTI SINGH**

Present:- Mr. Anirudh Gupta, Advocate, for the appellant.

SUDHIR SINGH, J.

CM-7787-CII-2024

For the reasons given in the application, the same is allowed and the delay of 76 days in filing the appeal is condoned, subject to all just exceptions.

FAO-2051-2024

Challenge in the present appeal is to the order dated 18.12.2023 passed by learned Family Court, Gurdaspur, whereby the petition under Section 25 of Guardians and Wards Act, 1890 (hereinafter referred as 'the Act') filed by the respondent for custody of the minor son, has been allowed and the appellant has been granted visiting rights qua the said minor child.

2. The respondent had filed the aforesaid petition, *inter-alia*, averring that the marriage between the parties was solemnized on

17.08.2014 as per Sikh rites and out of the said wedlock a male child, namely, Jagmeet Singh, was born on 10.11.2017. It was further stated by her that after some days of the marriage, the appellant and his family members started taunting and torturing her on the pretext of bringing insufficient dowry. It was further asserted that the behavior of the appellant became cruel and many times, he tried to kill the respondent, but somehow she escaped from his cruel hands. It was further asserted that the appellant used to beat the respondent when she had been in her advance stage of pregnancy and also accused her of having illicit relations with someone. It was further stated that the respondent tolerated the aforesaid ill-treatment with the hope that one day a better sense will prevail upon the appellant and his family members, but all in vain. It was further the case of the respondent that on 26.08.2019, the appellant and his family members in connivance with each other, mercilessly beat the applicant and tried to kill her, whereupon the matter was reported by the respondent to the police at Police Station Kathu Nangal, but in the said Police Station the appellant along with ten persons had forcibly taken the signatures of the respondent on some blank papers; snatched the minor child and later on prepared a divorce deed/talaqnama. It was further stated that since then, the respondent had been residing with her parents. It was yet further stated that the minor son aged only 22 months, was being deprived of motherly love and affection. Accordingly, being mother and natural guardian of the minor child, she had sought the custody of the child.

3. The appellant appeared and filed his written statement. The factum of marriage and birth of the minor child was admitted, but the allegations of cruelty, maltreatment and mental torture were denied. It was further stated that the respondent used to leave the appellant alone and would return back at night only. It was further stated that later on, the appellant came to know that the respondent had relations with one Prabhdeep Singh and when he objected to it, the respondent had raised a hue and cry. It was further pointed out that on 26.08.2019, the respondent quarreled with the appellant and left the matrimonial home after leaving behind the minor child of one and half years of age with the appellant and that when she did not return, the appellant filed an application at Police Station Kathu Nangal and that when the Police had called her, she made a statement that she did not want to live with the appellant. It was further stated that thereafter, the respondent had filed an application before the SSP, Gurdaspur on 16.10.2019 and a writing was prepared, wherein it was agreed upon that the minor child would remain with the appellant and as the matrimonial relations of the parties had come to an end, they could solemnize marriage, according to their own choice.

4. On the basis of pleadings of the parties the following issue framed by learned Family Court:-

“1. Whether the applicant is entitled for the custody of minor namely Jagmeet Singh from the respondent? OPA

2. Relief.”

5. In evidence, the respondent examined herself as PW-1; her mother Narinder Kaur as PW-2; Gurmeet Singh as PW-3 and Paramvir, Assistant Manager, Union Bank of India as PW-4, besides leading documentary evidence. On the other hand the appellant appeared as RW-1 and had examined Ranjit Singh as RW-2 and Satnam Singh as RW-3, besides leading documentary evidence as Ex.RW-1/A to Ex.RW-3/A. In rebuttal evidence, the respondent tendered certified copy of the judgment/order dated 25.04.2013 passed by learned Family Court, Gurdaspur as Ex.DX.

6. The learned Family Court after taking into consideration the rival contentions of the parties and the evidence on record, allowed the petition filed by the respondent and held her entitled to the custody of the minor child, but gave visiting rights to the appellant.

7. Learned counsel appearing for the appellant has vehemently argued that once the respondent had given in writing on 16.10.2019, before the Police that she did not want the custody of the child and the marital relations between the parties came to an end, there was no occasion for the respondent to file the custody petition. It is further argued that it is the appellant, who has been taking care of the minor child since 26.08.2019 and as a matter of fact, the child was abandoned by the respondent. It is further argued that the learned Family Court has acted illegally in returning a finding that the very execution of Ex. R.2 (Fargatinama), is doubtful. It is yet further argued that the respondent was having extra marital relations with one

Prabhdeep Singh and, therefore, it is not in the welfare of the child to hand over his custody to the respondent.

8. We have heard learned counsel for the appellant and have also gone through the impugned order passed by the Court below.

9. The question that arises for consideration by this Court is whether the judgment passed by learned Family Court, requires any interference.

10. In the cases of the custody of the minor children, their welfare is the paramount consideration. In the instant case, the learned Family Court came to the conclusion that so far as the document (Fargatinama) is concerned, the parties had failed to prove that there was any custom between them so as to validate such document (Fargatinama). As regards the alleged adulterous relations of the respondent, it was found by the learned Family Court that the same was not proved by the appellant by leading any cogent and convincing evidence.

11. The learned Family Court found that it is the respondent (mother of the minor child), who is entitled to the custody of the child. It was further found that the appellant in his testimony admitted that despite there being maintenance order from the Court, he had not paid a single penny to the minor child. It was, accordingly, found by learned Family Court that a father, who is not ready to bear the expenses of the minor son despite the orders of the Court and is reluctant to maintain him, cannot be expected to take care of the child properly. It was also found by learned Family Court that the minor child was produced in the Court and in an interaction with him, he had

refused to accompany or even meet the father. Thus, it was found that in such circumstances, the custody of the minor child could not be handed over to the appellant. However, the learned Family Court, while handing over the custody of the minor to the mother, has granted visiting rights to the appellant.

12. In *Rajeswari Chandrasekar Ganesh Vs. The State of Tamil Nadu and Ors. MANU/SC/0890/2022*, it was held by the Hon'ble Supreme Court that while considering the question of the custody of the children, the dominant consideration should be their welfare. It was held by the Apex Court as under:

“ We would therefore hold that in the case at bar the dominant consideration to which all other considerations must remain subordinate must be the welfare of the child. This is not to say that the question of custody will be determined by weighing the economic circumstances of the contending parties. The matter will not be determined solely on the basis of the physical comfort and material advantages that may be available in the home of one contender or the other. The welfare of the child must be decided on a consideration of these and all other relevant facts, including the general psychological, spiritual and emotional welfare of the child. It must be the aim of the Court, when resolving disputes between the rival claimants for the custody of a child, to choose the course which will best provide for the healthy growth, development and education of the child so that he or she will be equipped to face the problems of life as a mature adult.”

Furthermore, in *Yashita Sahu Vs. State of Rajasthan and Ors. MANU/SC/0052/2020*, it was held that though no hard and fast rules can be laid down as regards the custody of the children yet it should be considered that while deciding the same, the Court must

keep in mind as to what is in the best interest of the child. It was held as under:

“There are various factors to be taken into consideration while deciding what is best in the interest of the child. No hard and fast Rules can be laid down and each case has to be decided on its own merits. We are also not oblivious of the fact that when two parents are at war with each other it is impossible to provide a completely peaceful environment to the child. The Court has to decide what is in the best interest of the child after weighing all the pros and cons of both the respective parents who claim custody of the child. Obviously, any such order of custody cannot give a perfect environment to the child because that perfect environment would only be available if both the parents put the interest of the child above their won differences. Even if parents separate, they may reach an arrangement where the child can live in an environment which is reasonably conducive to her/his development. As far as the present case is concerned other than the age of the child nothing is in favour of the mother. She herself approached the jurisdictional Court in Norfolk. She entered into an agreement on the basis of which a consent order was passed. She has violated that order with impunity and come back to India and, this is a factor which we have to hold against her.”

13. We find that in the given facts and circumstances of the case coupled with the evidence on record, the learned Family Court was perfectly justified in granting the custody of the minor child to the respondent. We do not find that the impugned order passed by the learned Family Court suffers from any illegality or perversity, which may warrant interference by this Court.

14. No other point has been urged.

15. In view of the above, we do not find any merits in the present appeal and the same is hereby, dismissed.

16. Pending application(s), if any, shall also stand disposed of.

17. Before parting with the order, we would like to put our words of appreciation for the efforts put in by Mr. Anirudh Gupta, learned counsel for the appellant, while efficiently assisting the Court, arguing the appeal and also being honest about the facts of the case.

[SUDHIR SINGH]
JUDGE

[KIRTI SINGH]
JUDGE

22.05.2024
Himanshu

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