

2024.PHHC.122609-DB



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO-4412-2024 (O&M)

Date of decision: 17.09.2024

PAWAN KUMAR

...Appellant

Versus

GURMEET DEVI

...Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present:- Mr. Arun Chander Sharma, Advocate,
for appellant.

SUDHIR SINGH, J.

Challenge in the present appeal is to the order dated 03.08.2024, passed by the Learned Additional Principal Judge, Family Court, Karnal (for short 'the Family Court'), whereby the petition under Section 25 of The Guardians and Wards Act read with Hindu Minority and Guardianship Act, 1956, filed by the appellant-husband for the care and custody of the minor son of the parties, has been partly allowed by holding the appellant not entitled to the custody of the minor children, but giving him visiting rights qua the said children, as indicated in Para No.30 of the said order.

2. The appellant-husband had filed the aforesaid petition, *inter alia*, pleading therein that his marriage with the respondent-wife was solemnized on 31.05.2010, according to Hindu rites and out of the said wedlock two children were born. It was further stated therein

that on 27.05.2019, the respondent-wife went to her parental home along with minor children, saying that she had intended to reside with her parents as the School of children was off during those days and that once the vacations were over, she would come back. However, the respondent did not return to her matrimonial home. Many Panchayats had been convened and efforts were also made to bring back the respondent-wife and the minor children, but to no avail. It was further averred that the appellant had incurred a huge amount in the admission of the children and the act and conduct of the respondent-wife had seriously affected the study of the children. It was further stated that the respondent-wife was not taking care of the children inasmuch as she was not worried about their future and that she had no means to look after and meet their necessities and expenses. It was further asserted that the respondent-wife at the instigation of her parents lodged FIR No.151 dated 11.07.2019 under Sections 323, 406, 498-A, 506 read with Section 34 IPC at Police Station Women, Panipat against the appellant and his family members. Accordingly, custody of the minor children was sought for.

3. Upon notice, the respondent-wife entered appearance and filed her written statement, stating therein that after the marriage, the appellant and his family members started harassing her and that the appellant-husband told her that he was in love with another girl and wanted to solemnize marriage with her. The appellant-husband had also given her beatings, besides hurling abuses. Demands of dowry were raised and on 25.05.2019, she along with minor children was thrown out of the matrimonial home. Moving of an application to the

police was admitted and so was the factum of registration of the aforesaid FIR. It was further stated that the appellant-husband had also treated the minor children with cruelty and did not provide them basic necessities and, therefore, he was not entitled to the custody of the children.

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

- “1. Whether the petitioner is entitled to the custody of the minor children as prayed? OPP
2. Whether the petitioner is maintainable in the present form? OPR
3. Whether the petitioner has not approached the Court with clean hands and has suppressed true and material facts from the Court?OPR
4. Relief.”

5. In evidence, the appellant examined himself as PW-1 and PW-2 Neeraj Kumar, besides tendering into evidence Ex.P1 to Ex.P13. On the other hand, the respondent-wife appeared as RW-1 and examined Sudhir Kumar as RW-2, besides leading documentary evidence Ex.R1 to Ex.R15; Mark-R1 to Mark-R9 and Mark-PA. In rebuttal evidence, the appellant-husband tendered Ex.P-16 certified copy of FIR No.372 and Ex.P-17 copy of complaint under Sections 323 and 506 IPC.

6. The learned Family Court, after taking into consideration the rival contentions of the parties and the evidence on record, has

partly allowed the petition filed by the appellant-husband, as noticed above.

7. Learned counsel appearing for the appellant has vehemently argued that the appellant had produced before the learned Family Court sufficient evidence to establish that the minor children are not being provided the proper care, love and affection. It is further argued that the respondent-wife is not possessed of sufficient means so as to provide proper education to the children and, thus, the future of the children is compromised. It is further argued that the appellant is a man of means and he can provide a better future to the children besides giving them proper care love and affection.

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 order passed by learned Family Court, requires any interference.

10. In Para No.21 of the impugned order, the learned Family Court has noticed that the Court had interacted with the minor children and they had expressed their desire to reside with their mother and further told that they did not feel comfortable with their father and his family members. It was also found that from the documentary evidence produced on record by the respondent-wife, it was clear that the children were pursuing their education. It was further found that in view of the desire expressed by the children, their custody must not be disturbed. However, as noticed above, the

appellant-husband was granted visiting rights qua the minor children.

The said part of the order would read as under:-

“23. In view of my findings on the above discussed issues, the present petition is partly allowed. It is ordered that the petitioner is not entitled to custody of minor children ‘P’ and ‘Pa’. However being father, he can meet minor children at District Legal Services Authority, Karnal on 1st and 3rd Saturday of each month from 4:00 P.M. to 5:00 P.M at District Legal Services Authority, Karnal. The respondent- is directed to ensure the presence of minor children before the District Legal Services Authority, Karnal. A copy of this order be also sent to the learned Secretary, District Legal Services Authority, Karnal for information. Memo of costs be prepared accordingly. File be consigned to record room, after due compliance”.

11. We find that the learned Family Court, while partly allowing the petition filed by the appellant, has taken into consideration all the relevant factual aspects of the matter and concluded that the welfare and betterment of the child is safe in the company of the respondent-wife. It is settled law that while deciding the custody of the minor children, the sole consideration is the paramount welfare of such children. The Hon’ble Supreme Court has held that the custody of the minor child, it is the paramount welfare of the minor child, which is to be taken into consideration and nothing else.

12. In *Sheoli Hati v. Somnath Das*, (2019) 7 SCC 490, while laying emphasis on the paramount welfare of the child in the custody matter, it was held by the Hon'ble Supreme Court as under:-

“17. It is well settled that while taking a decision regarding custody or other issues pertaining to a child, welfare of the child is of paramount consideration. This Court in *Gaurav Nagpal v. Sumedha Nagpal*, (2009) 1 SCC 42 : (2009) 1 SCC (Civ) 1, had the occasion to consider the parameters while determining the issues of child custody and visitation rights, entire law on the subject was reviewed. This Court referred to English Law, American Law, the statutory provisions of the Guardians and Wards Act, 1890 and provisions of the Hindu Minority and Guardianship Act, 1956, this Court laid down following in paras 43, 44, 45, 46 and 51 (SCC pp. 55-57):-

“43. The principles in relation to the custody of a minor child are well settled. In determining the question as to who should be given custody of a minor child, the paramount consideration is the “welfare of the child” and not rights of the parents under a statute for the time being in force.

44. The aforesaid statutory provisions came up for consideration before courts in India in several cases. Let us deal with few decisions wherein the courts have applied the principles relating to grant of custody of minor children by taking into account their interest and well-being as paramount consideration.

45. In *Saraswatibai Shripad Vad v. Shripad Vasanji Vad* [Saraswatibai Shripad Vad v. Shripad Vasanji Vad, 1940 SCC OnLine Bom 77 : ILR 1941 Bom 455 : AIR 1941 Bom 103, the High Court of Bombay stated :

‘... It is not the welfare of the father, nor the welfare of the mother, that is the paramount consideration for the court. *It is the welfare of the minor and of the minor alone which is the paramount consideration ...*’

46. In *Rosy Jacob v. Jacob A. Chakramakkal*, (1973) 1 SCC 840, this Court held that object and purpose of the 1890 Act is not merely physical custody of the minor but due protection of the rights of ward's health, maintenance and education. The *power* and *duty* of the court under the Act is the welfare of minor. In considering the question of welfare of minor, due regard has of course to be given to the right of the father as natural guardian but if the custody of the father cannot promote the welfare of the children, he may be refused such guardianship.

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51. The word “welfare” used in Section 13 of the Act has to be construed literally and must be taken in its widest sense. The moral and ethical welfare of the child must also weigh with the court as well as its physical well-being. Though the provisions of the special statutes which govern the rights of the parents or guardians may be taken into consideration, there is nothing which can stand in the way of the court exercising its *parents patriae* jurisdiction arising in such cases”.

13. We find that the child can be given better parenting by both the parents. While the custody has been held to remain with the respondent-wife, the appellant-husband has been granted visiting rights and he can very well visit the children and grant them love care and affection. Thus, we do not find that the impugned order suffers from any illegality or perversity.

14. No other point has been urged.
15. In view of the above, we do not find any merit in the present appeal and the same is hereby, dismissed.
16. Pending application(s), if any, shall also stand disposed of.

[SUDHIR SINGH]
JUDGE

[JASJIT SINGH BEDI]
JUDGE

17.09.2024
Himanshu

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