

2025:PHHC:031926-DB



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

FAO-1469-2025 (O&M)
Date of Decision: March 05, 2025

Ravi Kumar

.....Appellant

versus

Mukesh Kumari

....Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present:- Mr. Vansh Malhotra, Advocate for the appellant.

SUDHIR SINGH, J.

Challenge in the present appeal is to the order dated 17.12.2024 passed by the learned Principal Judge, Family Court, Kaithal (for short 'Family Court'), whereby, the petition under Section 25 of the Guardians and Wards Act, 1890 (for short 'Act') filed by the appellant, was dismissed. However, he was granted visitation rights to meet the minor once in a month at a common place and the time to be fixed at the convenience of the parties.

2. The aforesaid petition had been filed by the appellant asserting therein that his marriage with the respondent was solemnized on 05.07.2006 according to Hindu rites, and out of the said wedlock, two daughters and one son were born. It was further asserted that both the daughters were in the custody of the appellant, whereas, the son was in the custody of the respondent. The respondent had performed second marriage with one Ravinder Kumar without getting their marriage dissolved by a decree of divorce. The respondent had

failed to maintain or provide basic amenities to the minor son. It was further pleaded that she had filed a petition under Section 13 of the Act, which was still pending. The appellant had filed a complaint under Sections 494, 506, 120-B IPC, which was also pending. A *panchayat* was convened wherein, the respondent had assured to allow the appellant to meet his son regularly, but when he tried to meet his son, she had not only misbehaved with him, but had also given him beatings and threatened that she would lodge a false complaint against the appellant, and kill the minor son. It was further alleged that future of the minor son was not secured in the hands of the respondent and that it would be in the welfare of the minor, if his custody was given to the appellant.

3. Upon notice, the respondent entered appearance and filed her written statement pleading therein that the appellant was a landless person and unable to fulfill the necessities of the minor child. It was further asserted that she was providing better education and other necessities to the minor child. The allegations regarding convening of *panchayat* and not treating the minor child with love and affection were denied.

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

- “1. *Whether the petitioner is entitled to the custody of minor son Devan from the respondent, on the ground taken in the petition? OPP*
2. *Whether the petition is not maintainable? OPR Relief.”*

5. In evidence, the appellant himself appeared as PW1 and tendered documents Exhibits P1 to P28 and Mark-A. On the other hand, the respondent herself appeared as RW1 besides tendering documents Exhibits R1 to R7 and Mark-A.

6. Learned Family Court, after taking into consideration the rival contentions and evidence on record, has dismissed the custody petition, as noticed above.

7. Learned counsel appearing on behalf of the appellant has vehemently argued that the respondent is not in a position to provide better future prospects to the minor child, and she is not having sufficient income to take care of him or meet his basic necessities. It is further argued that in respect of the obscene acts of the respondent, he had lodged an FIR No.755 dated 25.12.2020, under Sections 354, 506 and 201 read with Section 34 IPC and Section 12 of the POCSO Act, at Police Station Model Town, Rewari, and after trial, the respondent was convicted of the offences under Section 201 IPC and Section 12 read with Section 17 of the POCSO Act, and sentenced to undergo imprisonment for 01 year and 03 years, respectively. It is thus, argued that when the respondent is having criminal antecedents, the custody of the minor child is not safe and secure with her, and therefore, the learned Family Court ought to have granted the custody of the child to the appellant.

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

9. The only question that requires consideration by this Court is whether the impugned order passed by learned Family Court requires any interference by this Court.

10. On the basis of interaction held with the minor child, it was observed by the learned Family Court that the child had expressed his unwillingness to accompany his father and thus, it was found that handing over custody of the minor to his father, would amount to disrespecting the psyche of the minor, who was otherwise enjoying in the custody of his mother. It was

observed by the learned Family Court, in para-19 of the impugned order, as under:-

“19. *The personal meeting held in the chamber of the then learned Principal Judge, Family Court on 08.02.2022 with the child, is of weightage value. During that meeting the child was interviewed and was asked specific questions who made it abundantly clear that he was not ready to accompany his father. Handing over the custody of minor child to the father would amount disturbing psyche of the minor, who is otherwise enjoying while in the custody of his mother and is getting a lot of love and affection. It is also settled that when a minor can make intelligent decision, his wishes and attending circumstances must weigh the balance, as has been observed by the Hon'ble Apex Court in Kirtikumar Maheshankar Joshi vs. Pradip Kumar Karunashanker Joshi, 1992 (3) SCC 573.”*

11. While deciding the case of the custody of the children, the Court is to take into consideration the paramount welfare of the children. 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”.*

12. As per the custody petition filed by the appellant, the age of the minor son once stated to be 08 years. The petition was filed in the year 2019, meaning thereby, by now the minor must have been aged between 11 and 12 years. Learned Family Court before adjudicating upon the claim of the appellant regarding custody of the minor had interacted with the minor child, who had expressed his unwillingness to go with his father and rather stated that he was living with his mother happily. Thus, we find that custody of the minor child cannot be disturbed and any indulgence in respect of such custody would not be in the interest of the minor.

13. We also find that the learned Family Court has granted visiting rights to the appellant. The appellant, during his visit and meeting with the minor child, can provide him his fatherly love and also provide basic necessities to the minor child.
14. In view of the above, we do not find any illegality or perversity in the findings recorded by the learned Family Court.
15. No other point has been urged.
16. In view of the above, we do not find any merit in the present appeal and the same is hereby, dismissed.
17. At this stage, learned counsel for the appellant stated that directions, regarding visiting rights, of the learned Family Court, are not being complied with by the respondent. We may observe that if there is non-compliance of the directions of the learned Family Court, the appellant will be at liberty to move an appropriate application before the Family Court, in this regard.
18. Pending application(s), if any, shall also stand disposed of.

(SUDHIR SINGH)
JUDGE

(SUKHVINDER KAUR)
JUDGE

March 05, 2025
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No