

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CRWP-822-2021 (O & M)

Reserved on: 17.03.2023

Pronounced on: 11.04.2023

Manisha Maheshwari

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Argued by: Mr. Bawa Karanveer, Advocate
for Mr. Karunesh Kaushal, Advocate
for the petitioner.

Mr. Pradeep Parkash Chahar, DAG, Haryana.

Mr. P.S.Jammu, Advocate
for respondent No. 4.

Ms. Jannat Duhan, Advocate
for Mr. Sartaj Singh Narula, Advocate
for respondents No. 5 and 6.

SURESHWAR THAKUR, J.

Factual Background

1. The petitioner is the biological mother of the minor child Santosh @ Archit. Undisputedly, at the instant moment, the above minor child is in the custody of co-respondents No. 5 and 6, who became impleaded, as such, through an order made by this Court, on 22.02.2021, upon, CRM-W-140-2021.

2. The facts necessary which relate(s) to the assumption(s) of custody of the minor child Santosh @ Archit are that, co-respondents No. 5 and 6 assumed the custody of the above minor child, on May/June,2018 from one Anupam Muni, who is arrayed as co-respondent

No. 4. The petitioner was at the relevant stage a disciple of co-respondent No. 4, and, since she had divorced her previous husband, therefore, co-respondent No. 4 persuaded her to marry his disciple Jagdish. The said marriage was solemnized on 10.02.2018. At the time of the petitioner solemnizing second marriage with Jagdish Rai, thus, she through Annexure R-4/1, handed over the custody of her minor child, to co-respondent No. 4. Annexure R-4/1 is claimed by co-respondent No. 4 to be signed by the present petitioner. However, in the rejoinder filed by the petitioner to the reply of co-respondent No. 4, she submits that the said document is a false, and a forged document. She further denies the contents of Annexure R-4/1 being written by her or the same being signed by her. However, the said denial is left open to be made before the learned civil Court concerned, whereto, the parties have been relegated to make a recourse rather for claiming the ultimate/final custody of the minor child. The contents of Annexure R-4/1 are extracted hereinafter.

“ I, Manisha, am resident of Nepal. Gurdev Sh. Anupam Muni, got my marriage held with Jagga Jagdish resident of Kalanwali. Due to this happiness, I give my son, Santosh to Gurdev Shri Anupam Muni and I am doing this work without any pressure. Now, I have no responsibility on it. Now, I have no right on him. Gurudev Shri Anupam Muni Ji is the owner of the same and after making him his disciple (son) and by bringing up him and by giving Dharam Sanskar to him, he will make him Jain Sant.

Sd/- Manisha

Sd/- Anupam Muni.

3. Moreover, further the delivery of interim custody to co-respondents No. 5 and 6, has been granted by this Court, but after interacting with the minor child, and, thereby this Court concluding that the minor child is happy to reside in the company of co-respondents No. 5 and 6.

4. Co-respondents No. 5 and 6 plead, that since they were also disciples of co-respondent No. 4, and, since the present petitioner, had surrendered the minor child to co-respondent No. 4, through Annexure R-4/1. Thus, when there was none to take care of the minor child besides when the health of the minor child was frail. Resultantly co-respondent No. 4 entrusted the custody of the minor child to them in about May/June, 2018. They further plead that since then the minor child is being given the best care by them. Even the best medical care, is pleaded to be provided to the minor child, but as revealed by Annexure A-2, Annexure whereof becomes appended with their impleadment application. Moreover, Annexures R-5/3 and R-5/4, as appended with their reply, do suggest, that the said child has been admitted by them in Mango Blossoms Kids School, Begu Road, Sirsa, Haryana.

4. Co-respondent No. 4 also furnished his reply to the petition and though in the preliminary objections, he had claimed that the petition is mis-constituted and requires dismissal. Moreover, though he supports the above manner of assumption of custody of the minor child by co-respondents No. 5 and 6. However, he has made speakings therein, that he had merely handed over the temporary custody of the minor child to co-respondents No. 5 and 6, and but with a promise made by them, to him, that they would hand over his custody to him.

However, since the said request was not acceded to, by co-respondents No. 5 and 6, yet resultantly, he appears to endorse the makings of Annexure R-4/1. Though, obviously also he does not deny the factum of his handing over the custody of the minor child to co-respondents No. 5 and 6, but he yet speaks about his merely handing over of the temporary custody of the said minor child to co-respondents No. 5 and 6, but with a promise by them to him, to return the minor child to him, yet the promise becoming breached. He further denies that the best education is being purveyed to the said minor child by co-respondents No. 5 and 6, and, alleges that the school certificate has been forged.

5. When the matter was listed before this Court, on 27.01.2021, the hereinafter extracted directions were made, upon, the respondent concerned, to ensure the production of the minor child before this Court, on 01.02.2021.

“.....Let steps be taken to recover the son of the petitioner and status report be filed before the next date of hearing.

List on 01.02.2021.”

6. On 01.02.2021 when the petition was re-listed before this Court, then the hereinafter extracted orders were made thereons.

“In compliance of order dated 27.01.2021, the alleged detenu, namely, Santosh @ Archit, a nine years old child has been recovered and produced by Mr. Nitish Aggarwal, Assistant Commissioner of Police, Kalanwali, District Sirsa. The Officer has informed the Court that he has made a preliminary enquiry and interacted with the child, who has told him that he wants to stay with Mr. Bhim Sain Singla from where he was recovered.

In order to satisfy myself, I have personally interacted with the child. The child comes across as very confident for his age. He has expressed a desire to stay

with Mr. Bhim Sain Singla and his wife, whom he calls as his parents.

Considering the wish of the child and the fact that the welfare of the child is of paramount consideration, his custody is ordered to be handed back to Mr. Bhim Sain Singla, subject to further orders of this Court.

Let an affidavit on behalf of respondents No.1 to 3 be filed before the next date of hearing.

Notice be issued to respondent No.4.

On a request received, Mr. Bhim Sain Singla and his wife namely Manju Singla, have been permitted to join the video conferencing. They have informed the Court that they have filed an application for being impleaded as respondents No.5 and 6.

List on 22.02.2021.”

Handing over the interim custody through an order made by this Court on 01.02.2021.

7. A reading of the above extracted orders, does reveal, that this Court had made references to the paramount consideration or the sine qua none, rather governing the handing over the interim custody to the claimants concerned, inasmuch as, it giving the befitting reverence to the happiness and the best care givings to the minor child besides its ascertaining the wish of the minor child. The above inference becomes embeded in the factum of this Court, but graphically recording in the said order, that it interacting with the minor child, who is spoken therein to be very confident for his age, and, who also is further spoken in the said order, to yet express a desire to stay with Mr.Bhim Sain Singla and his wife, whom he called as his parents. Thus, since only after the above satisfaction being recorded by this Court, with respect to the paramount consideration of the welfare, and, best care givings to the child, that this Court had not handed over the interim custody of the

minor child to the petitioner, but rather had handed over the interim custody of the minor child to co-respondents No. 5 and 6.

8. Consequently, the burning issue relates to the confirmation of the order made by this Court on 01.02.2021, whereby, this Court had handed over the interim custody of the minor child, to co-respondents No. 5 and 6. Apparently since then upto now, there is no material existing on the record but suggestive that there has been any dereliction on the part of co-respondents No. 5 and 6, to provide the omnibus optimum care givings to the minor child, nor also when there is no material suggestive, that the minor child has expressed his unwillingness, to yet continue to stay in the company of co-respondents No. 5 and 6, whom he, upon, his interacting with this Court on 01.02.2021, had called them as his parents. Significantly also when there is a report, on record, of the Child Welfare Committee, Sirsa contents whereof are extracted hereinafter.

Action taken report of Child Welfare Committee.

The meeting held today on 31.01.2021 completed in the presence of Chairperson Anita Kumari and member Sonia Mittal.

Today, SI Rampal Singh informed the CWC on phone about child Santosh @ Archit, aged 9 years, diary No.216, PO dated 28.01.2021, Mandi Kalanwali. The child had been recovered from Jain Muni-Anupam Muni. but, since Anupam Muni does not come by sitting on any vehicle. Therefore, soon after getting the information on phone during noon hours, CWC Chairman Anita Kumari and member Sonia Mittal reached to Kalanwali at 01.30 P.M. At there, the CWC made discussion with child

Santosh @ Archit, Manisha (biological mother of child), Manisha's husband Jagdish, Anupam Muni and the present family members of the child. According to child Santosh @ Archit, he has given all satisfactory replies about his present mother Manju Singla and father Bhim Singla. While behaving very polity with the child, he has been asked about the upbringing, behavior and education being provided by his present parents. At that, the child expressed his satisfaction towards them. Further, the child was expressing his full affection and happiness towards his parents. The child had completely forgotten his past time. Child Santosh @ Archit was willing to live with his present family. On making discussion with the biological mother of child, Jain muni and other members of family, the matter has not been found of selling of child. Further, no legal responsibility has been given to anyone with regard to the custody of child. On next day, the VC of child was fixed at High Court and Anupam Jain Muni had himself handed over the child to the police officials.....”

*Sd/- Anita Kumari
Chairperson*

*Sd/- Sonia Mittal
Member*

9. Thus, cumulatively and prima facie, given the surrendering of the custody of the minor child, as revealed by Annexure R-4/1 by the petitioner to co-respondent No. 4, who thereafter, handed over, as expressed by him, merely a temporary custody of the minor child to co-respondents No. 5 and 6, but on a promise made by them to him, that they shall on his request, return the said custody to him, yet the said promise becoming breached. Thus, thereby the purportedly abandoned

minor child did, prima facie, become a child who was in need of care and protection. Resultantly the report of the Child Welfare Committee, Sirsa, contents whereof are extracted above, assume a dire importance. Since in terms of Section 31 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'the Act'), provisions whereof are extracted hereinafter, rather the report (supra), does make expressions therein, that the minor child was happily residing in the company of co-respondents No.5 and 6. Thus, may be the said extracted contents, do support the handing over the temporary custody of minor child to co-respondents No. 5 and 6, and, also does support the hereafter drawn conclusion that the said handing over of the temporary custody of the minor child is but to be confirmed.

10. Be that as it may, though a reading of the above extracted contents, do also manifest, that the parting of the custody of the minor child by co-respondent No. 4 to co-respondents No. 5 and 6, was not made on any monetary consideration, but yet since the instant habeas corpus writ petition, was filed before this Court, and directions were made to produce the minor child in Court. Therefore, the Child Welfare Committee, Sirsa did not make any declaration in terms of Section 31 of 'the Act', qua the child being in need of care and protection. Nonetheless, since this Court on 01.02.2021, but for the self explanatory reasons, as made thereins, had handed over the temporary custody of the minor child to co-respondents No. 5 and 6. Thus, prima facie, it is to be concluded, that this Court inferred that the child, is in need of care and protection, and that such care and protection, can be provided to him, only by co-respondents No. 5 and 6, both of whom are candidly expressed in the orders made by this Court on 01.02.2021, to

be spoken by the minor child to be his parents.

“31. Production before Committee. (1) Any child in need of care and protection may be produced before the Committee by any of the following persons, namely:— (i) any police officer or special juvenile police unit or a designated Child Welfare Police Officer or any officer of District Child Protection Unit or inspector appointed under any labour law for the time being in force; (ii) any public servant; (iii) Childline Services or any voluntary or non-governmental organisation or any agency as may be recognised by the State Government; (iv) Child Welfare Officer or probation officer; (v) any social worker or a public spirited citizen; (vi) by the child himself; or (vii) any nurse, doctor or management of a nursing home, hospital or maternity home: Provided that the child shall be produced before the Committee without any loss of time but within a period of twenty-four hours excluding the time necessary for the journey. (2) The State Government may make rules consistent with this Act, to provide for the manner of submitting the report to the Committee and the manner of sending and entrusting the child to children’s home or fit facility or fit person, as the case may be, during the period of the inquiry.”

Submissions of the learned counsel for the petitioner.

11. 1) The learned counsel for the petitioner, has placed reliance upon the judgment rendered by the Hon'ble Apex Court, in case titled as ***Tejaswini Gaud and others Vs. Shekhar Jagdish Prasad Tewari and others (SC) : 2019(3) R.C.R.(Civil) 104*** to which SLP (Crl.) No. 1675 of 2019 became assigned, and thereby submits that the petitioner is entitled to the restoration of the custody of her biological child from co-respondents No. 5 and 6, whom he speaks to be not his legal or natural guardians.

2) Moreover, he also submits that the petitioner, who is the biological mother of the minor child, and whom he submits to have never abandoned the child, is entitled to the custody of her biological child, as she alone can impart parental love and affection to him, and, which bestowments he submits are imperative for the grooming of his personality.

However, for the reasons to be assigned hereinafter this Court does not agree with the above submissions.

12. The reason for rejecting the above submission is firmly embedded in the hereinafter counts.

1) Though there being a denial on behalf of the petitioner qua hers signaturing Annexure R-4/1, and or, she alleges that Annexure R-4/1 is a false and forged document, prepared by co-respondent No. 4. However, the said denial is left open to be made before the learned civil Court concerned, whereto, the parties have been relegated to make a recourse for claiming the ultimate/final custody of the minor child.

2) Moreover, yet since co-respondent No. 4, does not deny the makings of Annexure R-4/1, as such, the minor child is deemed to be purportedly abandoned or surrendered by the petitioner, obviously to co-respondent No. 4, who thereafter did temporarily hand over the custody of the minor child to co-respondents No. 5 and 6. Though it is contended by co-respondent No. 4, that such handing over by him, qua the custody of the minor child to co-respondents No. 5 and 6, was under a promise made to him, by the said respondents, that on his asking for returning the custody of the minor child to him, they shall do so, but yet the said promise becoming breached.

3) In addition also, though co-respondent No. 4 alleges that the best education is not being provided to the minor child, nor the best medical care is being provided to him by the said respondents despite his being frail in health. However, since co-respondents No. 5 and 6 alongwith their impleadment application have appended Annexures A-2 to A-4, as proof in respect of the best medical care being provided to the minor child, besides when also, in respect of their providing the best education to the minor child, rather prima facie sound proof becomes adduced. Thus, prima facie, sanctity is to be assigned to the above Annexures.

4) Moreover, when on the production of the minor child before this Court, on 01.02.2021, the above extracted inferences were drawn, thus, leading this Court to hand over the temporary custody of minor child to co-respondents No. 5 and 6. Consequently, this Court does not have any occasion to grant the custody of the minor child to the petitioner, especially when there is no further evidence existing at this stage, but suggestive that co-respondents No. 5 and 6 have been derelicting, in performing their duties purportedly as parents rather towards the minor child. Further, the expressions made by the minor child on 01.02.2021, about his being happy in the company of co-respondents No. 5 and 6, besides when the said expressions are endorsed by the report of the Child Welfare Committee, Sirsa. Therefore, at this stage, this Court, rather becomes constrained to confirm the order made earlier by this Court, on 01.02.2021, whereby this Court had handed over the interim custody of the biological child of the petitioner rather to co-respondents No. 5 and 6.

13. The reason for making the above conclusion, is firmly

rooted in the factum, that in verdict (supra), clear underlinings have been made, that the welfare and upkeep, and, the necessity of purveying the best care givings, to the minor child are but the imperative or paramount consideration, for determining the rival contestants claim, for theirs' assuming either the interim or the ultimate custody of the minor child. Moreover, since in paragraph 34 of the verdict (supra), para whereof, becomes extracted hereinafter, it has been categorically spelt, that unless there is proof that the biological parents, had abandoned the child or had deprived the child of his right, to love and affection, thereupon, the biological parents of the minor child cannot be deprived of the custody of the said child.

“34. The welfare of the child has to be determined owing to the facts and circumstances of each case and the court cannot take a pedantic approach. In the present case, the first respondent has neither abandoned the child nor has deprived the child of a right to his love and affection. The circumstances were such that due to illness of the parents, the appellants had to take care of the child for some time. Merely because, the appellants being the relatives took care of the child for some time, they cannot retain the custody of the child. It is not the case of the appellants that the first respondent is unfit to take care of the child except contending that he has no female support to take care of the child. The first respondent is fully recovered from his illness and is now healthy and having the support of his mother and is able to take care of the child.”

14. Therefore, the *ratio decidendi* of the verdict (supra), is that, if evidence prima facie surges forth but demonstrative qua the minor child becoming abandoned or becoming deprived of love and affection,

by his biological parents, and, or obviously, upon, interactions being made by the Court with the minor child, he reveals his unwillingness to join the company of his biological parents, rather expresses his desire to stay in the company of those persons, who on his purported abandonment have assumed custody over him. Thus, in that situation may be, the biological parents becoming not entitled to receive the interim custody of the minor child.

15. The foundational facts necessitating the application of *ratio decidendi*, as made in the verdict (supra), are but not only pleaded by co-respondents No.5 and 6, but also when prima facie evidence, rather to support the requisite foundational facts hence also do appear. Thus, the foundational facts of the instant case, and, also the prima facie evidence in support of such foundational facts, do require, the applications thereons, of the above underlinings, as, made by the Hon'ble Apex Court in judgment (supra). The foundational facts relating to the prima facie purported abandonment of the minor child by the petitioner, who is his biological mother, to co-respondent No. 4, who thereafter handed over the custody of the minor child, to co-respondents No. 5 and 6, is but, borne out from the reply furnished to the petition by co-respondent No. 4. Resultantly, at this stage, prima facie, the petitioner is not entitled to the interim custody of the minor child, rather the co-respondents No. 5 and 6, who are jointly expressed by the Child Welfare Committee, Sirsa and, also by this Court, to give the maximum care givings to the minor child, who but has also accepted them to be his parents. Thus, when the wish and aspirations of the child, is but, the paramount consideration for determining the issue of the custody of the minor child, thereupon the said expressed

aspiration(s) is but to be revered. Preeminently when the said paramount consideration, may countervail the claim of the biological parent to assume the temporary custody over the minor child.

16. However, yet in terms of the mandates/judgments carried/pronounced in (1) *Manju Tiwari versus Dr. Rajendra Tiwari, (SC) AIR 1990 SC 1156*, (2) *Syed Saleemuddin Versus Dr. Rukhsana 2001(2) RCR (Criminal) 591*, (3) *Roxan Sharma versus Arun Sharma (SC) 2015(2) RCR (Civil) 93*, (4) *Eugenia Archetti Abdullah versus State of Kerala 2005(1) RCR (Civil) 259*, (5) *Surabhai Ravikumar Minawala versus State of Gujarat 2005(2) RCR (Civil) 822*, (6) *CRWP No. 68 of 2017 titled as Kirandeep Kaur versus State of Punjab and others' decided on 7.3.2017*, and, (7) *Gippy Arora versus State of Punjab and others 2012(4) RCR (Civil) 397 (PHHC)* and which but cast therein an expostulation of law that restoration of interim custody of the minor child to the ablest person, is yet to last only till a decision with respect to his/her ultimate custody rather is made by the Family Court concerned.

17. Thus, the handing over the interim custody of the minor child but after confirming the order made by this Court on 01.02.2021, is made subject to the determination of the ultimate custody of the minor child rather being made by the Courts or authority hence holding the able vested jurisdiction to do so.

18. Disposed of with the above observations.

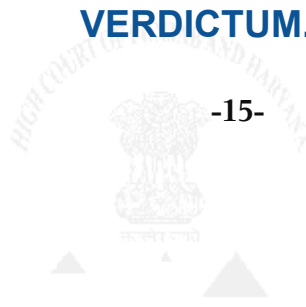
19. Nothing in this order shall be treated as an expression of any opinion on the merits of the case, so as to bind or influence the Courts or authority rather holding the able vested jurisdiction to make an adjudication on the relevant suit or petition, if any, so filed hereafter

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by the petitioner.



(SURESHWAR THAKUR)
JUDGE

11.04.2023

kavneet singh

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

