

(2010) 09 P&H CK 0280

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 5955 of 2010

Parneet Singh

APPELLANT

Vs

Bhupinder Kaur

RESPONDENT

Date of Decision: Sept. 15, 2010

Acts Referred:

- Constitution of India, 1950 - Article 227
- Criminal Procedure Code, 1973 (CrPC) - Section 125

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

Parneet Singh has filed the instant revision petition under Article 227 of the Constitution of India impugning order dated 23.08.2010 passed by learned Guardian Judge, Karnal, thereby declining prayer of the petitioner for interim custody of his minor son Abhijeet Singh.

2. Petitioner is husband of respondent Bhupinder Kaur. Their matrimonial relations appear to have soured. The petitioner's version is that the respondent is mentally upset. However, it is also the petitioner's case that she is pursuing B.Ed. Course from Kharar, whereas petitioner is resident of Karnal. The petitioner has filed divorce petition against the respondent. Petitioner has also alleged that on 01.05.2010, respondent took away the minor child after calling the petitioner and minor son to Police Station, Sector 9, Karnal. Resultantly, studies of the minor are suffering.

3. Respondent has inter alia pleaded that she was maltreated in the matrimonial home and demand of dowry was made. Compromise was effected earlier, when the petitioner expressed regrets and gave undertaking on 11.10.2007 that they would not make any demand of dowry, but the petitioner and his family members did not

honour the compromise. It is also alleged that on 01.05.2010, she was not permitted to enter the matrimonial home. Petitioner's mother called the police. The police challaned the petitioner and his family members. They had given beatings to the respondent and thrown her out of the matrimonial home and forcibly snatched the minor son from her. The son was restored to her after the police came. Parents of the petitioner have disowned the petitioner by publishing notice in newspaper on 06.04.2010. On the other hand, respondent herself is a teacher and is pursuing her career in education.

4. Learned Guardian Judge, vide impugned order dated 23.08.2010, dismissed the petitioner's application for interim custody of the minor son. Feeling aggrieved, the petitioner has preferred the instant revision petition.

5. I have heard learned Counsel for the petitioner and perused the case file.

6. Learned Counsel for the petitioner vehemently contended that the petitioner's parents are now with the petitioner and respondent has filed application u/s 125 of the Code of Criminal Procedure for maintenance alleging that she has no source of income. It is also contended that the minor child has not been admitted in any school by the respondent. To buttress the claim of the petitioner for interim custody, reliance has been placed on judgment of Hon'ble Supreme Court in the case of Mausami Moitra Ganguli and Ors. v. Jayant Ganguli and Ors. reported as (2009-1) PLR 506 and judgment of Rajasthan High Court in the case of Parkash Chandra Jain v. Smt. Chandrawati reported as 1996 (2) CCC 492 (Rajasthan).

7. I have carefully considered the aforesaid contentions, but find no merit therein.

8. That Guardian Judge has rightly observed that souring of relations of parents causes maximum suffering to the child. In the instant case also, the parties are litigating and their son is the victim. The respondent alleged that she was employed as a teacher, whereas the petitioner has not alleged anything about his occupation and earning. On the other hand, petitioner's parents disowned him by publication of notice in newspaper. The petitioner was residing with his parents and has no independent existence or shelter. However, the petitioner persuaded his parents to come to the Guardian Judge to say that now they are again with the petitioner. It is thus manifest that petitioner and his parents are playing tricks with the respondent and the Court as well. On the one hand, petitioner's parents published notice in the newspaper to disown the petitioner apparently to create evidence and defence for dowry harassment case that could be lodged by the respondent and on the other hand, petitioner's parents came to support the petitioner for seeking interim custody of the minor. Thus, in view of conduct of the petitioner and his parents, it would not be desirable to grant interim custody of the minor son to the petitioner. Judgments relied on by counsel for the petitioner are not applicable to the facts of the instant case. Question of custody of a minor has to be decided on facts and circumstances of each case. In the instant case, respondent's version is that she was

turned out of matrimonial home on 01.05.2010 only and since then the child is with the respondent.

9. In addition to the aforesaid, it may be added that Guardian Judge has exercised discretion in the matter of interim custody of the minor child. The said discretion cannot be said to be perverse or illegal so as to warrant interference in exercise of power of superintendence under Article 227 of the Constitution of India. Even if two views are possible, the view taken by the Guardian Judge cannot be reversed in exercise of revisional power merely on the ground that another view is also possible.

10. For the reasons aforesaid, I find no merit in the instant revision petition, which is accordingly dismissed in limine. However, nothing observed herein before shall have any bearing on the merits of the main case pending before the Guardian Judge.