

Jaspreet Singh v. Roopali Dhillon, (2023-4)212 PLR 362 , PLRonline 473683

PUNJAB AND HARYANA HIGH COURT

Before : Justice Archana Puri.

JASPREET SINGH – Petitioner

Versus

ROOPALI DHILLON – Respondent

CR-7808 of 2018(O&M)

(i) Guardians and Wards Act, 1890 (8 of 1890), Section 25 – Custody of Child – Welfare of the child – Paramount consideration, is the welfare of the minor child and not the statutory rights of the parents - Sole and predominant criterion of what would be best to serve the interest and welfare of the child - ‘Welfare of the child’ depends upon several factors - It has to be measured not only in terms of money and physical comfort, but also in view of the age of the child and the manner, in which, ‘needs’ can be fulfilled, more particularly, moral and ethical aspects of the shaping of the minor’s personality - Depends upon the facts and circumstances of each particular case - The legal right or the financial affluence is not decisive, but the welfare of the minor is decisive for the claim of the custody. [Para 7, 8]

(ii) Guardians and Wards Act, 1890 (8 of 1890), Section 25 – Custody of Child – Welfare of the child – Question ‘what is the wish/desire of the child’ is different and distinct from the question ‘what would be in the best interest of the child’ - Certainly, the wish/desire of the child can be ascertained through interaction but then, the question as to ‘what would be in the best interest of the child’ is a matter to be decided by the Court, based on all the relevant circumstances - When the couples are at loggerheads and want to part ways, they may level extreme allegations against each other, so as to depict the other unworthy, to have the custody of the child - In the circumstances, unless and until, there is proven bad conduct of one of the parent, which makes him/her unworthy to claim the custody of the child concerned, the question can and shall be decided, solely looking into the question as to, ‘what would be the best interest of the child concerned’. [Para 9]

(iii) Guardians and Wards Act, 1890 (8 of 1890), Section 25 – Custody of Child – Welfare of the child – A custody dispute involves human issues, which are always complex and complicated - There can never be a straight jacket formula, even to adjudicate the question of interim custody - However, it is fact dependent exercise to be conducted by the Courts in the backdrop of the welfare of the child, while observing how the child’s interest can be protected while custody being given to either parent. [Para 10]

(iv) Guardians and Wards Act, 1890 (8 of 1890), Section 25 – Girl child – Aged 10-11 years – Is passing through the formative stage of life – Mother is qualified doctor – At this stage, the mother can be the best friend, guide and mentor for the growing daughter – She is already residing with the mother and therefore, no further change in the arrangement, already existing, shall be beneficial to the child – Father allowed to meet the child twice a month.

(v) Guardians and Wards Act, 1890 (8 of 1890), Section 25 – A man or a woman may be bad for someone in a contextual relationship, the same does not necessarily mean that the person is bad for his/her child – A mother or father, may be morally bad in the societal sense, but that parent may be good for the child – The so called morality is created by society, based on their own ethos and norms and should not necessarily reflect in a contextual relationship between the parent and child

Held, Even though, allegation is that father is dependent upon the chemicals and that rehabilitation is incomplete but however, these observations so made ipso facto, do not make the father to be a bad man and no conclusive opinion can be made about his being dependent upon chemicals. [Para 12]

Mr. Kanwaljit Singh, Senior Advocate with Mr. K.S. Brar, for the petitioner. Mr. Abhishek Sharma, for the respondent.

Archana Puri, J. – (04.12.2023) – The petitioner has invoked the jurisdiction of this Court under Article 226/227 of the Constitution of India, thereby seeking quashing/modification of the order dated 01.11.2018 (Annexure P-10) for grant of appropriate visitation rights of the minor and also for the interim custody to the petitioner and his parents.

2. Initially, petitioner-Jaspreet Singh had filed a petition under Section 25 of the Guardians and Wards Act for seeking custody of the minor daughter. Therein, an application for interim custody was disposed of vide impugned order, wherein, it was held that no ground is made out for handing over the custody of the minor child to the petitioner, but however, visitation rights were granted to the petitioner-father.

3. Feeling aggrieved by the order passed by the Court below for not handing over the custody of the minor child to the father and also granting only visitation rights, Jaspreet Singh has filed the present revision petition.

4. In pursuance of notice issued, respondent made appearance.

5. Learned counsel for the parties heard.

6. The facts, as culled from the paperbook, are as follows:-

That, marriage between the petitioner and respondent was solemnized on 23.11.2008 and

the girl child was born from their wedlock in the year 2012. However, matrimonial dispute arose between the parties, as a result whereof, the petitioner and the respondent parted ways and the girl child continued to be in the custody of the mother. Amidst the matrimonial discord, there is unfortunate dispute between the petitioner-husband and respondent-wife, with regard to handing over of the custody of the minor child.

7. In a custody tussle, the matter is to be decided, not on consideration of the legal rights of the parties, but on the sole and predominant criterion of what would be best to serve the interest and welfare of the child. The various provisions of the Guardians and Wards Act, makes it manifestly clear that the paramount consideration, is the welfare of the minor child and not the statutory rights of the parents.

8. What is 'welfare of the child' depends upon several factors. It has to be measured not only in terms of money and physical comfort, but also in view of the age of the child and the manner, in which, 'needs' can be fulfilled, more particularly, moral and ethical aspects of the shaping of the minor's personality. The welfare of the child depends upon the facts and circumstances of each particular case. The legal right or the financial affluence is not decisive, but the welfare of the minor is decisive for the claim of the custody.

9. In a matter involving the question of custody of a child, it has to be borne in mind that the question 'what is the wish/desire of the child' is different and distinct from the question 'what would be in the best interest of the child'. Certainly, the wish/desire of the child can be ascertained through interaction but then, the question as to 'what would be in the best interest of the child' is a matter to be decided by the Court, while taking into account, all the relevant circumstances. When the couples are at loggerheads and want to part ways, they may level extreme allegations against each other, so as to depict the other unworthy, to have the custody of the child. In the circumstances, unless and until, there is proven bad conduct of one of the parent, which makes him/her unworthy to claim the custody of the child concerned, the question can and shall be decided, solely looking into the question as to, 'what would be the best interest of the child concerned'.

10. A custody dispute involves human issues, which are always complex and complicated. There can never be a straight jacket formula, even to adjudicate the question of interim custody. However, it is fact dependent exercise to be conducted by the Courts in the backdrop of the welfare of the child, while observing how the child's interest can be protected while custody being given to either parent.

11. In the pleadings, the parties to the lis have raised allegations and counter allegations regarding bad behaviour and conduct of each other. However, at this stage, there is no need to dilate upon the same. It should be always kept in mind that the girl child in question was five and half years old, at the time when the petition was filed in the year 2018. As such, it is evident that the child is now 10-11 years old. Welfare of the child is of utmost importance and consideration, but however, to work upon the wellbeing of the child, the aspect of age of the child also weighs in the mind of the Court. Keeping in view the same, a conscious attempt is made by the Court not to dilate on the allegations and counter allegations, against each other by father and mother, lest it may hamper not only

the case build up by the parents, but also, shall not be in the interest of the child. Considering the same, also it is pertinent to mention that a compromise has been effected between the parties and the compromise deed, coming on record is Annexure P-2. On the basis of the same, it was pleaded at the instance of the petitioner that the petitioner had not willingly reached the said compromise. Rather, he was made to sign the same under constrained circumstances and one of the recitals of the said compromise is that the petitioner, who is father, will not claim the custody of the minor child, at a later stage. However, this clause of compromise is not acceptable to the father. However, at this stage, there is no need to go into the genuineness of the settlement of terms of the said compromise, or about the compliance by either parent. However, the same can be appraised only at appropriate stage of decision by learned Family Court.

12. Vide the impugned order, the custody of the girl child was ordered to remain with the mother only, who is a qualified doctor. Even though, it has been alleged that father is dependent upon the chemicals and it was observed in the impugned order that rehabilitation as per the certificate, coming on record, for treatment, is incomplete and therefore, no ground is made for handing over the custody of the minor child to the father, but however, these observations so made ipso facto, do not make the father to be a bad man and no conclusive opinion can be made about his being dependent upon chemicals. A man or a woman may be bad for someone in a contextual relationship, the same does not necessarily mean that the person is bad for his/her child. A mother or father, may be morally bad in the societal sense, but that parent may be good for the child. The so called morality is created by society, based on their own ethos and norms and should not necessarily reflect in a contextual relationship between the parent and child.

13. However, in this backdrop, further it is necessary to mention that vide impugned order the custody of the child was ordered to remain with the mother, who is a qualified doctor. Considering her avocation, it is quite obvious that she is having independent source of earning and can very well protect the interest of the minor child, more particularly, when the child being of 10-11 years, is passing through the formative stage of life. It is a matter of common knowledge that at this stage, the mother can be the best friend, guide and mentor for the growing daughter. Considering the same, the girl child, at this stage, requires the assistance of her mother, more than that of a father. Not that, the father is not having any love and affection for the minor, but however, considering the age of the child, she is bound to have more attachment with the mother, more particularly, when she is already residing with the mother and therefore, no further change in the arrangement, already existing, shall be beneficial to the child.

14. Also, as pointed out by learned counsel for the petitioner in the order dated 11.12.2020 passed by the Coordinate Bench, there was some arrangement made to facilitate interaction, between the father and the daughter, but however, it should be noted that as observed in the order itself, it was only a temporary arrangement, which was to be reviewed after four weeks. In the light of the same, from the aforesaid order, no sustenance, as such, can be drawn to assert about the custody or the visitation rights.

15. In the light of the aforesaid observations, the custody of the girl child, as such, shall

remain with the mother only, but however, the visitation rights are to be considered. Vide the impugned order, petitioner-father was given visitation rights on every 3rd Saturday of the month, to visit the Court from 3.00 pm to 4.00 pm, in the presence of the respondent or her family members. As now pointed out by learned counsel for the petitioner, this arrangement was made in the Court premises, which was alleged to be not that comfortable interaction. Subsequently, some changes were made to make the child interact with the petitioner, while remaining away from the Court premises. Now, the petitioner has also sought the visitation rights of the child to his house for having lunch etc. Even, the petitioner has asked for more frequent visits i.e. one hour interaction with the child everyday, which, this Court is not inclined to do so, as it is not appropriate for the girl child. All the time, the child shall be struck between shuffling of the custody between her parents, which will dilute the purpose of having interaction with both parents. However, the mother, as such, has no objection, to the minor child's interaction with the father.

16. In the given circumstances, in the fitness of circumstances, it shall be appropriate, if the girl child is allowed to meet the petitioner, her father, twice a month. Once in fortnight, the child may visit in the company of her mother or maternal grand-parents to some settled place like restaurant or park, to have interaction with the father, for a period of two hours, on a day decided by mutual consent and the arrangement for the said visit shall be made to operate between 10.00 am to 4.00 pm. However, during the course of interaction for these two hours, the mother or maternal grandparents of the child, though, shall remain at the place, where the child is having interaction, but shall remain away from the audible limits of interaction between the petitioner and the minor child. Apart from above, there shall be another visit in a month in the subsequent fortnight, on the day settled between the parties mutually for a period of two hours, to be operative between 10.00 am to 4.00 pm, wherein, the petitioner shall visit the house of the respondent and the respondent shall facilitate the meeting of the child with the petitioner, for two hours, without any obstruction in their conversation, though, she may remain, at the place of interaction.

17. However, during the course of such meetings, it is expected and desired from both the parties to extend cooperation to each other and create congenial atmosphere for the child to have healthy interaction with the petitioner.

18. In the light of the aforesaid observations, the revision petition stands allowed and consequently, the impugned order is modified, to the extent of the aforesaid terms.