

(2003) 08 MAD CK 0047
In the Madras High Court
Case No : H.C.P. No. 546 of 2003

Jayant Rajan

APPELLANT

Vs

Dr. S. Lakshmanan and Mrs. Uma Lakshmanan

RESPONDENT

Date of Decision : 04-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 08 MAD CK 0047

Hon'ble Judges : S.R. Singharavelu, J;R. Jayasimha Babu, J

Bench : Division Bench

Advocate : N. Natarajan, for the Appellant; G. Masilamani, for the Respondent

Final Decision : Dismissed

Judgement

R. Jayasimha Babu, J.—The matter concerns custody of a young boy who will be attaining the age of 10 in a few months" time. He was

initially living with his parents and after the demise of his mother, his custody was given to the grand parents, viz., the parents of the deceased

mother. That was at a time when the child was about four years old.

2. Thereafter, on a petition having been filed by the father seeking custody of the child, the custody of the child was given to the father. That

custody remained with the father till an appeal against the order on the original petition came to be decided by a Division Bench of this Court on

27.10.1998, wherein the Court held thus:-

The appeal is allowed. The respondent is directed to hand over the custody of the minor herein within one week from today.

That order order of the Division Bench was sought to be carried in appeal to the Supreme Court on a petition seeking Special Leave to appeal

against that order and the Supreme Court directed stay of implementation of the order of the Division Bench till 30th of June 1999. However, The

Court ultimately dismissed the petition for Special Leave. As a result, the order of the Division Bench of this Court, directing handing over of the

custody of the minor, to the parents of the deceased mother of the child stood affirmed.

3. Learned Senior Counsel for the petitioner/father submitted that the child is to be admitted in a school at Dehradun, the school which the father

himself had attended and before him his father had attended. It was submitted that a place has already been reserved for the child in that school,

when he attains the age of eleven. It is further submitted that arrangements have been made to admit the minor in a school at Madras till he reaches

the age of eleven. It was also submitted that the primary reason for denying the custody of the child to the petitioner/father was the fact that he was

an accused in a criminal case wherein he had been charged with the murder of his wife. That case ended ultimately in acquittal of the petitioner. The

judgment of the Mahila, Court which heard the matter and which acquitted the petitioner on 6th February, 2003 has been placed before us.

4. In that judgment it has been held that the prosecution had failed to prove that there was a murder and further that the petitioner was in any way

responsible for the unnatural death of his wife. Learned counsel also pointed out the medical evidence as also the postmortem certificate to show

that the opinion was only that the death was due to several causes cumulatively and there was no positive evidence that the death was due to any

external injury that may have been inflicted by any one. He further pointed out that it was established that the deceased was found in a room of the

house of the petitioner's father; that the room had been bolted from inside and that the petitioner was not in any way responsible for her demise.

5. It was further submitted by counsel that the reference made in the order of the Division Bench in the O.S.A. to the petitioner having suspected

the paternity of the child was not quite correct as it was only the wife who had informed the husband, about a day or two prior to her demise,

about her having had an affair prior to the marriage with her cousin and the petitioner never questioned the paternity of the child. Learned counsel

further submitted that the petitioner has no doubt whatsoever about his being the father of the child and that he is most anxious to take care of his

son.

6. We are, however, dealing with a petition for restoring the custody of the child to the petitioner. The petition having been filed for a writ of

habeas corpus, having regard to the order that was made by this Court in the O.S.A., it cannot be said that the grandparents of the child can be

accused of having the illegal custody of their grandson. In fact, custody of the child was entrusted to them by this Court and the order of this Court

giving them the custody has been affirmed by the Supreme Court.

7. What the petitioner is seeking in effect is to have himself declared as the guardian, competent to have custody of his minor son, having regard to

the fact that the situation which prevailed at the time the Original Side Appeal was decided on 27.10.1998 no longer prevails and what was alleged

against the petitioner has since been found to be without truth, having regard to the acquittal, which, counsel says, is a honourable acquittal.

Counsel also took pains to point out that the conclusion drawn by the criminal court was based upon evidence and there was no possibility of that

conclusion being found to be in any way incorrect or untenable.

8. Whatever be the merits of the case pleaded by the petitioner, we cannot in this jurisdiction hold that the grand parents of the minor presently do

not have a right to the custody of the boy. That custody is traceable to the orders made by this Court in the O.S.A. We are not now reviewing the

order made in that O.S.A.

9. It is open to the petitioner to apply to the Court of first instance, viz. the Original Side of this Court, which had been approached by him earlier

by filing the original petition in the year 1997 under the Guardians and Wards Act, 1890. It is open to him to bring to the notice of the Court the

change in the circumstances and place before that Court his submission that the factors which weighed with the Court when denying him the

custody of his son can no longer be regarded as factors which can come in the way of the petitioner being given the custody of his son. With these

observations, the petition is dismissed.