

(2016) 10 P&H CK 0086
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 8820 of 2014

Raj Kumar

APPELLANT

Vs

Neetu Bala

RESPONDENT

Date of Decision : 21-10-2016

Acts Referred:

Guardians And Wards Act, 1890 — Section 25

Citation : (2017) 1 PLR 822

Hon'ble Judges : Mr. M. Jeyapaul and Mr. Tejinder Singh Dhindsa, JJ.

Bench : Division Bench

Advocate : Mr. Umesh Kanwar, Advocate, for the Appellant; Mr. Jaivir S. Chandail, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mr. M. Jeyapaul, J.—Appellant Raj Kumar has challenged the dismissal of the petition filed by him under Section 25 of the Guardians and Wards Act, 1890 praying for entrustment of custody of minor daughter "Hemansi" who was born on 2.12.2004.

2. The appellant had contended in the petition filed by him that the respondent-wife was arrested in connection with an offence under Section 3, 4, and 5 of the Prevention of Immoral Traffic Act. She was also booked in a case under Sections 177 and 420 IPC. Further, the respondent was living an adulterous life which could adversely affect the welfare of the minor child. Contending that the future of the minor daughter is very bleak in the above facts and circumstances, he has sought for custody of the minor child.

3. The respondent-wife contended in her reply before the trial Court that the minor girl is being properly maintained by her out of the maintenance amount being paid by the appellant under Section 125 Cr.P.C. Further, she has contended that the appellant was habitual in taking liquor. She has further contended that she was falsely implicated under the provisions of Prevention of Immoral Traffic

Act. The girl child will be in the safe custody of the mother who has the capacity to take care of the betterment of the girl child, it is further contended.

4. The trial Court having evaluated the evidence came to a conclusion that the girl child will have to be in the custody of the mother.

5. We heard the submissions made by learned counsel appearing for the appellant-husband and the learned counsel appearing for the respondent-wife.

6. It is an admitted position that the case originally registered as against the respondent under the provisions of Prevention of Immoral Traffic Act has now ended into acquittal. Pendency of a criminal case under Section 177 and 420 IPC will not have a direct bearing on the custody issue that has to be determined by the Court of law. Further, it is brought to our notice that the said case booked under Sections 177 and 420 IPC has originated only at the instance of the appellant. The child has attained the age of 12 years as on today. We also interacted with the child in the Chamber. The child is very much hesitant to join the father on a permanent basis. A girl child of 12 years undergoes lot of physical changes and the same can be effectively taken care of only by the mother. Further, it is an admitted position that the girl child whose custody is in dispute is studying in the same school in which a boy born out of the wedlock is studying. In fact, it is the admitted position that both the children are very much comfortable and they are very friendly in the school premises, being hostel inmates.

7. Of course, the respondent is eking out her livelihood by performing in an Orchestra. Such an avocation chosen by the respondent cannot be construed as a circumstance adverse to the upbringing of a minor child by the respondent more especially, when the child is carrying on her educational pursuit by availing hostel facility. In our considered view, the trial Court has rightly accorded visitation rights to the appellant and dismissed the plea for custody of the minor girl child aged 12 years claimed by him.

8. In view of the above, we find that there is no merit in the appeal and therefore, it stands dismissed.

Sd/- Tejinder Singh Dhindsa, J.