

(2022) 06 GUJ CK 0092

In the Gujarat High Court

Case No : R/Special Criminal Application No. 5010 Of 2022

Sabirbhai Gafarbhai Multani

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 09-06-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Criminal Procedure, 1973 — Section 97

Citation : (2022) 06 GUJ CK 0092

Hon'ble Judges : Vipul M. Pancholi, J;Rajendra M. Sareen, J

Bench : Division Bench

Advocate : Harsh A Vyas, Dixa U Pandya, HK Patel, Vasimraja A Kureshi

Final Decision : Dismissed

Judgement

Rajendra M. Sareen, J

1. This petition is filed under Article 226 of the Constitution of India praying to direct the respondent - police authority to produce the corpus before this Court and handover the custody of the corpus - Samir to the petitioner being father.

2. The respondent Nos.4 and 5 are maternal grand-parents and Father-in-law and Mother-in-law of the petitioner.

3. Heard Ms.Dixa Pandya, learned advocate for the petitioner, Mr.Vasimraja Kureshi, learned advocate for the respondent Nos.4 and 5 and Mr.H.K. Patel, learned APP for the respondent Nos.1,2 and 3.

4. It is the case of the petitioner that the marriage of the petitioner was solemnized in the year 2011 and out of the said wedlock, the minor corpus was born in the year 2013.

Due to some matrimonial dispute, his wife left her matrimonial home and went to her parental home from 2015. Attempts were made for conciliation between the husband and wife. Due to intervention of the respected members of the society,

the wife had returned to her matrimonial home, however, thereafter also disputes had arisen between the husband and wife and his wife again left her matrimonial home in the year 2016 along with the minor son – corpus and started residing with her parents. The husband filed application under section 97 of the Code of Criminal Procedure which was disposed of. It is also the case of the petitioner that thereafter also many efforts were made by the petitioner to get custody of the minor son but in vein. In the meantime in the year 2020, wife of the petitioner and mother of the corpus expired due to Covid.

5. According to the case of the petitioner, the petitioner remarried even during the subsistence of his first marriage and out of the said second marriage, he has two children. The wife of the petitioner was residing since 2016 at her parental home and at that time the minor was aged 3.1/2 years and since then the minor is with the respondent Nos.4 and 5 - maternal grand-parents. The petitioner has made various attempts to get the custody of the corpus but failed. Hence as a last resort, the present petition has been preferred by the petitioner being father for getting custody of his minor son. According to the petitioner, the minor son requires love and affection of his father and hence it is requested to handover custody of the minor corpus to the petitioner.

6. Today, when the matter is taken up for hearing, corpus named Samir along with the respondent Nos.4 and 5 – his maternal grand-parents is present. We have inquired from the corpus about his status and his daily routine. He does not know the name of the petitioner – his father, naturally because since long he is not residing with his father. He calls his Maternal grand-parents as "Mummy and Pappa". He has stated that his maternal grand-parents are taking his care and he is getting love and affection from them and he has no complain against them. He has happily stated that he is happy with his maternal grand-parents.

7. We have also ascertained the wish of the minor corpus and the corpus has specifically stated that he wants to go and reside with the respondent Nos.4 and 5 – his maternal grand-parents.

8. In view of the willingness expressed by the corpus, and as the petitioner has remarried and has two children and the corpus is residing with his maternal grand-parents – respondent Nos.4 and 5 herein since about 6 years, custody of the minor corpus is ordered to be continued with the respondent nos.4 and 5 herein from whom the minor corpus is produced before this Court and the custody of the corpus has been handed over to the petitioner, considering the welfare and happiness of the corpus – minor son of the petitioner. Considering the overall facts situation, custody of the minor cannot be handed over to the petitioner herein who has remarried and has two children. In any way, the custody of the corpus with the respondent Nos.4 and 5 – maternal grand-parents cannot be said to be illegal custody and it cannot be said that the corpus is in illegal confinement. Hence, no interference of this Court is warranted and hence the present petition is dismissed.