
(1984) 08 P&H CK 0048

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 264 of 1984

Udham Devi

APPELLANT

Vs

Tripta and anr.

RESPONDENT

Date of Decision : 10-08-1984

Acts Referred:

Citation : (1984) 08 P&H CK 0048

Hon'ble Judges : M.M.Punchhi, J

Advocate : K.L. Arora, S.P. Goyal, Advocates for appearing Parties

Judgement

M.M. Punchhi, J. (oral)

1. Here this Court in its parens patriae jurisdiction is confronted with a problematic case of a child who assumes herself to be orphan and is yet not an orphan. Facts giving rise there to are these.

2. Madan Mohan Rattan, by profession a homeopath doctor, took in adoption his sister's daughter, the present child, named Kamini. He had just about the same time divorced his wife. The child grew up in the knowledge of her adoptive father but either in a state of oblivion of her blood relatives or in a state of hostility towards them, which is not clear. She is now about 15 years of age. Madan Mohan Rattan died on 9th June, 1984 while living at House No. 2002, Sector 20, Chandigarh as a tenant with Smt. Tripta respondent and her husband Mangat Ram cor respondent. Statedly, he left behind House No. 2002, Sector 20, Chandigarh to be inherited by the child as also some household articles and perhaps some cash in his saving accounts. Madan Mohan Rattan has a mother Udham Devi, the petitioner herein as also two brothers Manmohan Rattan and Surinder Mohan Rattan, of course, a sister as well by the name of Kamlesh, who is the natural mother of the minor. The natural father Of the minor, Ram Labhaya, too is alive. Most of these people have laid their claim to the custody of the minor as also for her guardianship and her property.

3. While this petition remained pending, I recorded statements of the minor as

also the claimants to her guardianship. Significantly, Smt. Tripta did not lay any claim to the guardianship of the minor. She stated that it was up to the minor and if she wanted to live with her, she would gladly accommodate her. As was expected of the blood relatives of the minor, each offered to be her guardian. Now this Court being conscious of the claims of the blood relatives, and in particular of the mother, who has no other child besides the minor, would have without any difficulty handed over the custody of the minor to the mother. The claim of the father, though not expressly laid in this Court, could have been rejected as he had earlier been in litigation with the adoptive father on the criminal side. But as is plain from my interim orders recorded in the case as also from the statement of the minor dated July 23, 1984, she not only refused to recognise her blood relatives but even would not let them touch her. This attitude of the minor appeared to me abnormal. However hostile she may now be towards them, surely in times to come her blood was expected to grow warmer when her heart would grow softer. For the present, it seems to me that it has hardened up with hate, overbrimmed as it is with prejudice, anger and dislike for her blood relatives. There is presently no love.

4. The other step which I took was to have a report from the psychiatrist of the Post Graduate Institute of Medical Education and Research, Chandigarh. A preliminary report has come. There is nothing to indicate any emotional or mental problems in the child. Rather, it is said that she was able to give a good account of her present situation and problems. Though the report is preliminary in nature, it gives sufficient handle to dispose of the matter in hand. The child can no longer continue to be kept in the interim guardianship of the President of the Bar Association Shri D. V. Sehgal, Senior Advocate, who in keeping up with the glorious traditions of the bar readily helped this Court in keeping the minor with him for over a fortnight and arranged for her being taken to the P.G.I. for examination by the Psychiatrist. This Court places its appreciation on the record for the help rendered by Shri Sehgal.

5. In the situation, the only course which appears to me just is that the minor be not thrust upon the respondents merely because the minor likes to stay with them. This is all the more necessary when the respondents and in particular Smt. Tripta does not claim the guardianship of the minor. Otherwise also the respondents come from the weaker sections of the society and can hardly be expected to meet the expenses towards the upkeep and education of the minor who as per her statement aspires to be a doctor. Thus, the guardianship of the minor as also her property would have to be, in her interest, split up.

6. Now for the purpose, on my request Mrs S. Roy, the Principal of M.C. M.D.A.V. College for Women, Chandigarh is present in Court. I order that she as also her successor (s) shall presently be the de facto guardians of the minor during her educative career. The minor shall be accommodated in the College hostel in proper surroundings where she can get the company of girls of her own age and revert to being a normal child; not as preconscious as she seems to be for her age.

Additionally, the supporting de jure guardian of the minor shall be her natural mother Smt. Kamlesh Kanta who had readily offered to play the role and bear all expenses towards the upbringing and the marriage of the minor She shall. to show her bona fides, in the first instance deposit a sum of 3,000/ by 1381984 with Principal Roy towards initial expenses of the minor and keep depositing such further sums from time to time as asked by Mrs. Roy or her successors for the purpose. Mr. Manmohan Rattan in deference to the wishes of his late brother, as is apparent from will, Annexure P 1, shall assume. the guardianship of the property of the minor and take charge of House No 2002, Sector 20, Chandigarh as also the movables and cash left by his deceased brother and keep proper account The respondents are directed to hand over the movables they have in their custody to her and are expected to do so faithfully for all the love they profess towards the minor. The said articles/money shall be in trust with Mr. Manmohan Rattan till such time the minor comes of age or till further orders of the Court, as the case may be. He would be at liberty to rent out House No 2002, Sector 20, Chandigarh and accept the rent by cheque to be deposited in a bank account to be opened for the benefit of the minor and in the name of the minor, but such sum shall not be capable of being withdrawn by the minor without further orders of the Court. For. the present, it is anticipated that the said accumulation of money would be necessary towards the marriage portion of the minor when she comes of age.

7. Lastly comes the consideration of the right of visitation of the respective parties. Depending on the wishes of the minor and how best can Mrs. Roy or her successors arrange meeting, regulation of visitation is left purely to her their discretion and convenience. Such right is conferred on both the respondents, both the natural parents, the grandmother, the uncles named earlier and the wives of the uncles as also their children. It is left entirely to Mrs. Roy or her successors to permit the child being taken away temporarily from the hostel premises, for a duration to be fixed by her by any of the aforesaid persons from time to time keeping in view as to what goes to promote the happiness and the wellbeing of the minor. Mrs. Roy, of course. is at liberty to seek guidance from time to time in that regard from this Court in chambers.

8. This order, of course in the nature of things like all other orders of this kind, is interim in nature and reviewable in appropriate but exceptional circumstances. This Court has the hope that the trust reposed in Mrs. Roy and her successors would be fulfilled. This Court is also conscious that it is a burden on the otherwise hard duties of Mrs. Roy as the head of the institution. But then this Court can exercise its *parens patriae* jurisdiction only in the confidence and hope that the citizens living within its territorial jurisdiction would render a wilful hand to fulfill its obligations. Equally. this Court has confidence that the parties to this dispute will not indulge in mutual acrimony and would rather utilise their time and energy towards promotion of the welfare and happiness of the minor. Lastly, this Court hopes that by lapse of time, the minor would mellow down, view things in the right perspective, and flock back to the family she rightfully belongs

to, for she is not only the only child of her parents but also the sole symbol of their hope and affection.

9. The minor has been put in the guardianship of Mrs. Roy forthwith.

10. This petition is disposed of accordingly. No costs.

11. Let a copy of this order be conveyed to Mrs. S. Roy, as also to the minor.