

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

Civil Revision No.1402 of 2020 (O&M)  
DATE OF DECISION: March 26, 2021

MEGHA SOOD

..PETITIONER

VERSUS

AMIT SOOD

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Vikas Kuthiala, Advocate, for the petitioner.

Mr. Vikas Bahl, Senior Advocate with  
Ms. Priyanka Kansal, Advocate, for the respondent.

Dr. Amarpreet Kaur Sandhu, Advocate/Amicus Curiae.

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**SUDHIR MITTAL, J.**

Children are innocence personified. For their ideal development, it is essential that the period of innocence be cherished and protected. This however remains a pipe-dream where parents clash. Reasons for such clashes may be many but primarily it is ego or lust. One or the other parent is unable to check this primordial urge even though parents are supposedly mature and responsible. As a result, the children suffer. Courts are asked to decide what is in their best interests because the parents have abdicated their duties and responsibilities.

2. Facts in brief are that marriage between the parties was solemnized on 03.05.2008. A male child namely Lakshin was born on 16.07.2009 and a female child namely Tiana was born on 13.03.2017. Thus, Lakshin is presently about 11 and a half years old and Tiana is about 04 years old. The parents have separated since 16.02.2019. The case of the wife is that she has been thrown out and has not been permitted to take the children along with her, whereas the husband says that she has deserted the family. Be that as it may, the fact remains that a petition under Sections 7, 10 & 25 of the Guardians and Wards Act, 1890 (hereinafter referred to as the Guardian Act) has been preferred by the wife on 30.05.2019 in which an application under Section 12 thereof has been filed for grant of interim custody. The said application has been rejected vide impugned order dated 05.02.2020. However, the mother has been permitted to meet the minor children as provided in the said order.

3. The petitioner-mother was working as a teacher in Delhi Public School, Sector 40, Chandigarh, since April, 2009. She resigned on 15.02.2019. She is a Post Graduate. After the separation, she has taken up a teaching job in June-July, 2019 in Panchkula. Currently, she is residing with her parents in Mansa Devi Complex, Panchkula.

4. While issuing notice of motion, an Amicus Curiae was appointed to interact with the parents and the minor children so that an assessment could be made regarding the best interests of the children. The learned Amicus Curiae has submitted her report dated 14.08.2020 and the same has been perused. In the said report, incidents which took place during various meetings have been narrated and the response of the children to different situations has been recorded. It emerges that the children miss

their mother's company. It also emerges that Lakshin, being older in age, is being indoctrinated against his mother. Despite the same, he is keen on meeting his mother and enjoys her company. Instances have been recorded which reflect that the father and the paternal grandmother bad mouth the mother in front of the children with the aim of alienating them from her. On the other hand, the mother has never attempted to do the same against the father or the paternal grandparents.

5. Learned counsel for the petitioner has argued that Tiana is below 05 years of age and Section 6(a) of the Hindu Minority and Guardianship Act, 1956 (hereinafter referred to as the Minority Act) stipulates that custody of such child should ordinarily be with the mother. This legal position has been ignored by the learned trial Court. The petitioner is working as a teacher and lives with her parents who are extremely affectionate. In such an environment, the children would blossom whereas in the company of their father and paternal grandparents they are withering. This has been revealed to the petitioner by the children during the course of telephonic conversations. Allegations of infidelity made against the petitioner are false and are the outcome of a perverted mind. The trial Court has found that the same are unproved and yet it has relied on the said allegations to deny interim custody. Thus, the impugned order deserves to be set aside being perverse and contrary to law. Reliance has been placed upon Division Bench judgment of this Court in *Mukul Chauhan vs. Neha Aggarwal and others, 2019(4) RCR (Civil) 342* and judgment of Supreme Court in *Roxann Sharma vs. Arun Sharma, 2015(2) RCR (Civil) 93*.

6. Learned Senior counsel for the respondent has responded by arguing that reply to the petition under the Guardian Act has been filed along with which application under Section 125 of the Code of Criminal Procedure filed by the petitioner has been annexed. A perusal thereof shows that the petitioner has pleaded therein that she does not possess any resources to maintain herself. Thus, custody of the children cannot be given to her as she would not be able to maintain them. Lot of expenditure is required for their education as well as up-bringing. Reference has also been made to the statement of one Harjinder recorded under Section 161 Cr.P.C. by the police (copy annexed with the reply) wherein he has stated that the petitioner and he were working together in Delhi Public School, Sector 40, Chandigarh and that she used to make repeated phone calls to him. On 14.02.2019, he accompanied the petitioner from school to Sector 17 Chandigarh and would often accompany her to the market in Sector 40, Chandigarh. He has also said that she used to talk with him 5 to 6 times in a day and that she had also gifted him a watch apart from other things. Reference has also been made to the averments made in the reply to argue that the petitioner is a person of questionable character and if she is given the custody of the children their normal development would suffer. It has also been argued that the respondent is making investments in the name of the children and is securing their future apart from bearing the current expenditure. All these facts go to show that the best interests of the children would be served if their custody is retained by their father. The judgments relied upon by learned counsel for the petitioner have been distinguished. Regarding Section 6(a) of the Minority Act, it is submitted that even the said provision provides that the natural guardian of minor children is the

father and the prescription that a child below 05 years should ordinarily reside with the mother is contained in the proviso. For this prescription to apply it must be established that best interests of such a minor dictate that the mother should get the custody. In the instant case, it has been shown that the petitioner is of questionable character and thus, the said prescription cannot apply.

7. Section 17 of the Guardian Act as well as Section 13 of the Minority Act leave no manner of doubt that the welfare of the minor is the paramount consideration to be kept in mind by the Court while appointing a guardian. Thus, the lament in the first paragraph of this judgment. Allegations and counter-allegations have been made by both the parties. In her petition for guardianship, the petitioner has pleaded that the respondent is a perverted person. He and his parents also harass her for dowry and abuse her physically. In the reply filed by the respondent, he claims that the petitioner is over-sexed and has extra marital relations. Apart from that, she is not possessed of means to bring up the children. The allegations made by either side however, cannot be taken into consideration at this stage as they have not been proved through evidence. The learned trial Court was correct in observing so while passing the impugned order but apparently it has still been influenced by the allegations made against the mother which is a perversity requiring correction.

8. In the application under the Guardians Act, it has specifically been pleaded that the petitioner is a postgraduate and that she worked as a teacher in Delhi Public School for 10 long years. This has not been controverted by the respondent in his written statement and thus, it can safely be concluded that the petitioner is a well educated and qualified lady.

**Civil Revision No.1402 of 2020 (O&M)**

**[6]**

During the course of arguments, it has been submitted that she has taken up a job as a teacher in a school in Panchkula in June-July, 2019 after she resigned from Delhi Public School in February, 2019. The respondent has not been able to controvert this statement and thus, it can also be concluded that she possesses means to maintain her children. The fact that she worked as a teacher for 10 long years suggests that she must have accumulated some savings and these can also be utilized for bringing up the children, at least on an interim basis. It is not disputed that she is residing with her parents and that they have a house in Mansa Devi Complex, Panchkula. The detailed report of the learned Amicus Curiae referred to in the earlier part of the judgment makes me conclude that the best interests of the children lie in the custody of their mother. Tiana is under 05 years of age and in view of Section 6(a) of the Minority Act, her best interests would definitely be served in the custody of the mother. Lakshin cannot be separated from his sister as the same would traumatize both of them.

9. The judgment in *Mukul Chauhan's case (supra)* also commends to me the above conclusion. Although, learned Senior counsel for the respondent has tried to distinguish the same on the ground that the mother in the said case was earning handsomely being an employee of Deloitte Touche Tohmatsu India LLP (Organization), the distinction pointed out has to be ignored as I have found that the petitioner also possesses means to maintain the children. I can safely place reliance upon *Roxann Sharma (supra)* as well in support of my view wherein the Hon'ble Supreme Court set aside the order of the High Court to grant interim custody to the mother subject to certain conditions. The attempt by learned Senior counsel for the respondent to distinguish this judgment also on the



ground that the father therein was a drug addict and a member of Narcotics Anonymous does not appeal to me as the said fact was not the sole reason for denying the father interim custody. The primary ground that weighed with the Supreme Court was the minor being below 05 years of age.

10. Thus, impugned order dated 05.02.2020 passed by the trial Court is set aside. It is directed that the custody of the minor children be transferred to the petitioner within 07 days of receipt of a certified copy of this judgment. The respondent shall have visitation rights on 1<sup>st</sup> and 3<sup>rd</sup> Saturday of every month between 3.00 pm to 5.00 pm at the residence of the petitioner and in her presence. The visitation rights shall enure till the decision of the main petition for custody, however, subject to modification in case required if difficulty is faced by either party.

(SUDHIR MITTAL)  
JUDGE

March 26, 2021

Ankur

WWW.LIVELAW.IN

Whether speaking/reasoned

Yes

Whether Reportable

Yes