

**ORDER ON APPLICATION U/SEC.21 OF PROTECTION OF
WOMEN FROM DOMESTIC VIOLENCE ACT**

The applicant/petitioner has filed present application U/Sec.21 of Protection of Women from Domestic Violence Act for the custody of petitioners No.2 and 3 to the petitioner No.1. In the accompanying affidavit, it has been stated that, the respondents have given petitioner No.1 mental and physical harassments and also to the minor petitioners No.2 and 3. But recently the respondent No.1 has forcibly taken away the minor petitioner from her custody. She is the natural mother of minor daughters and guardian of minors and therefore, prayed before the court to handover the minor petitioners No.1 and 2 to her custody.

2. To the above said application filed under Section 21 of Protection of Women from Domestic Violence Act, the respondent has filed his objection. In the objections it has been stated that, the petitioner No.1 has left the house of her husband. She alone went to her parents house without the knowledge the respondent and his family. She left the children at the house of respondent and went mercilessly. Infact, she has no love and affection towards her children she kept quite since from last 2 to 3 years. She did not ask the custody of her children. At this stage, she is demanding the custody of children with an intention to claim maintenance

amount of petitioners No.2 and 3. She has not shown on which date and month, the respondent taken the children from the custody of petitioner No.1. Why she has not filed any complaint before the concerned police and why she has not filed any application before the court at the earliest point of time. The petitioner has filed this application at belated stage intentionally just to demand more maintenance for the children.

3. It is contended by the respondent that beside facts narrated supra, the petitioner No.1 will not look after the children. The petitioner No.2 and 3 are never ready to live with their mother. The children will not be safe in the custody of petitioner No.1. This lady never taken care of her children. If she had love and affection towards her children she would have filed this application long back. Simple visit of petitioner is harmful to the interest of children.

4. I have heard the arguments of the learned advocate for the petitioner and respondents.

5. Section 21 of Protection of Women from Domestic Violence Act, 2005 reads as thus:

“21, Custody Order.- Notwithstanding anything contained in any other law for the time being in force, the Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this Act grant temporary custody of any child or children to the aggrieved

person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent: Provided that if the magistrate is of the opinion that any visit of the respondent may be harmful to the interests of the child or children, the Magistrate shall refuse to allow such visit.”

6. The children in the present case are minors. That too aged about 2 and 4 years respectively. Both children are below 6 years of their age.

7. Custody of minor children is a sensitive and it involves sentimentally attachments. Welfare of the minor children is paramount consideration while dealing with such application.

8. The welfare of the minors is the paramount importance. The factual position of the parties in this case is that, the mother would have sought for custody of the child at the time of filing of the Miscellaneous Petition. But she has failed to seek the custody. The children are residing with the father, and it is contention of the respondent that, the children now not able to identify their mother. However, the children are girl child and the care and custody of mother is very much required at this age. It is settled principle of law that, the custody of mother is necessary for over all development of the child till both the children attain certain age. The custody of child should be with their mother.

9. Section 21 speaks about temporary custody of children for a limited period of time and the welfare of the children is always the paramount issue while granting this temporary custody of children. In this case, the two daughters are aged about 2 years and 4 years. Ordinarily children of this group feel more comfortable to live with their mother.

10. The custody of the minor children cannot be decided on the legal rights of the parties. But to be decided on the basis of who best serve the interest of minor children is the paramount consideration. Interest and welfare of the minor children, the act does not define the word welfare of the minor children. This word welfare of the minor has a very wide connotation besides it has several facets including financial, educational, physical, moral and religious. It is not possible to catalogue exhaustively of factors which contribute to the welfare of the minor. It depends upon of the facts and circumstances of each case.

The principles of law in relation to the custody of minor appear to be welfare established. It is well settled that any matter concerning a minor has to be considered and decided only from the points of view of the welfare and interest of the minor. In dealing with a matter concerning minor, the court has a special responsibility and it is the duty of the court to consider the welfare of the

*minor and to protect the minors interests in considering the question of custody of a minor. The court has to be guided by the only consideration of the welfare of the minor. **Thrity Hoshi Doli Kuka Vs. Oshiam Shavakha Doli Kuka, AIR 1982 HC 1276.***

11. Thus in this case, the children are aged about 2 and 4 years. As stated supra both children are below 6 years of their age. These children are girls and the care and custody of mother is very much required at this stage. It is settled principle of law that, the custody of mother is necessary for over all development of the child till both the children attain certain age. Mother is the preferred custodial parent when the child is less than five years old. The opinion of a child who is over nine years old can be considered. Therefore, I am of the opinion that, the custody of child should be with their mother and the father shall have a visiting right and he shall take the child with him for 4 days in a month. In view at the above, I proceed to pass the following order:

ORDER

The Petition filed by the Petitioner U/Sec.21 of the Protection of Women from Domestic Violence Act, 2005 is hereby partly allowed.

The petitioner No.1 shall have the custody of petitioners No.2 and 3. The respondent shall visit petitioners No.2 and 3 for 4 days in a month and he is at liberty to take the children with him during those 4 days.

(CHANDRAKANTH)
ADDL.CIVIL JUDGE & JMFC,
ALAND

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