

MHNG120002282022

Misc.Criminal Application No.41/2022  
Shilpa/Pravin**Order Below Exh.6**

Applicant has filed this proceedings under sections 12, 18, 19, 20, 21 and 22 of the Protection of Women from Domestic Violence Act, 2005 (in short Act, 2005). The applicant has also filed this application under section 21 of the Act, 2005 for custody of her minor son Ansh, aged 8 years. The applicant contended that she has narrated all the acts of domestic violence by non-applicant and his family in her main application. She also contended that on several times the non-applicant no.1 has beaten her mercilessly. For that the non-applicant nos.2 and 3 used to instigate the non-applicant no.1. she further contended that due to continuous mental and physical harassment by non-applicants she has left their house with her minor son Ansh and take shelter at her parents house. However, on 12.02.2022 the non-applicant no.1 has forcibly taken their son Ansh from the custody of applicant. According to applicant, at that time the non-applicant no.1 was under great influence of liquor. According to applicant, the non-applicant no.1 is having addiction of liquor and his parents i.e. non-applicant nos.2 and 3 are old aged, therefore they cannot take proper care of her minor son. Due to all these reasons, her son is not in safe custody, due to his tender age he require more love and affection. Applicant is her real mother, hence she can take all proper care of

Ansh as well as he will be safe only in the custody of applicant. She also wants to give good education to her son, hence she requested to grant the application and requested to give directions to non-applicant to give custody of her child Ansh to applicant.

2. The non-applicant has filed his say and strongly objected to the application. He contended that applicant herself at her own will left his company and residing with her parents. Their son is residing with him and all of them are taking very good care of their minor son Ansh. He further contended that Ansh is taking education at the School of Mowad. He is residing happily with them. The non-applicant no.1 is ready to lead matrimonial life with the applicant. He further contended that as they all are taking very good care of their son Ansh, hence there is no reason to hand over the custody of Ansh to applicant.

3. Read application and say. Heard both learned advocates at length. Also perused notes of judgments of Hon'ble High Courts and notes from the Protection of Women from Domestic Violence Act, 2005 filed by the learned advocate for applicant. As per record, the age of son of applicant and non-applicant no.1 is 8 years. He is going to school at Mowad. Applicant in her application contended that the non-applicant no.1 is having addition of consumption of liquor, hence will not take proper care of their minor son Ansh. However, that fact will be decided at the final hearing of case after giving opportunity to both parties to lead their evidence. In my opinion, the question of custody of minor child will be property decided by proper authority under Guardian and Wards Act.

Applicant is having opportunity to file application before proper forum under Guardian and Wards Act for custody of her son Ansh.

4. Applicant has filed notes regarding custody of child under this Act. However on perusal of that judgment, it is seen that the child in that case was 3 years and in the case in hand the child is of 8 years. Hence, with due respect it is not applicable to the case in hand. No doubt, the welfare of child is of prime importance, however in my opinion, the question of custody will be properly decided by appropriate forum under Guardian and Wards Act. Applicant is having opportunity to approach that forum. Hence, I proceed to pass the following order :-

**ORDER**

1. The application Exh.6 is hereby rejected.

Narkhed.  
Date-28.07.2022.

Sd/-  
(Smt.V.D.Sungare)  
Judicial Magistrate First Class, Narkhed,  
Tahsil-Narkhed, District-Nagpur.

Argument heard on	28.07.2022
Order passed on	28.07.2022
Transcription ready on	28.07.2022
Order checked and signed on	28.07.2022

**CERTIFICATE**

I affirm that the contents of this P.D.F. file of order are word to word, as per original order.

**Name of Stenographer**-A.Y.Kulkarni (Gr.-III)