

**IN THE COURT OF SHRI MOHIT BANSAL, PCS,
ADDITIONAL CIVIL JUDGE (SENIOR DIVISION),
SAS NAGAR.**

CNR No. PBSA02-000895-2016

C.I.S. No. GW/000022/2016

Guardian Case No. 10 of 2016

Date of Institution: 11.08.2016

Date of Decision: 31.10.2018.

Raj Rani aged about 33 years wife of Sh. Gurjeet Singh, D/o Sh. Som Nath, R/o 117-C, Jagatpura, Jattan Da Muhalla, Mohali.

... Petitioner

Versus

Gurjeet Singh son of Naib Singh, R/o Village Dappar Zirakpur, District Mohali.

... Respondent

Petition U/s 25 of Guardians & Wards Act 1890 for the custody of minor Jashanpreet Singh aged about 8 years now living with the respondent to the petitioner.

Present:- Petitioner with Counsel Ms. Rajvinder Kaur Prince,
Advocate.

Respondent with Counsel Sh. G.S. Randhawa, Advocate.

J U D G M E N T

1. Briefly stated that the petitioner has filed the present petition for the custody of the minor son Jashanpreet Singh @ Jaspreet Singh against the respondent Gurjeet Singh who is the father of the minor and the husband of the petitioner.

2. The petitioner has pleaded that she is natural guardian of the minor. The petition is for the custody of the minor and for welfare and future interest of the minor.

3. The petition is having sufficient source of income running

beauty parlour at Mohali. The petitioner is well qualified person and capable proper looking after the minor.

4. The paramount consideration is for welfare of the minors. The petitioner has every love and affection towards the minors. The respondent has no love and affection with the minors. The respondent has no source of income. The respondent cannot look after the minor as he is drunkard and idle person. The environment of the family of the respondent is very bad.

5. The petitioner wants to give good education in reputed English medium school at Mohali to the minor.

6. The petition has been filed for the welfare, good education, proper diet and for better and proper future and life of the minor. The respondent is person of criminal nature.

7. The minor has been neglected by the respondent. The petitioner can maintain the minor very well. Hence, this petition.

8. Upon notice the respondent appeared and filed reply taking preliminary objections that the petitioner has not approached with clean hands. She has concealed the facts. The present petition is abuse of process of law. The petitioner is estopped from her own acts and conduct and to seek custody of the minor Jashanpreet Singh @ Jaspreet Singh who is happily residing with the respondent.

9. The paramount consideration for grant of custody is welfare of the minor. The petitioner has never bothered about the welfare of the minor and always remained busy with her parental family. When the matrimonial discord surfaced between the husband and the wife, the petitioner has filed the present petition seeking custody of the minor.

10. The work of the petitioner is such that she remains at work at for late hours at night. Such a person cannot be given custody of the minor child. The father can think about the welfare of the child in a better manner.

11. On merits, the averments in the petition regarding the relation, age of the minor have been admitted. Remaining allegations have been denied. The plea taken in the preliminary objections has been reiterated.

12. It has been pleaded that the petitioner while living matrimonial home of taken the minor girl namely Nancy but left the minor son without any reason. The respondent is providing good education to the minor in an English medium school.

13. The interest of the minor in the custody of the respondent is better. Dismissal of the application has been prayed for.

14. The issues were framed on 28.10.2017 which are as under:-

- (i) Whether the petitioner is entitled to custody of minor child Jashanpreet? OPP.
- (ii) Whether the petition is not maintainable? OPR
- (iii) Relief.

15. Both the parties were granted opportunity to lead evidence. The petitioner Raj Rani deposed as PW1 and examined PW2 Som Nath, PW3 Rakesh Kumar, Vice Principal, Holy Heart Public School, Village Dappar, Tehsil Dera Bassi, District SAS Nagar and PW4 Vishnu Garg, Secretary Smart School, VPO Dappar, Tehsil Dera Bassi, District SAS Nagar. The petitioner did not lead any other evidence and the remaining evidence of the petitioner was closed by order.

16. In respondent evidence, the respondent Gurjeet Singh deposed as RW1. No other evidence was led by the respondent.

17. An application for additional evidence was filed by the petitioner to produce some documents which was allowed. The some documents were contained in the petitioner evidence. The respondent did not lead any evidence in rebuttal to the additional evidence led by the petitioner.

18. My issue wise findings are as under:-

ISSUE No.1

19. The onus to prove this issue is on the petitioner. Ms. Rajvinder Kaur Prince Advocate, Ld. Counsel for petitioner has submitted that the petitioner Raj Rani is mother of the minor Jashanpreet Singh @ Jaspreet Singh aged about 8 years is seeking custody of the minor at the time of filing of the petition.

20. The Ld. Counsel has submitted that the petitioner Raj Rani has deposed as PW1 on the lines of her case as per the petition.

21. The Ld. Counsel has submitted that the petitioner has duly deposed that she is doing work of beauty parlour and is in a better position to take care of the minor son.

22. The Ld. Counsel has further submitted that Som Nath father of the petitioner, sisters of the petitioner are working in banks. The Ld. Counsel has further submitted that the petitioner has deposed as sister of the respondent is divorced and even after re-marriage she is staying in the house of the respondent, it goes to show the character of the family of the respondent.

23. The Ld. Counsel has submitted that the respondent did not

file any petition under Section 9 of HM Act to show his bona fide to rehabilitate the petitioner.

24. The Ld. Counsel has submitted that the respondent has deposed that she is running beauty parlour and has produced the documents i.e. the bills in this regard. The Ld. Counsel has submitted that the petitioner is doing good business and in the present the people are beauty conscious and therefore, the business prospects of the petitioner are good.

25. The Ld. Counsel has submitted that proper care of the minor son has not been taken by the respondent. The Ld. Counsel has referred to the statement of PW3 Rakesh Kumar, Vice Principal, Holy Heart Public School, Village Dappar, Tehsil Dera Bassi, District SAS Nagar who has deposed that Jashanpreet Singh @ Jaspreet Singh was studying in III class in session 2017-2018. The Ld. Counsel has submitted that PW4 Vishnu Garg, Secretary Smart School, VPO Dappar, Tehsil Dera Bassi, District SAS Nagar has deposed that Jashanpreet Singh @ Jaspreet Singh is studying in III Class in the session 2018 towards.

26. The Ld. Counsel has submitted that the respondent did not take care and due to this reason one academic year of the minor son Jashanpreet Singh @ Jaspreet Singh has been lost.

27. The Ld. Counsel has submitted that the respondent has pleaded that he met with an accident, yet, the parents of the respondent could have paid the fees of the son. The Ld. Counsel has submitted that the respondent could have moved an application for waiving the fees of the son but nothing was done and therefore, it shows that the respondent is not concerned about the minor son.

28. The Ld. Counsel has submitted that the plea of the respondent regarding accident is not tenable.

29. The Ld. Counsel referred to the cross-examination of RW1 Gurjeet Singh respondent who has stated that he has not filed any custody case of the minor daughter which shows that he has no love and affection towards the minor daughter. The respondent has stated that he does not remember the date of birth of both his children nor he remembers the name of the school in which the school is studying.

30. Upon this, the Ld. Counsel has prayed that the petition may be allowed and the custody of the minor son be handed over to the petitioner Raj Rani who is the natural mother of the minor son.

31. On the other hand, The Ld. Counsel for the respondent Gurjeet Singh has submitted that the present petition has been filed due to matrimonial discard between the petitioner and the respondent. The Ld. Counsel has submitted that the petitioner Raj Rani left the matrimonial home of her own agreed. The Ld. Counsel has submitted that the petitioner has filed the present petition and divorce petition simultaneously. The divorce petition has been dismissed.

32. The Ld. Counsel has referred to the cross-examination of PW1 Raj Rani who has admitted that she took the minor daughter at the time of going from the maternal home but left the minor son. She has admitted that she has not filed any appeal against the order dismissing the divorce petition.

33. The Ld. Counsel further referred to the cross-examination of PW1 Raj Rani who has admitted that there are 12 persons living in the parental house comprising 04 rooms. She has admitted daughter is going

to a Government school.

34. The Ld. Counsel has submitted that petitioner has admitted in her cross-examination that the house of the respondent is double story and there are only three persons living in the house.

35. The Ld. Counsel has submitted that the respondent has proper accommodation.

36. The Ld. Counsel has further submitted that the respondent did not file any litigation. The petition under Section 9 HM Act was not filed by the respondent as the petitioner had filed the divorce petition.

37. The Ld. Counsel has submitted that the petitioner has not disclosed her income.

38. The Ld. Counsel has submitted that the petitioner has levelled the allegations against the respondent as drunkard and criminal nature. The petitioner has not produced document in this regard nor there is any other proof in this regard.

39. The Ld. Counsel has referred to the statement of Som Nath father of the petitioner who has admitted that the petitioner came with the daughter and had left the son. PW2 Som Nath stated that he does not know if the sister of the respondent is staying in the house of the respondent or in her matrimonial home. PW2 Som Nath has admitted that her daughter has no diploma in beauty parlour line.

40. The Ld. Counsel has referred to the statement of PW3 and PW4 both have stated that Gurjeet Singh had met with an accident. The Ld. Counsel has submitted that the fees of the minor son could not be paid by his father Gurjeet Singh as he had met with an accident.

41. The Ld. Counsel has submitted that the respondent Gurjeet

Singh has stepped into witness box as RW1 to rebut the claim of the petitioner and stated that he is looking after his son.

42. The Ld. Counsel has referred to the documents produced by the petitioner which are not duly proved being marked documents. Further the bills and the certificate do not bear any date and do not appear to be genuine documents.

43. The Ld. Counsel has referred to Ex.R2 i.e. the certified copy of cross-examination of Raj Rani recorded in the divorce case where she has admitted that her parents and Massi reached on the date of accident i.e. April 2016 at about 05.30 PM and thereafter, she left the matrimonial home and came to her parental home at Jagatpura along with her parents with her own will and wish.

44. The Ld. Counsel has submitted that the petitioner is not entitled to the custody of the minor son and therefore, the petition may be dismissed.

45. I have heard the rival submissions and perused the record carefully.

46. The petitioner Raj Rani who is mother of the son is seeking custody of the minor son.

47. The relationship between the parties is not in dispute. The petitioner Raj Rani has deposed on the lines of her case as PW1.

48. The cross-examination of PW1 Raj Rani goes to show that she has not been able to point out as to how the minor Jashanpreet Singh @ Jaspreet Singh is not being looked after properly.

49. The arguments of the Ld. Counsel for the petitioner that the minor son Jashanpreet Singh @ Jaspreet Singh has lost one academic year

is not in dispute. However, the respondent has given a cogent explanation for the same i.e. the respondent met with an accident and could not go for his work for 2-3 months due to accident.

50. PW4 Vishnu Garg, Secretary Smart School, VPO Dappar, Tehsil Dera Bassi, District SAS Nagar has admitted in his cross-examination that he knows that Gurjeet Singh father of the child had met with an accident and remained on bed for 2-3 months. Information in this regard was given to the school.

51. PW3 Rakesh Kumar, Vice Principal, Holy Heart Public School, Village Dappar, Tehsil Dera Bassi, District SAS Nagar has also stated that information regarding accident of Gurjeet Singh was given.

52. Thus, the loss of academic year of the minor child Jashanpreet Singh @ Jaspreet Singh cannot be said to have been caused due to any intentional act on the part of the respondent. Further the same cannot also held to be committed due to any lapse on the part of the respondent, rather the circumstances have to be held to be beyond the control of the respondent.

53. The petitioner Raj Rani has stated that she took the minor daughter at the time of going to the matrimonial home. At the time of her cross-examination in this Court she has stated that sister of her husband caught the arm of the son.

54. This statement of the petitioner, is in contradiction/variation to the statement dated 29.03.2017 i.e. the cross-examination of the petitioner Raj Rani recorded in the divorce petition.

55. Reference is made to Ex.R2 i.e. the cross-examination of Raj Rani in the divorce petition where she has stated that my parents and

Massi reached on the same day on the incident i.e. April 2016 at about 05.30 PM and after that I left the matrimonial home and came to my parental home at Jagatpura along with my parents with my own will and wish.

56. Thus, at the time of leaving the matrimonial home in April 2016 the petitioner had gone with her own will and wish.

57. PW1 Raj Rani has admitted that the house of her parents is of four rooms and there are 12 members living in the same. PW 1 Raj Rani has admitted that the house of respondent is two storeys and there are three persons living in the same.

58. Thus, the accommodation with the respondent is also better than the accommodation with the petitioner at her parental house.

59. It has to be noted that paramount consideration in grant of custody of minor is the welfare of the minor. The respondent is getting minor son educated in Shivam Smart School. On the other hand, the minor daughter staying with the petitioner is studying in a Government School.

60. The petitioner has not been able to show that the school in which the minor son Jashanpreet Singh @ Jaspreet Singh is being taught not a good school. Further, there is no allegation or evidence that health of the minor Jashanpreet Singh @ Jaspreet Singh is not being looked after properly.

61. The petitioner has levelled allegations against the respondent that he is a criminal nature and drunkard but there is no proof qua the same.

62. The respondent has stepped into witness box to rebut the

allegations of the petitioner.

63. The petitioner having come to the Court, the onus lies on the petitioner to prove her case.

64. In view of the foregoing discussion in the considered opinion of this Court the petitioner has not been able to make out a fit case for grant of custody of the minor son Jashanpreet Singh @ Jaspreet Singh.

65. Therefore, this issue is decided against the petitioner and in favour of the respondent.

ISSUE No.2

66. The Ld. Counsel for the respondent has submitted that the petition is not maintainable. The Ld. Counsel for the petitioner has submitted that the petition is maintainable.

67. In my view, the petition is maintainable as the same has been filed by the mother.

ISSUE No.3 Relief.

68. In view of the findings recorded on the Issue no. 1, the present petition stands dismissed. File be consigned to the Judicial record room after due indexation.

Pronounced in open Court.

Date: 31.10.2018.

****Vikas Kohli****

(MOHIT BANSAL), PCS

UID No.PB-0208

**Additional Civil Judge (Sr. Division),
SAS NAGAR-MOHALI**

LIST OF WITNESSES

PW1	Raj Rani
PW2	Som Nath
PW3	Rakesh Kumar, Vice Principal, Holy Heart Public School, Village Dappar, Tehsil Dera Bassi, District SAS Nagar
PW4	Vishnu Garg, Secretary Smart School, VPO Dappar, Tehsil Dera Bassi, District SAS Nagar
RW1	Gurjeet Singh

LIST OF EXHIBITS

Ex. PW1/A	Affidavit of Raj Rani
Ex.PW2/A	Affidavit of Som Nath
Ex.P1	Copy of admission and withdrawal register qua Jaspreet Singh at Sr. no. 770
Ex.P2	Attendance register of Class IIIrd
Ex.P3	Tuition fees of Class IIIrd
Ex.P4	Copy of attendance register for the month of April 2018
Ex.P5	Photocopy of admission and register qua Jaspreet Singh
Ex.P6	Attendance register of Class IIIrd for the period of April 2018 to 06 th August, 2018
Mark P1	Copy of experience certificate
Mark P2	Copy of Pan card
Mark P3 to Mark P6	Bills
Mark P7 to Mark P9	Delivery challan
Ex.RW1/A	Affidavit of Gurjeet Singh
Ex.R1 and Ex.R2	Copy of cross-examination of Raj Rani dated 09.03.2017 and dated 29.03.2017 in case title Raj Rani Vs Gurjeet Singh
Ex.R3	Certified copy of judgment dated 13.04.2018
Ex.R4	Copy of decree sheet

(MOHIT BANSAL), PCS

Date: 31.10.2018.

UID No.PB-0208

**Vikas Kohli*

ADDL. CIVIL JUDGE (SR. DIVN),
SAS NAGAR-MOHALI