



CGHC010221942023



2026:CGHC:29832-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

FA(MAT) No. 194 of 2023

- Dikesh Kumar Sahu S/o Anil Kumar Sahu, Aged About 32 Years R/o Village - Churiyaradih Para Ward No. 1 Nagari, District Dhamtari Chhattisgarh.

... Appellant

versus

- Keshav Ram Sahu S/o Late Sopsingh Sahu, Aged About 51 Years R/o M.G. Ward, Behind District Jail Kanker, Bhupendra Kirana Stores, Indra Nagar, Kanker, District Kanker Chhattisgarh.
- Smt. Rekha Sahu W/o Keshav Ram Sahu, Aged About 45 Years R/o M.G. Ward, Behind District Jail Kanker, Bhupendra Kirana Stores, Indra Nagar, Kanker, District Kanker Chhattisgarh.

... Respondents

For Appellant : Mr. Pawan Kesharwani, Advocate.

For Respondents : Mr. Hemant Kumar Agrawal, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu

Hon'ble Shri Justice Sachin Singh Rajput

Judgment on Board

14/07/2026

Per Sachin Singh Rajput, Judge

- Heard.
- This appeal has been preferred by the appellant/plaintiff under Section 19(1) of the Family Court's Act, 1984 (for short 'the Act, 1984') against the judgment and decree dated 23.06.2023 passed by the Family Court, Dhamtari (for short 'Family Court') (C.G.) in Guardian and Wards Act Case No.2A/2019.

3. By the impugned judgment and decree, the learned Family Court dismissed the application filed under Section 10 of the Guardian and Wards Act, 1890 (for short 'the Act, 1890') by the appellant.
4. Undisputed facts in this case are that the appellant is the father of minor Shivam Sahu and respondents No.1 & 2 are his grandparents with whom he is residing at present. As per the pleadings of the application, marriage of the appellant was solemnized with the daughter namely, Dipika Sahu of the respondents on 19.04.2013. Out of their wedlock their minor son Shiva born on 10.04.2014. On 16.12.2016 Dipika Sahu caught fire while lightening the Lamp (Diya) and was burnt and died during the course of treatment on 22.12.2016. Her last rites and rituals were performed from the appellant's side. A mereg intimation was recorded in Police Station Nagri and on the basis of statement of respondents, a crime has been registered bearing Crime No.29/2017 against the appellant and his mother namely Yashoda Sahu, father Anil Kumar Sahu and brother Deepak Sahu for the offence punishable under Sections 304B, 498-A, 34 of IPC. Learned Additional Sessions Judge (F.T.C.) Dhamtari (C.G.) vide its judgment dated 27.03.2018 acquitted the appellant, his parents and brother. On 21.01.2017, respondents No.1 and his relatives namely Bohran Sahu and Dhansingh Sahu came to the house of the appellant and stated that they want to keep the minor child in their guardianship and demanded Rs.25,000/- per month for the expenses of the minor child from the appellant. Upon which, the appellant has stated that child is kept very well with him. On 24.01.2017, respondent No.1 again came to the appellant with an application stating therein that they would deliver the child to Kanker persons and asked him to put his signature on the said application, the appellant stated not to deliver the child and did not put his signature on the application. On being asked by the respondent No.1, appellant along with his minor son Shivam went to Kanker and while coming to Nagri Kanker, the respondents kept his minor son with them and stated that they would drop the child to Nagri after 2-3 days. However, they failed to

send back the child to the appellant, thus, complaint was registered on 29.01.2017 at Police Station Nagri. Further case of the appellant is that the respondents possibly keeping his minor son in their house from 24.01.2017 and never allowed to meet him. He being a father and natural guardian was not allowed to meet his child. He made several efforts to bring his son, however, the respondents are not allowing him to keep his son. The appellant is an Insurance Agent having sufficient means to raise his child, apart from this his parents lived with him. Apart from being an Insurance Agent, he also performs agricultural work and any of the member always resides in house and will never leave his child alone and he is ready and willing to raise his child and give proper time. As the parents of the appellant are government teacher and proper atmosphere in respect of education would be provided to his son and his parents are also ready to look after his minor son. If the minor son is not allowed to meet him, he will not recognize him in future, thus seeking for the custody and guardianship of the minor child, the application was filed.

5. The respondents filed their reply/written statement to the application. Barring the admitted facts denied the material pleadings, it was pleaded that their daughter was residing with the appellant was performing his marital duties. She was treated with physical and mental cruelty, which was reported by their daughter in Police Station Nagri. Appellant always tortured their daughter in the name of dowry and threatened to throw her out of the house. They have offered the maintenance, education, upbringing of the minor son, being the maternal grandparents of the minor child. After the death of their daughter, under social rituals on 24.01.2017, they took the appellant to their village, where he stayed for one week, however, his behaviour towards the respondents and the minor child was not proper. Looking to it, they did not deliver the minor child in the custody of the appellant. Further it was pleaded that though the minor child is a son of the appellant, however, he is not looking after him and his conduct is suspicious. The appellant has avoided to

look after the child, his upbringing and education. Looking to the criminal mindset of the appellant, the minor child is in the custody of the respondents, the child is being given proper education, he has been looked after properly and maintained by the respondents.

6. From further pleadings, it reflects that the appellant being an Insurance Agent has no regular income, he has to work in the field, thus, the custody of the minor child cannot be given to him. The parents of the appellant are the government teachers, thus, they cannot extend their cooperation for upbringing, education and maintenance of the minor child. The minor child is observing maternal affection, living with his maternal grandparents. The respondent No.1 is having a grocery shop and also he is an Insurance Agent, earned sufficient income and the minor child has been looked after properly and proper education and maintained by the respondent No.2. It has been further pleaded that their daughter was tortured in the name of dowry by the appellant, his parents and brother. The appellant informed their son on mobile that their daughter was burnt duly performing Puja, whereas the actual fact was different. The appellant was prosecuted for the offence punishable under Sections 304B, 498-A, 34 of IPC and on 16.12.2016 their daughter Dipika was physically and mentally tortured and was burnt, upon which the Sessions Trial No.31/2017 was tried against them and they were acquitted giving benefit of doubt vide judgment and decree dated 27.03.2018. An Acquittal Appeal No.439/2018 was filed by the respondents before the High Court of Chhattisgarh, which is pending consideration. It has been further pleaded that the minor child is studying in U.K.G. and being looked after properly by the respondents in respect of the upbringing, education and maintenance, thus prayed for dismissal of the case.

7. The learned Family Court framed the following issues:-

“1. Whether it is essential to give the ward, Shivam Sahu, into the plaintiff's custody for his well-being and bright future?”

2. Whether giving the custody of the ward, Shivam Sahu, to the plaintiff be in the best interest and welfare of the ward?

3. Relief and cost?"

8. The appellant examined as many as two witnesses, whereas the respondents also examined two witnesses. Evidence on affidavit of Smt. Rekha Sahu was filed by the respondents, however, she was not subjected to cross-examination.
9. The learned Family Court after assessment of the evidence and material available on record, decided the application and dismissed the same, however, permitted the appellant to meet the minor child and passed the following judgment and decree :-

"It is ordered accordingly that-

(i) The applicant, Dikesh Kumar Sahu, and his family members shall have the right to meet and visit the minor son, Shivam Sahu, on his birthday, festivals, and other occasions, subject to prior notice being given by them to the respondent party.

(ii) The respondent party shall not prevent the applicant and his family members from giving any kind of donation/gift to the child, nor shall they prevent him from communicating with his grandparents and other family members via electronic gadgets.

(iii) The parties are at liberty to extend the visitation time based on mutually agreed terms and conditions.

Both parties shall bear their own litigation costs."

10. Learned counsel for the appellant submits that the impugned judgment and decree is illegal, erroneous and contrary to law. He further submits that the learned Family Court failed to appreciate that the appellant being a father and natural guardian of the minor child is entitled to get the custody of minor

child. Learned counsel for the appellant further submits that appellant is in a better position to provide better education and upbringing for bright future of his son, thus, the impugned judgment and decree passed the Family Court cannot be sustained. He further submits that the welfare of the child is paramount consideration and the learned Family Court failed to see that paramount welfare of the child is much more secure with the appellant and erroneously dismissed the application. He further submits that the appellant lives with his parents, thus, his minor child would get homely atmosphere in his home and his welfare in respect of his education, upbringing, maintenance would properly be looked after by the appellant and his parents. He further submits that the appellant and his family members were acquitted of the criminal charges levelled against them, thus, the acquittal appeal is pending, would not mean that the appellant and his family member are not capable of giving proper care and affection to the minor child. In support of his submission, he placed his reliance upon the judgment rendered by the Hon'ble Supreme Court in case of **Tejaswini Gaud and Others Versus Shekhar Jagdish Prasad Tewari and Others**, reported in (2019) 7 SCC 42. Thus, he prays that the appeal may be allowed and the impugned judgment and decree may be set aside and the custody and guardianship of the minor child be handed-over to the appellant.

11. *Per Contra*, learned counsel for the respondents supports the impugned judgment and decree and submits that the learned Family Court meticulously examined the evidence available on record and categorically found that the welfare of child is protected with the respondents. He further submits that the appellant has remarried, in that situation, the minor child may face step motherly treatment from the wife of the appellant. He further submits that the parents of the appellant are government teacher, thus, they would not be able to provide proper time to the child. Apart from this, respondent No.2 is a homemaker and is always available in the home to take care of the minor child. He further submits that since the death of their daughter, the minor

child is residing with the respondents and his wish was also enquired by the learned Family Court by which he has expressed his willingness to reside with the respondents. He further submits that the appellant though being a father as a natural guardian, however, he never shows inclination for the welfare of the minor child. He further submits that the finding recorded by the learned Family Court is based upon the proper appreciation of the evidence and it does not call for any interference by this Court.

12. We have heard learned counsel for the respective parties and perused the material available on record.
13. The points for consideration before this Court, is to whether the learned Family Court in the given facts and circumstances and the material available on record was justified in dismissing the application filed by the appellant.
14. The law with regard to the guardianship and custody of the minor child is no longer *res integra*. It is a settled principle of law that the welfare of the child is paramount consideration.
15. The learned Family Court relied upon the judgment rendered by the Hon'ble Supreme Court in case of **Nil Ratan Kundu and Another Versus Abhijit Kundu**, reported in (2008) 9 SCC 413 as held in para 52 & 57, which are quoted below:-

“Principles governing custody of minor children

52. *In our judgment, the law relating to custody of a child is fairly well-settled and it is this: in deciding a difficult and complex question as to the custody of minor, a Court of law should keep in mind the relevant statutes and the rights flowing therefrom. But such cases cannot be decided solely by interpreting legal provisions. It is a human problem and is required to be solved with human touch. A Court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and well-being of the child. In*

selecting a guardian, the Court is exercising parens patriae jurisdiction and is expected, nay bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the Court must consider such preference as well, though the final decision should rest with the Court as to what is conducive to the welfare of the minor.

.....

57. In our opinion, in such cases, it is not the 'negative test' that the father is not 'unfit' or disqualified to have custody of his son/daughter that is relevant but the 'positive test' that such custody would be in the welfare of the minor which is material and it is on that basis that the Court should exercise the power to grant or refuse custody of minor in favour of father, the mother or any other guardian."

16. From perusal of the record, it appears that the appellant in his evidence before the Family Court stated that he was acquitted of the criminal charges vide order dated 27.03.2018. It is further stated that the child was taken by the respondents and despite many requests, respondents are not handing over the custody of his minor son. According to him, his parents are government teachers, who are capable of giving proper upbringing to the minor child, somebody stays in his house, thus, they will never leave his child alone, the welfare of the minor child is properly protected in his custody. His statement was also supported by Smt. Yashoda Sahu (AW-2). The respondent No.1 also deposed in light of written statement, which has been stated by him that after the acquittal of the appellant on suspicion on giving benefit of doubt, he preferred an acquittal appeal before this High Court, which is pending consideration. It has come in record from the statement that

since 22.12.2016, the minor child is in his custody and the respondents are properly taking care of him in respect of well-being, education and family affection. At that time he was living with the respondents in their village and studying in U.K.G., at Kanker. The evidence also suggest that appellant has not filed any application for custody of the minor child from 22.12.2016 to 23.01.2019 and he only filed the application until he was acquitted of the criminal case. As the mother of the minor child died in suspicious circumstances, the welfare of the minor child is not secured with the appellant. They have also stated that having a grocery shop and being an insurance agent, he has having sufficient income for welfare of the child including his education, upbringing etc. The learned Family Court assessed the evidences available on record and found that from 19.05.2017 to 27.03.2018, the appellant could not come to meet his son. It has also been observed by the learned Family Court during the pendency and disposal of the criminal case, he has never gone to meet his son and his parents have also not gone to meet him. Similar statement was given by Smt. Yashoda Sahu (AW-2). The learned Family Court also observed that on 19.12.2017 to 03.10.2019, no maintenance or expenses was given by the appellant to the respondents for upbringing or educational expenses of the minor child. The learned Family Court also found that the parents of the appellants are government teachers and their schools are 12 to 16 kms away. Assessing the admission of Smt. Yashoda Sahu (AW-2), the learned Family Court also observed that working hours of her and her husband is from 10:00 am to 4:00 pm and they leave for work at 9:30 am and returned home at about 4:30 pm. Learned Family Court also observed that acquittal appeal was filed against the acquittal of the appellant is pending consideration before this Court. If the trial court's judgment of acquittal is overturned by the court and the guardianship of the child is handed over to the appellant, the possibility of a crisis arising regarding the child's care and maintenance cannot be ruled out in such a situation.

- 17.** The learned Family Court has also enquired from the minor child with regard to his wishes to live with appellant or respondents, it appears that minor child shows his inclination to live with respondents. It has been further observed by the learned Family Court that whether such inclination has been shown on account of some threat, fear, the same was denied by the minor child. Further observations have been made by the Family Court that the appellant has remarried and having children thus, possibility of step motherly treatment by the wife of the appellant can be made. On assessments of the evident material available on record that the Family Court found that welfare of the child, which is a paramount consideration is with the respondents and dismissed the application, however, permitted that appellant to meet him in terms of the decree quoted above.
- 18.** Learned counsel for the appellant tried to persuade this Court that appellant being a natural guardian; acquitted of the criminal charges; having sufficient means to look after the proper welfare of the minor child including his upbringing, maintenance and education, thus, the welfare of the minor child is secured with the appellant.
- 19.** From perusal of the record and the assessment yet hereinabove, the facts which showing that the appellant was prosecuted in a criminal case, though acquitted by the learned Additional Sessions Judge, however, the acquittal appeal and as such acquittal is pending consideration. The appellant has re-married and having children, the child was enquired by the Family Court with regard to his wishes to live with respondents or appellants, he shown his inclination to live with the respondents. The child for a long period of time, i.e., from 22.12.2016 is residing with the respondents and at present he may be around 12 years old.
- 20.** The parents of the appellant are government teachers and their workplace is 12 to 16 kms away and since morning till evening they did not remain in the house. Appellant being an insurance agent and agriculturist would required to

go for field work for his job profile. Thus, during this period, if the custody is given to the appellant he would be left alone in the house along with the second wife of the appellant and his children. Whereas, if we compare this scenario with the present scenario in which the minor child is residing with his maternal grandparents for a long period of time, he has been provided proper education and he looked after by his maternal grandparents. Respondent No.2 being a homemaker stays at home and thus, her company is always available to the minor child.

21. No cogent evidence brought on record that the respondents are not monetary capable to provide proper education, maintenance and better upbringing to the minor son. From the record, it also appears that the appellant and his parents, for a long period of time never visited the house of the respondents to meet the minor child.
22. Thus, weighing the balance between these two scenarios, in the opinion of this Court, the welfare of the child, which is a paramount consideration for decision making in cases of custody and guardianship of the minor child, tilts in favour of the respondents. Thus, this Court is of the considered view that the learned Family Court has not committed any illegality or irregularity in dismissing the application filed by the appellant.
23. Accordingly, the instant appeal fails and is hereby dismissed. Decree be drawn accordingly. No order as to costs.
24. Interlocutory application(s), pending if any, also stands disposed of.

Sd/-
(Parth Prateem Sahu)
Judge

Sd/-
(Sachin Singh Rajput)
Judge