

his cross examination that the signatures on the cheque were with ink pen and remaining particulars have been filled up by ball pen.

5. Even, otherwise, there is nothing on record to show that the applicant had advanced the amount in question to the respondent from his bank account or from any other source. Neither any receipt nor any authenticated document has been placed on record to substantiate his claim. In the absence of any document that the applicant had the alleged amount with him, it is highly improbable that he advanced an amount of Rs.3,86,000/- to the respondent without any receipt or pronote. There is no document on record to show the legal liability of the respondent towards the applicant. Moreover, as per Ex.DW1/A, the date, name and amount filled on the cheque does not tally with the specimen writing of the respondent. Otherwise also, as per the applicant, he had given the said amount as loan in the year 2000, however, the cheque in question pertains to the year 2008, therefore, the allegations of the applicant appears to be vague and barred by time.

6. In the circumstances, the finding of acquittal recorded by the trial Court cannot be said to be perverse or contrary to the material on record. In fact there is no infirmity in the reasoning assigned by the trial Court for acquitting the accused/respondent. It is a settled law as has been held in **C. Antony Vs. K.G. Raghavan Nair, 2002(4) RCR (Criminal) 750** that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

7. Accordingly, the leave to appeal stands declined.

8. Dismissed.

Appeal dismissed.

PUNJAB AND HARYANA HIGH COURT

Before: Ajay Kumar Mittal & Sneha Prashar, JJ.

FAO No.1326 of 2014 (O&M)

Decided on: 29.01.2015

Bimla and others

Appellants

Versus

Anita

Respondent

Present: Mr. Sandeep Singal, Advocate for the appellants.

None for the respondent

A. Hindu Minority and Guardianship Act, 1956 (32 of 1956), Section 6 – Minor child – Custody of -- Mother have faced trial in the criminal case registered in respect of suicide by her husband but she stands acquitted of the charge of having abetted the suicide -- Father of the minor had died and after him, being mother and the natural guardian of her son, she has a preferential right of custody as compared to anyone else.

(Para 10)

B. Hindu Minority and Guardianship Act, 1956 (32 of 1956), Section 6 – Welfare of child -- Minor child – Custody of -- Dominant matter for consideration before the Court is the 'welfare' of the child which cannot be measured by money or by physical comfort alone -- Word 'welfare' must be taken in its widest sense -- Moral and religious 'welfare' of the child as well as his physical well-being and the tie of affection have not to be disregarded -- Grandmother of the minor, who was given custody of the child by virtue of compromise has since expired -- Paternal uncle and paternal aunt have their separate family units to be taken care of by them -- There is nothing on record to indicate that the mother had any interest adverse to that of the minor -- Mother is the best person to bring up her minor son and to effectively take care of his interest -- Indeed, the welfare of the child lies with his mother.

(Para 12)

JUDGMENT

SNEH PRASHAR, J. –

1. This appeal is directed against the judgment dated 12.02.2014 vide which a petition under Section 6 of the Hindu Minority and Guardianship Act, 1956 (for short 'the Act') filed by Anita-respondent against Bimla and others-appellants was allowed and the appellants were directed to hand over the custody of minor Aryan to the respondent, his mother, within two months from the date of order.

2. The relevant facts which need elaboration are as under:

Anita averred that her marriage with Rajesh (since deceased) was solemnized on 18.04.2006 as per Hindu rites and ceremonies. The marriage was consummated and out of the wedlock, a son, namely, Aryan was born on 08.11.2007. Her husband Rajesh died on 30.09.2009 under suspicious circumstances and a criminal case under Section 306 read with Section 34 of the Indian Penal Code was registered against her on wrong facts. She stood trial and was acquitted by Learned Sessions Judge vide judgment dated 18.10.2011. Prior to that, a compromise had taken place in the presence of Sarpanch of Gram Panchayat of Village Ghilot Khurd on 15.09.2011 by virtue of which the custody of her son Aryan had been given to her mother-in-law Bimla.

The respondent alleged that she was made to consent to the compromise under pressure of her in-laws and other respectables of the village. Infact, the compromise was arrived at with regard to the criminal case only and the custody of her son was wrongly given to her mother-in-law. She pleaded that she is a matriculate and is in a position to provide better education and care to her minor son, being his mother. The appellants on the other hand are careless and rigid kind of persons and if the minor remains in their custody, his mental and physical growth will be adversely affected. As such, she prayed that the custody of her son be delivered to her.

3. The appellants contested the petition. In the written statement filed by them, they admitted that the custody of the minor was given to them by virtue of written settlement dated 15.09.2011 and alleged that in view of the said settlement, it is no longer open for the respondent to ask for return of the custody.

They further pleaded that ever since birth of the child, the respondent never took care of him. She would often go missing from the house without any intimation to her husband, leaving the minor with the grandmother. Her husband committed suicide on 30.09.2009 due to her cruel act and conduct. A first information report No.456 was registered at Police Station, Civil Lines, Sonipat, against her on 01.10.2009. They did not pursue the trial under pressure of the co-villagers and on an apology tendered by her. According to them, the compromise dated 15.09.2011 was effected in the presence of the Panchayat without any pressure from any quarter whatsoever and by way of compromise, the respondent had agreed to handover the custody of the minor son to them as she was not interested to keep him.

The appellants further submitted that they are respectable persons of the society and are earning well. They have a house of their own in village Ghilot Khurd and the minor is being brought up in the best possible manner. He is studying in Manav Bharti High School in village Sanghi, District Rohtak, and his custody in their hands is safe. The respondent on the other hand is not earning anything and is likely to remarry. Alleging that the respondent has no interest in the welfare of the minor son and the petition had been filed by her to coerce them to pay her money, the appellants prayed for dismissal of the petition.

4. On the pleadings of the parties, following issues were settled by learned trial court:

1. Whether the petitioner is entitled to the custody of minor Aryan on the grounds mentioned in the petition? OPP
2. Whether the petitioner is estopped from claiming the custody of the minor as alleged? OPR
3. Whether the petition is liable to be dismissed as alleged? OPR
4. Relief.

5. To substantiate her claim, the respondent stepped into the witness box as PW-1 and reiterated her averments as incorporated in the petition. She examined her mother Rajwanti as PW2 who supported her claim in every manner.

On the other hand Bimla Devi (appellant No.1) appeared as RW1 and deposed on the same lines as set out in the written statement; Raj Singh RW2, uncle of the minor, corroborated the testimony of RW1; School Certificate of the minor Ex.R1, copy of debenture certificates Ex. R2 and Ex. R3, photostat copy of the compromise dated 15.09.2011, 'mark A' and the first information report 'mark B' were tendered in evidence.

6. Considering the evidence adduced on record by the parties and the submissions made on their behalf, learned trial Court finding that the respondent is entitled to take custody of the minor son Aryan, decided issue No.1 in her favour. Similarly issues No.2 and 3 were answered against the appellants and the petition was allowed directing the appellants to handover the custody of minor Aryan to the respondent, his mother, within two months from the date of order.

7. Feeling aggrieved by the impugned judgment dated 12.02.2014 passed by learned District Judge Family Court, Sonipat, the appellants preferred the instant appeal.

8. As the matter was opened for arguments, learned counsel for the appellants disclosed that Bimla-appellant No.1, grandmother of minor Aryan had died on 05.06.2014 and is survived by son Raj Kumar(appellant No.2) and Rani (appellant No.3). CM No.20120-CII of 2014 had been filed by him to implead the said respondents in the capacity of legal representatives of deceased Bimla apart from their being appellants in individual capacity. Learned counsel also intimated that a petition for execution of the impugned order dated 12.02.2014 was filed by respondent Anita and during the said proceedings, she has taken custody of the minor child.

9. Coming to the merits of the appeal learned counsel asserted that learned trial Court had failed to take note of the fact that Anita was charged with a serious offence of abetting suicide by her husband. Copy of the first information report is Mark B. There is no denial on part of the respondent that she had faced trial in the said criminal case. She was acquitted because the appellants did not pursue the allegations as a consequence of the compromise dated 15.09.2011 arrived at between the parties with the intervention of the Gram Panchayat and other respectables of the village. In compliance of the compromise Mark A, the respondent without any pressure from any quarter and on her own volition, had given custody of the minor child to the appellant. The terms and conditions of the said compromise were binding on her and she was estopped from claiming back the custody of the child.

10. No one appeared on behalf of Anita but the fact remains that she is mother of the minor who was born to her on 08.11.2007 and on the date of presentation of the petition, was hardly four years old. At that age undoubtedly a mother is the natural guardian of the minor.

Anita may have faced trial in the criminal case registered in respect of suicide by her husband but admittedly, she stands acquitted of the charge of having abetted the suicide. The father of the minor had died and after him, Anita being mother and the natural guardian of her son, has a preferential right of custody as compared to anyone else.

[Sic. 11.]

12. The dominant matter for consideration before the Court is the 'welfare' of the child which cannot be measured by money or by physical comfort alone. The word 'welfare' must be taken in its widest sense. The moral and religious 'welfare' of the child as well as his physical well-being and the tie of affection have not to be disregarded. In the case in hand, Bimla, grandmother of the minor, who was given custody of the child by virtue of compromise dated 15.09.2011 has since expired. Appellants No.2 and 3 being paternal uncle and paternal aunt have their separate family units to be taken care of by them. There is nothing on record to indicate that the mother-respondent had any interest adverse to that of the minor in the given set of facts. Respondent being the mother is the best person to bring up her minor son and to effectively take care of his interest. Indeed, the welfare of the child lies with his mother.

13. Thus, finding no adversity or perversity in the findings recorded by the learned trial court the appeal is dismissed.

Appeal dismissed.
