

**SUPREME COURT OF INDIA****Bench: Justices Vikram Nath and Rajesh Bindal****Date of Decision: 6th December 2023**

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). OF 2023 (Arising out of S.L.P.(Crl.) No.9914 of 2018)

**SELVARAJ ...Appellant(s)****VERSUS****REVATHI ...Respondent(s)****Legislation and Rules:**

Section 12 of the Protection of Women from Domestic Violence Act, 2005

Various procedural laws and guidelines pertaining to child custody and matrimonial disputes

**Subject:** Custody dispute involving the child of the appellant (Selvaraj) and respondent (Revathi), following a matrimonial discord and divorce proceedings.**Headnotes:**

Custody Dispute - Child's Welfare Paramount - Challenge against High Court's custody order favoring respondent - Matrimonial dispute involving child custody - Importance of child's welfare as the paramount consideration in such cases [Para 3, 7, 11].

Non-compliance with Court Orders - Appellant failed to comply with the order to hand over the child's custody to respondent - Child custody remained with appellant since the beginning [Para 4].

Child's Preference and Welfare - Interaction with child in court - Child's reluctance to live with or talk to mother - Importance of child's preference and psychological state in determining custody [Para 7, 9, 11].

Court's Effort in Facilitating Parent-Child Relationship - Request to Senior Advocate Ms. V. Mohana to counsel and interact with child and parents - Child agreed to monthly meetings and phone calls with mother, indicating gradual improvement in mother-child relationship [Para 8, 8.1, 9, 10].

Final Decision - Maintaining Status Quo with Conditional Visitation Rights - Considering child's age, preference, and welfare, custody remains with father - Respondent granted rights to call and monthly visits with child [Para 11, 12].

Referred Cases: None..

## **J U D G M E N T**

### **RAJESH BINDAL, J.**

Leave granted.

2. Order<sup>1</sup> passed by the High Court<sup>2</sup> is under challenge before this Court.
  
3. The present appeal arises out of a dispute pertaining to custody of the child born out of the wedlock of the parties to the appeal. The marriage between the parties was solemnised on 16.05.2010. Out of the wedlock, the child, namely, Manish whose custody is the subjectmatter of dispute, was born on 18.02.2011. Thereafter, the matrimonial dispute arose between the parties. Divorce Petition<sup>3</sup> was filed by the appellant in the year 2014. The respondent filed Complaint<sup>4</sup> under Section 12 of the Act<sup>5</sup> claiming maintenance. Further prayer was made for grant of interim custody of the child to the respondent. *Vide* order dated 22.05.2014, the Magistrate<sup>6</sup> allowed the application and directed the appellant to hand over custody of the child to the respondent. The appellant filed application<sup>7</sup> seeking revocation of the earlier order dated 22.05.2014 passed by the Magistrate

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<sup>1</sup> Order dated 04.10.2018 IN CrI.R.C.(ML) No.88of 2017

<sup>2</sup> Madurai Bench of Madras High Court

<sup>3</sup> H.M.O.P. No. 12 of 2014

<sup>4</sup> M.C.No.4 of 2014

<sup>5</sup> Protection of Women from Domestic Violence Act, 2005

<sup>6</sup> Judicial Magistrate, Pudukottai

<sup>7</sup> CrI.M.P. No. 4929 of 2014

directing handing over custody of the child to the respondent. The aforesaid application was dismissed by the Magistrate *vide* order dated 20.11.2014. The said order was challenged by the appellant by filing appeal before the Principal District Judge, Pudukottai. The same was dismissed *vide* order dated 31.01.2017. The High Court in revision filed by the appellant upheld the aforesaid order. The same is under challenge before this Court in the present appeal.

4. Despite there being no stay, the order directing the appellant to hand over custody of the child to the respondent had not been complied with. The proceedings of custody were initiated in May 2014 and *vide* order dated 22.05.2014, the appellant was directed to hand over custody of the child to the respondent when he was three years and three months old. However, till date custody of the child continues with the appellant.

5. A perusal of the paper book shows that to explore the possibility of settlement of dispute between the parties, *vide* order dated 02.12.2019, the matter was referred to the Mediation Centre<sup>8</sup> in the High Court. Report dated 19.11.2020 was received from the Mediator stating that the respondent was not ready to mediate and the child, who had completed nine years and nine months as on that date, was not willing to go with the mother.

6. On 19.10.2023, after hearing learned counsel for the parties, this Court deemed it appropriate to interact with the child. The appellant was directed to bring the child to the court and the respondent was also directed to appear.

7. We had interacted with the child in Court. He flatly refused not only to go with his mother but even talk to her. We do not wish to go into the reasons behind that but the fact remains that from the very beginning he is living with the father-appellant. In any matrimonial dispute, it is always the child/children who bear the brunt. For proper growth of a child, love and affection of both the parents is necessary. In any matter of custody of child, his welfare is paramount consideration. Keeping that in view and seeing the attitude of the child, we thought it appropriate to request Ms. V. Mohana, learned senior counsel to interact with the child. The matter was to be listed on 22.11.2023.

8. When the case was taken up for hearing on 22.11.2023, Ms. V. Mohana, learned senior counsel, who was requested by this court to submit her report

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<sup>8</sup> Tamil Nadu Mediation and Conciliation Centre, Madurai

after having interacted with the child at different times and also the parents. She had even counselled all of them.

8.1 A perusal of the report submitted by Ms. V. Mohana,

learned senior counsel shows that during interaction with the parties to the dispute, she had made numerous efforts to break the ice. As per the report, initially the child was averse even to see his mother. After Ms. V. Mohana apprised him importance of the mother, he reluctantly agreed to sit with the mother but with minimal interaction. He is stated to be an intelligent child. Though initially he said that he can meet the mother twice a year, however later on he consented for a monthly meeting at a public place to be scheduled on a Sunday. He was averse to visit the Court. He agreed that his mother-respondent can make phone calls to him.

9. It is always good for the upbringing of the child that he has love and affection of both the parents, but some how in the case in hand for the reason, we do not wish to go into, the child from the initial time remained deprived of that love and affection of the mother. With the efforts of Ms. V. Mohana, learned senior counsel, the child may also get affection of his mother though he may live with his father continuously where he is stated to be residing since birth.
10. Once the parties have agreed for conversation on phone, day, time and venue of the meeting can also be mutually agreed. The time of meeting can also be as per convenience of the parties and study of the child.
11. As suggested by Ms. Mohana, learned senior counsel an effort can be made by the Mediation Centre attached with the High Court for an interaction of the child with a Counsellor. However, as the child is averse to visit the court, it may be planned at a place other than the Court Complex. The child at present is 12 years and 9 months old. He is in a position to take decisions. Considering the interaction we had with the child when he appeared in court and the report submitted by Ms. V. Mohana, Senior Advocate, in our opinion, it would not be in the interest for upbringing of the child that his custody is given to the respondent-mother at this stage. However, as agreed, the mother can call him and will have visitation rights, as noticed above.
12. The present appeal is disposed of with the aforesaid modification in the impugned order.
13. Before parting with the order, we place on record our appreciation for the sincere efforts made by Ms. V. Mohana, Senior Advocate.

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