

HON'BLE SRI JUSTICE T. AMARNATH GOUD

I.A.Nos.1 & 2 OF 2020 IN C.C.No.481 OF 2020

AND
CONTEMPT CASE No.481 OF 2020

ORDER:

1 The prayer in this Contempt Case, instituted under Sections 10 to 12 of the Contempt Courts of Act, is as follows:

“For the reasons stated in accompanying affidavit, the petitioner herein prays that this Hon'ble Court may be pleased to hold the mother guilty of the contempt of the orders of the Hon'ble Court under Sections 10 to 12 of the Contempt of Courts Act and punish the mother for gross violation of the orders of the Hon'ble Court dated 13.12.2019 in CRP No.1556/2019 and pass such other order or orders as this Hon'ble Court deems fit and proper in the circumstances of the case.”

2 Petitioner and respondent are husband and wife respectively. Out of their wedlock they were blessed with a male child by name Agastya. Thereafter they are not in marital relation for several years and are staying separately.

3 The main *lis* involved in this case is with regard to custody of the minor boy by name Agasthya aged about 6 years, to be shared by both the parents. The petitioner is father and the respondent is mother of the child respectively in this Contempt Case. For the sake of convenience the parties to these proceedings will hereinafter be referred to as 'father', 'mother' and 'child'.

4 Originally the matter is pending before the Family Court, City Civil Court, Secunderabad viz., O.P.No.367 of 2018 wherein the father filed I.A.No.470 of 2019 in which child custody was granted in favour of the father directing the mother to produce the child before the Court at 4.45 PM on every day of custody in order to enable the Court to examine the minor child and also directed the father herein to take custody of the child from the Court daily from 07.6.2019 till 11.6.2019 at 5.00 PM, by order dated

06.6.2019. Aggrieved thereby the mother filed Civil Revision Petition No.1556 of 2019 seeking to set aside the order passed by the Family Court. By order dated 01.10.2019, this Court dismissed the CRP and further directed the parties to file appropriate applications seeking custody or visitation rights with the child as and when required, and on such applications made, the trial Court shall pass appropriate orders thereon as per law without any delay. The mother filed I.A.Nos.2, 5 of 2019 praying the Court to set aside the order dated 01.10.2019 passed in the Civil Revision Petition and restore the CRP to file and review the said order. However, the father filed I.A.No.6 of 2019 to review the orders dated 01.10.2019 in CRP No 1556 of 2019 and shift the custody of the child to the petitioner father and further direct the Family Court to give priority to the IAs and dispose of them in time bound manner. By common order dated 13.12.2019, this Court disposed of all the IAs as follows:

“Custody of the child shall be with the father and mother as follows:

- (i) Sunday evening 4.00 PM onwards till Friday morning, the father will have the custody of the child,
- (ii) The mother will pick up the child from the school on Friday and will hand over the custody of the child to the father post lunch on Sunday at 4.00 PM.

This arrangement shall be for first three weeks in every month and for the remaining weeks, father shall have the custody of the child in order to spend time with the child in the last week ends.

- (iii) From January, 2020 onwards, in all vacations, child custody shall be shared equally by both parents;
- (iv) If mutually agreed, both the parties are at liberty to take the child together to any place of his choice during vacation or on any other day.

This arrangement is made in view of the child being away from the father for almost a year and for the past two years, he was given custody for only 43 days.

This arrangement is made till the end of summer vacation. Thereafter, the parents are at liberty to take appropriate steps

before the Family Court in the event of any modification of having the custody of the child.

With the above observations, I.A.No.2 of 2019 is dismissed, I.A.Nos.5 and 6 of 2019 are closed and the order passed by this Court, dated 01.10.2019 in C.R.P.No.1556 of 2019 is reviewed to the extent indicated above.”

5 Accordingly the parents shared the custody of the child. Now, alleging that the mother has not only willfully violated Clause (iii) of the above order dated 13.12.2019, the present Contempt Case is filed by the father and he also brought to the notice of the Court that the mother is exposing the child to immoral activity of taking nude photographs of the child on 13.6.2020 and by taking the child to the Nilofer hospital during midnight and getting his private parts tested during COVID period.

6 Mr. Nagesh Reddy, the learned counsel for the petitioner/father argued that the respondent/mother has filed series of complaints dated 10.4.2018, 19.9.2018, 04.3.2020, 04.6.2020 and 12.7.2020 before different police stations viz., Osmania University, Begumpet, Karkhana and Abids (without any territorial jurisdiction) against the father alleging that he is committing immoral acts upon the child which amounts to serious offences under law. The said complaints were inquired into by the police and that the police have also made surprise visits to the house of the father on 07.02.2018, 28.5.2020 and 20.7.2020. The police met the child at the residence of the petitioner and also verified the C.C. TV cameras fixed in the house of the petitioner including his bedrooms. But they found no incriminating material or any objectionable clippings. The police gave positive report dated 10.3.2018, 29.7.2020 and 10.8.2020 in favour of the father and closed the file as 'false'. This has happened more than once at the instigation of the mother and that the mother is tutoring the

child to send certain messages to her in a secret manner through mobile phone which she provided to the child and this was done with an intention to implicate the father and his family members and the child innocently followed the instructions of the mother without knowing the consequences. It is the further case of the father that the mother has grossly violated COVID norms and in getting the child examined by doctors in the Nilofer hospital during the COVID period. To satisfy her ego and to win over the father with a vindictive mindset the mother is making the child a scapegoat. He would further contend that as per the orders of this Court dated 13.12.2019, the mother has not been handing over the child to the father and thus willfully violated the orders of this Hon'ble Court. It is to be noted that even during lockdown period the father had dropped off and picked up the child from the house of the mother. However, the mother has taken COVID-19 as a convenient excuse to flout the orders of the Hon'ble Court. However, more than once the custody of the child was shared during COVID period by both parties.

7 On the other hand, Mr. M.Naga Raghu, the learned counsel for the mother argued that the mother was having more concern towards the child and in order to protect the child from the clutches of the father, she has taken steps not to give custody of the child to the father during COVID period and that she was apprehending that the father would commit homosexual acts upon the child. He would further contend that in order to safeguard the child, the mother filed complaints before different police stations, but, however, the petitioner being a highly influential person in the society got managed all the cases in getting the reports in his

favour. The learned counsel further contended that the mother took the child to the hospital and also made audio and video recordings and his private parts were photographed only in the interest of the child. He would further pray that even if this Hon'ble Court comes to a conclusion that the mother is guilty of disobeying the orders of this Hon'ble Court, she may be pardoned and requested to take a lenient view since the interest of the child is paramount important and what all the actions done by her are in the welfare of the child only and that the mother tenders unconditional apology.

8 Now the points that arise for consideration in this Contempt Case are:

- i. Whether the mother has committed willful disobedience and flouted the orders of this Court? And if so, is she liable for contempt?
- ii. In the interest of child should the custody of the child be shared by both the parents? And if so, how the sharing pattern schedule is to be fixed?

9 The second point is framed at the request of both sides to consider the sharing of the child. In the process of deciding as to how the child custody to be shared by the parents.

10 Earlier the family Court has made an arrangement and accordingly passed orders. The interaction which the Family Court had with the child on 06.06.2019 is extracted hereunder:

“Minor child was called into the chambers. He entered into chamber with a smile and sat before me. Child was asked with whom he is staying and whom did he likes most. Child answered that he is staying with his mother and he likes his mother first and secondly he likes his father. Child was asked whether he wants to go along with his father. Then the child said he is not ready to go to his father as he was told by his mother that his father i.e. petitioner did bad things against him. Then this Court asked did he remember any of such incidents. Then minor boy said that he was told by his mother but he did not remember any such incidents. Minor boy is so active and stated about his school activities and friends. Father of the minor child was called into the chambers. Minor boy went to the father and gave a hug and kiss on the request of his father. Minor boy also told to his father that he wants to go to South America. Minor boy also told that he is

scared of the dog in the house of the petitioner. When the petitioner invited the child to his house he said that he will come but he will go whenever he wants to see his mother. Petitioner also gave a word to the minor boy that he can go to his mother whenever he wants to see her. Later mother of the child was called into the chamber. Boy was so active and shared about his holiday activities in the presence of his mother.”

11 Upon examining the movements of the child, the trial Court is of the opinion that the minor boy has no sort of fear to go near to his father and the way of sitting on the lap of his father indicates that he is not afraid of his father.

12 On 21.12.2018 in CRP No.4055 of 2018, Hon’ble Sri Justice Raghavendra Singh Chauhan, having concern towards the child, had interacted with the child in his High Court chambers. The interaction of his Lordship with the child is extracted hereunder:

“This Court had an occasion to interact with Agasthya, a five year child. Agasthya came with father, the respondent. Even before entering the chamber, Agasthya wanted his father to come with him into the chamber. Therefore, this Court permitted Mr. Tipirneni Harsha to accompany the child into the chamber.

During the interaction, Agasthya was absolutely comfortable in the company of his father. This Court asked Agasthya about his age, about the school that he goes to, about the friend he has in his class. This court also asked him whether he goes to the school by bus or by car. He informs the Court that he goes to the school by car. He also informs the court that he is taken to the school, at times, by his father, and most of the times by the driver. In his demur, there is nothing to suggest that Agasthya is uncomfortable in the presence of his father, or frightened, or even tortured by his father. Agasthya was rather active as he would play with the cushions which are kept in the chamber. He was also courteous when he was offered biscuits in the chamber. He was articulate to inform this court that he is suffering from a mild cold for which his father is given him medicines dutifully. Thus Agasthya is a bright, intelligent and articulate child.”

13 Upon examining the child, his Lordship did not form any adverse opinion about sharing custody of the child by the father.

14 This Court while disposing of the Civil Revision Petition No.1556 of 2019, after verifying the records and after hearing both sides, passed an elaborate order keeping in mind about the rights of both the parents upon the child and since the interest of the

child is paramount consideration and at the same time the child also shall not be deprived of having love and affection of both the parents, the sharing was accordingly ordered which went on smoothly.

15 It is pertinent to note that even during the COVID – 19 lockdown period – March 2020 onwards also the parents shared the custody of the child as per the schedule. During the COVID period, the mother did not allow the child to visit his father. It cannot be said that the father could be careless towards not only himself but also towards the child by exposing to Corona virus. It is further strange to accept the behaviour of the mother that on one hand she takes shelter of Corona virus for not sending the child to his father but on the other hand she took the child to police stations, hospital for examining his private parts and made serious allegations against the father that he has committed sexual assault upon the child. The medical examination reports did not support the said allegations. All inquiries and reports by the police of various police stations, indicate that no such act has been committed upon the child. But on the other hand, the mother not only violated the orders of this Court in the Civil Revision Petition but also her acts mentioned supra are unwarranted.

16 It is surprising to believe the version of the mother that on one hand she says that she is having more concern towards the welfare of the child and trying to keep away the child from the father and on the other hand and she is willing to continue the sharing of the child custody. Both pleas are contradictory to each other and her stand is inconsistent. So it can safely held that the plea of the mother as a lame excuse.

17 On 24.7.2020, the learned counsel for the mother, during the pendency of the Contempt Proceedings, upon instructions from his client, requested the Court to increase the child custody by one more day in favour of the mother. This Court considered the said request and accordingly fixed the schedule in the interest of the child as it is paramount consideration as “...Accordingly, the child shall be in the custody of the mother from Thursday evening to Sunday evening and from Sunday evening to Thursday evening, the custody of the child shall be with the father.” Thereafter, till date the sharing of the custody of the child is smooth. This request of increasing was made on 24.7.2020 much after the alleged incident of 12.6.2020, 25.5.2020 has happened where the mother accuses father of committing immoral acts upon the child. She has taken nude photos of the child and also took him for medical examination. This kind of inconsistent pleas of the mother leaves this Court to draw an adverse inference against her. She cannot deprive the child from having love and affection of the father.

18 On 27.11.2020 the learned counsel for the mother specifically indicted that if the custody of the child is increased by one day from the present schedule in favour of the mother, she will be happy. However, later by way of written arguments, the mother insists only visitation rights to be given to the father. This kind of inconsistent mindset cannot be appreciated by this Court. Further, upon the request of the learned counsel for mother to have an interaction with the child, this Court considered the request and fixed 01.12.2020 around 11.30 AM for interaction with the child and called for proposal if any regarding sharing of child custody.

19 In pursuance of the order dated 27.11.2020, both the counsel on at 01.12.2020 at 11.30 AM along with the child Agasthya visited my residence office for interaction with the child. This Court has interacted with the child for some time and found that he is brilliant and has quiet clarity of what he thinks and what he does. When asked as to what he would like to become in future, he stated that he is interested in becoming a scientist and an astronaut. When this Court asked the learned counsel to be present in the chamber and asked the child to go out, he said that we all will discuss secrets about him in his absence. In the presence of only Sri Naga Raghu, the learned counsel for the mother, when asked about physical abuse, the child said that he was not subjected to any physical abuse. In the process of interaction, he expressed his willingness to stay with both the parents and it is his wish that both the parents stay under one roof along with him. He also stated that his father has arranged Sanskrit tuition at his residence at Tarnaka and he knows four languages i.e. Telugu, Hindi, English and Sanskrit. Daily morning his father wakes him up by 7.00 AM and prepares him for attending virtual classes during the pandemic period. He is comfortable with his father at their residence and he plays football with his father and tennis with his coach and he also does cycling within the premises. He further stated that he is comfortable with his mother also at her residence in Vikrampuri. But other than his mother, there is no one to play with him and when she is out, he will spend time watching television and reading some magazines by himself. His grandfather does not spend time with him. When his mother goes out for shopping, he feels lonely at home. He misses his classes on and off when he is with his mother as both wake up

late, some times around 10.00 AM. He volunteered to say that his mother wanted him to speak against his father, which he earlier did and he again volunteered saying that hereafter he will speak truth only and he apologized for having said so against his father. He said if something can be done making both parents live with him together under one roof, he will be happy.

20 After interaction with the child, since he has expressed his wish that he would like to stay with both the parents under one roof, this Court feels sorry for the unfortunate situation. However, since the child has expressed that he is comfortable with his father and also with the mother, in view of the same, considering the request of the mother, this Court considers that the sharing pattern may be fixed as indicated in the order dated 24.7.2020 and this Court feels that the same need not be changed. Since there was interaction with the child by the Judge of the Family Court, Hon'ble Sri Justice Raghavendra Singh Chauhan and also myself, I strongly feel that there should be an end to this litigation and exposing the child to the Courts and to the allegations may not be just. There are much better places where the child should visit but definitely not police stations, courts and hospitals.

21 It can be seen from the record that so many advocates viz., Sri L.Ravichander, Sri Sripada Prabhakar, Smt. Puruhota Lodha Sri Adnan Osman Shaheed appeared on behalf of the mother all through and she changed them and finally now Sri M. Naga Rahu. Of course, she has a right to change the counsel of her choice from time to time, but the attitude of constantly changing the counsel appears that her thinking towards legal advice and the legal proceedings is unstable. It is also pertinent to note that the mother

even filed Transfer CMP No.229 of 2019 before this Court making allegations against the Family Court Judge for granting child custody to father and prayed to transfer the case from one Court to another Court, which was dismissed.

22 The Supreme Court in **VIVEK SINGH V. ROMANI SINGH**¹ (in Civil Appeal No.3962 of 2016, dated 13.02.2017), held that both parents are entitled to have custody of the child. The child cannot be denied his legitimate right of having company of his mother and father and also the child cannot be deprived of his right to have their love, affection and care.

23 The Hon'ble Supreme Court in **GAURAV NAGPAL V. SUMEDHA NAGPAL**², set out the principles in relation to the custody of minor child in certain terms. The Hon'ble apex Court held that welfare of the minor child is the first and paramount consideration and in order to determine child custody, the jurisdiction exercised by the Court rests on its own inherent equality powers where the Court acts as '*Parens Patriae*'. The Hon'ble apex Court also held that 'children are not mere chattels nor are they toys for their parents. Absolute right of parents over the destinies and the lives of their children, in the modern changed social conditions must yield to the considerations of their welfare as human beings so that they may grow up in a normal balanced manner to be useful members of the society and the guardian court in case of a dispute between the mother and the father, is expected to strike a just and proper balance between the

¹ (2017) 3 SCC 231

² (2009) 1 SCC 42

requirements of welfare of the minor children and the rights of their respective parents over them.’

24 Though number of Judgments are cited by the learned counsel for the mother on the point that in the matters of custody welfare of minor is paramount consideration, it is not necessary to refer to each and every decision as this legal position is well settled by the Hon'ble Supreme Court in catena of decisions. The other arguments and citations which relate to criminal procedure are not relevant to the facts of the case.

25 The Hon'ble Supreme Court in ***Nil Ratan Kundu v. Abhijit Kundu***³ set out the principles governing the custody of minor children in paragraph 52 as follows:

“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 custody of minor, a Court of law should keep in mind relevant statutes and the rights flowing therefrom. But such cases cannot be decided solely by interpreting legal provisions. It is a humane 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”.

26 A parent cannot be a guest in the life of their child. If visitation rights only are granted for limited hours, it may not be sufficient for the child to have comfortable time with the father or mother, whoever may be the case. The wider the gap, the bonds get broken quicker and the child is left confused and ends up

³ (2008) 9 SCC 413

believing this. Such acts of any parent in separating a child from the other parent should be nipped in the bud otherwise the separated parent ends up becoming a guest in the life of the child. Overnight custody must be encouraged wherever possible and mere meeting and spending time with the parent for couple of hours in court premises, hotel, theatre, Mall, park etc., under the supervision of other parent or relative will not serve any purpose of visitation as the child will be under psychological pressure and will not be comfortable.

27 From the written arguments filed by the learned counsel for the mother, it can be seen that in Para No.49 he requested this Hon'ble Court that in the interest and welfare of the minor child if the Hon'ble Court feels it is necessary to examine the child, by examining the child the Hon'ble Court can come to better conclusion with continuation of the custody of the child as per his wish. Therefore, this Court is inclined to interact with the child before passing the final order in this Contempt Case.

28 This Court is conscious of the parameters to decide a Contempt Case. Since the rights of the child are involved and interest of the child is paramount important, this Court believes that "Laws Are Made For Citizens And Citizens Are Not Made For Laws", in order to put a quietus to the litigation between father, mother and child, this Court while stepping ahead, considering the impact the growing child would have against his litigant parents, the sharing pattern is decided.

29 With regard to the violation of the orders of this Court, this Court is of the considered view that the mother / contemnor has

flouted the orders of this Court dated 13.12.2019 in Civil Revision Petition No.1556 of 2019 and hence she is guilty of contempt. However, since the mother expresses her unconditional apology and prayed for pardon, this Court takes a lenient view against her. She shall keep standing till the end of the Court proceedings of this day.

30 (A) As stated supra, since both parties have agreed for sharing the custody of the child, this Court directs the sharing shall be in principle and confirms the sharing as requested by the mother and as fixed by docket order dated 24.7.2020, which is reiterated as under:

(i) *The child shall be in the custody of the mother from Thursday evening to Sunday evening and from Sunday evening to Thursday evening, the custody of the child shall be with the father.*

(ii) *Apart from the sharing the custody of the child as indicated above, in the event of any festival falling on one day, the child shall stay with the parent upto 4.00 PM and overnight with the other parent. On the next day morning the child shall go back to the parent having the custody as per the schedule. In the event of festivals falling for two days, in such case, one day each shall be shared by both the parents. In the event of any functions or any occasions in the family of the parent not having custody, if mutually agreed, the child can attend the function and if so required can stay overnight with the parent.”*

30 (B) This Court further directs both the parents as under:

(i) To win over each other, the parents shall not use the child as a pawn against each other.

(ii) The parents should not poison the mind of the child. The child shall not be given mobile phone. He can use the mobile phone only under parental guidance.

(iii) Both mother and father shall have the custody of the child during vacation equally. During vacations if the mother and the child intend to go on domestic or international trip, the father shall make their travel and stay arrangements and bear with all such expenses.

(iv) The parties are strictly prohibited from taking obscene photos or videos of the child as well as audio recordings. All the existing photos, C.Ds and videos should be destroyed and they shall not be used hereafter.

31 The Contempt Case is accordingly ordered. In consequence thereof, no orders need be passed in I.A.Nos.1 and 2 separately and accordingly they are dismissed. Other miscellaneous petitions, if any, pending in this Contempt Case shall stand closed.

JUSTICE T. AMARNATH GOUD

Date: 04.12.2020.

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