

**IN THE COURT OF SH. DHARMENDER RANA,
ADDL. SESSIONS JUDGE-02, NEW DELHI DISTRICT**

In CrI. Appeal No.14/2021
Case No. 78/2021
CNR No. DLND01-004736-2021

Sajna Devi

S/o Late Sh. Savant Ram
R/o Village Chardara, Post Chardara,
Tehsil Kotputli, Chhardara, Jaipur,
Rajasthan-33105.

Presently Residing at:

Kh. No. 201, Flat No. 4,
Second Floor, Mangu Mohalla,
Gullu Ki Building, Ghitorni,
Vasant Kunj-Delhi

... Appellant

Versus

State of (NCT of Delhi)

... Respondent

Appeal received on assignment	: 24.07.2021
Arguments on petition concluded	: 29.09.2021
Date fixed for pronouncement	: 01.10.2021
Date of pronouncement	: 01.10.2021

AND

In CrI. Appeal No.16/2021
Case No. 57/2021
CNR No. DLND01-004600-2021

Ramanand Rangera

S/o Late Sh. Laduram Rangera
R/o Narayanpur Road
Todiya Ka Bass Road, Bansur
Alwar Rajasthan-301402.

... Appellant

Versus

Child Welfare Committee
(District South)

... Respondent

CA No. 14/21
Sajna Devi v. State
CA No. 16/21
Ramanand Rangera v. CWC

Appeal received on assignment	: 23.08.2021
Arguments on petition concluded	: 29.09.2021
Date fixed for pronouncement	: 01.10.2021
Date of pronouncement	: 01.10.2021

ORDER

1. By way of the instant common order, I propose to dispose off two separate appeals moved u/s 101 of the Juvenile Justice Act impugning order dated 02/07/2021 passed by the Child Welfare Committee, South District (hereinafter referred to as 'CWC').
2. Briefly stated : Smt. Rajesh Devi (now deceased) was married to Sh. Susheel Kumar Arya and out of the wedlock, two kids namely X, aged about 3½ years and Y, aged about 5 months were born (pseudonym of the kids is used not to disclose the identity of the kids). A matrimonial discord arose between Smt. Rajesh Devi and Sh. Susheel Kumar Arya. Smt. Rajesh Devi, mother of the kids was found dead in mysterious circumstances and the minor kids X and Y were also found unconscious with burnt marks and consequently, two FIRs regarding the said incident i.e. FIR No.150/2021 and 151/2021 was registered with PS Vasant Kunj. Sh. Sushil Kumar, father of the above mentioned kids is reported to be in J/C in the above-said FIR. Since the mother of the children was dead and the father was in jail, consequently, the children were produced before CWC and CWC order dated 02/07/2021 entrusted the custody of the above-said children X and Y to Children's Home.
3. Aggrieved by the order of CWC Smt. Sajna Devi (paternal grandmother of the children X and Y) filed appeal bearing No.14/2021 and similarly, Sh. Ramanand Rangera (maternal grandfather of the kids) filed appeal bearing no. 16/2021 seeking the custody of children X and Y.

4. On behalf of Smt. Sajna Devi, it was forcefully argued that since the kids were already residing with her, she, being the paternal grandmother, is entitled as a matter of right for the custody of kids. It is submitted that CWC has erred by granting the custody of the kids to Childrens Home
5. On the other hand, Sh. Ramanand Rangera maternal grandfather of the kids, seriously contested the claim of Smt. Sajna Devi and claimed himself to be the most suitable person for the custody of children, namely X and Y. It is submitted that Smt Sajna Devi alongwith her family members vanished from the scene, in order to avoid the legal action emanating from above-said FIRs No.150/2021 and No.151/2021, leaving the children in an abandoned and pitiable condition. It is argued that he is the best person to take care of the kids.
6. I have heard and considered the submissions made by Ld. Counsel for appellants and Ld' APP and also gone through the material available on record.
7. In **Mausami Moitra Ganguli vs. Jayant Ganguli, (2008) 7 SCC 673**, it was observed by Hon'ble Apex Court as under :

"19. The principles of law in relation to the custody of a minor child are well settled. It is trite that while determining the question as to which parent the care and control of a child should be committed, the first and the paramount consideration is the welfare and interest of the child and not the rights of the parents under a statue. Indubitably, the provisions of law pertaining to the custody of a child contained in either the Guardians and Wards Act, 1890 (Section 17) or the Hindu Minority and Guardianship Act, 1956 (Section 13) also hold out the welfare of the child as a predominant consideration. In fact, no statue, on the subject, can ignore, eschew or obliterate the vital fact of the welfare of the minor.

20. The question of welfare of the minor child has again to be considered in the background of the relevant facts and circumstances. Each case has to be decided on its own facts and other decided cases can hardly serve as binding precedents insofar as the factual aspects of the case are concerned. It is, no doubt, true that father is presumed by the statutes to be better suited to look after the welfare of the child, being normally the working member and head of the family, yet in each case the court has to see primarily to the welfare of the child in determining the question of his or her custody. Better financial resources of either of the parents or their love for the child may be one of the relevant considerations but cannot be the

sole determining factor for the custody of the child. It is there that a heavy duty is cast on the court to exercise its judicial discretion judiciously in the background of all the relevant facts and circumstances, bearing in mind the welfare of the child as the paramount consideration."

8. Further, in **Indira Khurana v. Prem Prakash, 60(1995) DLT 633**, Hon'ble Delhi High Court held as under:-

"10. It goes without saying that when the grant of custody is concerned, ascertainment of wishes of the children, especially when they are at an age to make an intelligent preference is a relevant and germane consideration. In none of the cited cases, the question of visitation rights only was involved. In the cited cases, the Court was considering the grant of custody and while doing so, had also made provision for visitation rights. It is also significant that in these cases, visitation rights were granted to the spouse who did not have the custody. This is because there should be very strong reasons to deny visitation rights to any of the spouse. These could be cases say where the grant of visitation rights could be injurious to the mental and physical health of the children.

11. The Guardian Judge while exercising his judicious discretion in granting visitation rights can certainly ascertain the wishes of the children by meeting them. In fact, it would be desirable to do so. However, omission to do so in case of visitation rights cannot be fatal especially when there is sufficient material on record available otherwise, supporting grant of visitation rights. This is so in the instant case. The memorandum of understanding had been entered into on the 6th day of December, 1993. The petitioner has not pointed out anything attributable to respondent after 6.12.1993, which would render grant of visitation rights to respondent injurious to the mental and physical health of the children. The petitioner in terms of memorandum as willing to share the vacation and give visitation rights to the respondent. Moreover the expression of wishes of the children is very often conditioned by the persuasion of the party in whose exclusive custody the children have been. The Court, therefore, while ascertaining the mind of the children, has to be conscious of the fact that what the children say could be the reflection of the views of the estranged spouse and induced by him/her."

9. Hon'ble High Court of Delhi in the case titled *Geeta Vohra @ Geeta Chopra vs Nitin Chopra (CONT. CAS(C) 1017/2019 & CM Nos.7482/2020 and 12348/2020 D.O.D 18 September, 2020)* has observed as under :-

"There cannot be a doubt on the proposition of law that in matters relating to custody or guardianship or visitation rights, the paramount consideration, while adjudicating the matter, is the welfare of the child and the Court in such matters exercises *parens patriae* jurisdiction. This jurisdiction, which is of ancient origin, has been aptly described by Lord Eldon L.C. as under :-
"it belongs to the King, as *parens patriae*, having the care of those who are not able to take care of themselves, and is founded on the obvious necessity that the law should place somewhere the care of individuals who

cannot take care of themselves, particularly in cases where it is clear that some care should be thrown round them."

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Relevant in this regard would be to quote a passage from *Diane Q. Brown v. George C. Brown*, 362 SC 85 (2004), which is as follows :-
"In determining the best interests of the child, the Court must consider the child's reasonable preference for custody. The Court shall place weight upon the preference based upon the child's age, experience, maturity, judgment, and ability to express a preference". S.C. Code Ann. § 20-7-1515 (Supp. 2003); see also *Moorhead v. Scott*, 259 S.C. 580, 585, 193 S.E. 2d 510, 513 (1972) (holding the wishes of a child of any age may be considered under all the circumstances, but the weight given to those wishes must be dominated by what is best for the welfare of the children). The significance to be attached to the wishes of children in a custody dispute depends upon the age of the children and the attendant circumstances. See *Smith v. Smith*, 261 S.C. 81, 85 : 198 S.E. 2d 271, 274 (1973). The child's preference will be given little weight where the wishes of the child are influenced by the permissive attitude of the preferred parent".

10. The issue of deciding the custody of two minor kids, one of them is aged about 5 years and other one is aged about five months, is a very sensitive exercise of discretion and the same can not be mechanically or perfunctorily decided. The kids on account of their tender age require special care, attention and affection. An ounce of personal love and care for the wholesome growth of the minor kids is worth more than tons of professional services rendered at any public institution. I fail to understand as to why the Children Home was chosen by Child Welfare Committee over the grand parents while deciding the custody issue of the minor kids in the instant matter. In my considered opinion, even the best of care and attention provided in a formal, institutionalized and alien environment of a Children Home cannot be an appropriate substitute for personal love, care and affection of the grand parents towards their young children, who are evidently in need of special care and affection. Personal care and affection

is not only desirable for the wholesome growth of the kids but it is also essential for helping the kids overcome the grief of losing their mother and company of their father. The younger infant all the more needs to be in personal care of the grand parents as he is not even in a position to express his agony and grief.

11. Under these circumstances, I am of the considered opinion that the decision of Child Welfare Committee entrusting the custody of the kids to the Children Home is erroneous and cannot be sustained.

12. Having observed that, I am now required to deal with the issue of custody of minor kids. In my considered opinion, the custody of the minor kids should be entrusted to appellant Ramanand Rangera; maternal grandfather (Nana) of the kids and not to appellant Sajna Devi; paternal grandmother (Dadi) for the following reasons :-

1. During my personal interaction with the elder child in my chamber, the elder child expressed his unambiguous inclination to live with his maternal grandfather in comparison to his paternal grandmother.

2. Paternal grandmother is reported to be an aged widow with apparently no stable source of income.

3. During the course of investigation in case FIR No.150/2021 and 151/2021 against the son of appellant Sajna Devi, it was reported that the entire family from the paternal side vanished to avoid the clutches of law abandoning the young kids in pitiable situation.

13. As a cumulative effect of the aforesaid discussions, It is hereby directed that the custody of both the young kids may immediately be transferred to their maternal grandfather (Nana) Ramanand Rangera. It is further directed that the paternal grandmother (Dadi) Smt. Sajna Devi shall be at liberty to meet both her grand sons and maternal grandfather shall ensure that both the kids can meet their paternal grandmother/paternal side family members on fourth Sunday of every month w.e.f 12.00 noon to 2.00 p.m before the Ld.

Duty Magistrate, Patiala House Courts Complex, New Delhi. In case, for any reasons on account of some inevitable circumstances, if either of the parties is not in a position to come down to the court, a 15 days' advance notice shall be served through registered post on the opposite side and thereafter the meeting shall accordingly be scheduled for the next available Sunday.

14. With these observations, the appeal filed by Smt. Sajna Devi (paternal grandmother) stands dismissed. However, the appeal filed by Sh. Ramanand Rangera (maternal grandmother) stands allowed.

15. Trial Court Record be sent back with the copy of this order for necessary information and compliance.

16. Copy of this order be given dasti to the parties.

17. File of both the above appeals be consigned to the Record Room after due compliance.

18. Instant order be uploaded on the court website immediately.

**Announced in the open court
On 01.10.2021.**

**(Dharmender Rana)
ASJ:NDD:PHC:NEW DELHI**