

**Madan Vs. Ravindra**

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**SooperKanoon Citation :** [sooperkanoon.com/1049395](http://sooperkanoon.com/1049395)

**Court :** Madhya Pradesh

**Decided On :** Oct-01-2012

**Appellant :** Madan

**Respondent :** Ravindra

**Judgement :**

1 HIGH COURT OF MADHYA PRADESH; JUDICATURE AT JABALPUR, JABALPUR M.Cr.C. No.4626/2009 Madan and another Versus Ravindra and another \*\*\* Shri Manish Datt, Senior counsel with Shri Yogesh Soni, Advocate for the petitioneRs.None for the respondent No.1, though served.

Shri Vinod Faujdar, GA for the State.

\*\*\* O R D E R 01.10.2012 The petitioners have invoked extra ordinary jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, being aggrieved by order dated 27.4.2009 passed by learned Special Judge (Atrocities)/Additional Sessions Judge, Chhindwara in Criminal Revision No. 245/2008 whereby the order dated 29.10.2008 passed by the Sub Divisional Magistrate, Chhindwara in Criminal Case No. 11/2008, was affirmed.

Facts, in short, giving rise to this petition are that the petitioners are parents of deceased Nirmala.

Her marriage was performed with respondent No.1 in the year 2000.

Out of the wedlock of respondent No.1 and deceased Nirmala a female child, namely Yukhta was begotten in the year 2002. Deceased Nirmala is said to have been died on 15.12.2007 due to encephalitis. After the death of Nirmala her female child Yukhta was brought by these petitioners with them. It is further pleaded that a civil suit in regard 2 to taking the possession of Yukhta is pending before the Civil Court. In the meantime, respondent has filed a petition under Section 98 of the Code of Criminal Procedure before the Sub Divisional Magistrate, Chhindwara for directing the petitioners to hand over Yukhta to the respondent. After hearing both the parties, learned Sub Divisional Magistrate has passed the order dated 29.10.2008 and thereby he directed the petitioners to hand over Yukhta to the respondent. Being aggrieved by the aforesaid order dated 29.10.2008, petitioners filed a revision petition before the Sessions Court and same was dismissed on 27.4.2009. Hence this petition.

Learned counsel appearing on behalf of the petitioners has submitted that the trial Court as well as Revisional Court have committed illegality in passing the impugned orders against these petitioners without recording the conclusion that Yukhta was abducted by unlawful detention for any unlawful purpose.

It is further submitted that a civil suit filed under Sections 7 and 12 of Guardian and Wards Act, the custody of Yukhta has given to these petitioners vide order dated 31.8.2009 passed by V Additional District Judge (Fast Track Court) Chhindwara in M.J.C. No.28/2009, therefore he prays for quashment of order passed by the Courts below.

None for the respondent though served.

Learned counsel appearing on behalf of the State supported the orders passed by the Courts below and prays for dismissal of the petition.

I have perused the impugned orders passed by the Courts below alongwith material placed before the Sub Divisional Magistrate, Chhindwara. It is undisputed on record that deceased Nirmala was the 3 daughter of these petitioners and Yukhta is her daughter. It is also on record that Yukhta was taken in possession by these petitioners at the time of final rites of the deceased Nirmala. Being a grand

parents, it cannot be said that they took her in their possession for unlawful purpose. Courts below have committed illegality in not considering the material ingredient of Section 98 of Cr.P.C. wherein specifically pleaded that the abduction or unlawful detention of a woman or a female child under the age of eighteen years for any unlawful purpose. Nothing is on record to show that Yukhta was abducted or kept in unlawful detention for any unlawful purpose. Mere female child Yukhta remains continued in custody of her grand parents after the death of her mother would not amount to unlawful detention for any unlawful purpose. It is also on record that ultimately Civil Court has passed the order in favour of petitioner No.2 Smt. Ganga, grand mother of the Yukhta to retain Yukhta till attaining her to age of majority.

Considering the aforesaid facts and circumstances of the case, I am of the view that if the orders passed by the Courts below shall remain continued will amount to harassment as well as amount to abuse of process of law.

Thus, the revision petition succeeds. The orders passed by the Court below, is hereby quashed.

(G.S. Solanki) JUDGE ravi

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