

Ramesh Vs. Laxmi Bai

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Court : Madhya Pradesh

Decided On : Jul-17-1996

Reported in : II(1997)DMC125

Judge : Rajeev Gupta, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 97

Appeal No. : Criminal Revision No. 577 of 1996

Appellant : Ramesh

Respondent : Laxmi Bai

Advocate for Def. : None

Advocate for Pet/Ap. : Atul Awasthy, Adv.

Disposition : Petition dismissed

Judgement :

Rajeev Gupta, J.

1. Petitioner Ramesh, who claims to have divorced his non- petitioner/wife Smt. Laxmi Bai, has filed this revision petition challenging the correctness and propriety of the order dated 9.7.1996, passed by Additional Sessions Judge, Baloda Bazar, Raipur in Criminal Revision No. 210/95.

2. S.D.M., Bhatapara vide order dated 20.2.1995 dismissed the application, filed by non-petitioner/wife Laxmi Bai, under the provision of Section 97, Cr.P.C, praying for a direction to petitioner-husband Ramesh, for the production of their minor child, Amit Kumar, in the Court. Frustrated mother Laxmi Bai then approached the Court of Sessions, by filing a revision petition against the dismissal of her application by the S.D.M. The Revisional Court, on considering facts in its entirety, while allowing the revision petition directed S.D.M., Bhatapara for issuing a search warrant for the production of minor child Amit Kumar, in the Court. The Revisional Court further directed that the minor child Amit Kumar, on his production in the Court, be allowed to go and remain with his mother, Laxmi Bai.

3. Mr. Awasthy, the learned Counsel for the petitioner, contended that the Revisional Court has transgressed its limits, as no such order could have been passed by a Criminal Court, in the proceedings, initiated under Section 97, Cr. P.C.

4. While considering the question relating to the custody of a minor child, the interest and welfare of the child should always be the paramount consideration. The natural and ideal arrangement, from the child's point of view, is that the child lives with his father and mother both. As mother and father supplement each other in looking after and in bringing up their child, none of them can substitute the other's role. In the unfortunate situation of the father and mother falling apart, the Courts are forced to perform the unhappy task of making a choice between the two and for entrusting the minor child in his/her custody. No hard and fast rule of universal application, in that behalf, can be laid down. The choice between father and mother would depend on the facts of each case.

5. On perusing the Revisional Court's order, it is found that petitioner Ramesh, after divorcing his first wife, has married again and his second wife has given birth to a female child also. From the above developments, it is apparent that minor child Amit Kumar, at present, is in the custody of his step-mother. Though there is nothing wrong in allowing a child to remain in the custody of his step-mother, but adopting such a course during the life time of his real mother will never be in the interest of the 'child'. The petitioner, in the revision petition, has not denied the fact

of his second marriage.

6. From the above narration of facts, it emerges out that the impugned order will result in the mother and child living together. Allowing the child to remain with his mother will help child Amit Kumar in his normal, physical and mental development.

7. For the foregoing reasons, the impugned order, passed by the Revisional Court, even if the same does not come within the ambit of Section 97 Cr.P.C, deserves to be maintained, as this Court is of the opinion that the directions, contained in the impugned order, are in the interest of minor child Amit Kumar.

8. Consequently, the revision petition fails and is hereby dismissed summarily.

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