



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**FAO No.877 of 2025
Reserved on 09.04.2026
Date of decision: 21.04.2026**

.... Appellant

Versus

.... Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MRS. JUSTICE RAMESH KUMARI**

Present : Mr. Salli Bali, Sr. Advocate with
Mr. Jaiveer Bali, Advocate,
Ms. Archana Chauhan, Advocate and
Ms. Aarti Singh, Advocate for the appellant.

Mr. Sunil Chadha, Sr. Advocate with
Mr. Kunal Muthreja, Advocate and
Mr. Tara Dutt, Advocate for the respondent.

RAMESH KUMARI, J.

1. Present appeal has been filed by the appellant (hereinafter referred to as wife) against impugned order dated 30.05.2024 whereby, petition filed by her under Section 7, 9 and 25 of the Guardians and Wards Act, 1890 read with Section 6 of the Hindu Minority And Guardianship Act, 1956, had been dismissed by the learned Additional Principal Judge, Family Court, Gurugram.
2. Learned trial Court vide impugned order declined to handover the custody of the minor child to wife and the minor was allowed to remain in the custody of father/ respondent (hereinafter referred to as husband) and the



wife had been allowed visitation rights to meet the minor at the house of the father on second and fourth Sunday from 3:00 pm to 5:00 pm .

3. The case pleaded by the wife is that her marriage with husband, was solemnized on 01.11.2021 in New Delhi. They cohabited together in Faridabad till May 2022 and thereafter they shifted to Gurugram. She has fulfilled all the responsibilities being wife and daughter-in-law. A male child was born on 17.08.2022 from their wedlock. She was treated with physical and mental cruelty by the husband. She was given beatings. She tolerated the bad behaviour of the husband and his mother. The husband is habitual of having late night parties. On 22.09.2023, at around 7:30 to 8:00 PM, when the wife had been breast feeding the child by holding the child in her lap, the husband threw the child on bed and she was thrown out of her matrimonial home. She begged for custody of the minor child but to no avail. She had no place for her residence and she went to the place of her friend Nancy at Gurugram who was staying as a paying guest. Thereafter, the wife tried to call her husband but he paid no heed. He hurled abuses upon her. She was threatened with dire consequences. She was not allowed to meet her child. She kept on calling her husband but she was not allowed to meet her child. On 27.09.2023, the wife along with her family members went to the house of husband to meet with the child but she was not allowed to enter the house by husband and by other members of his family. She found herself helpless and dialed at number 112 for police. They were called to Police Station. There the wife was forced to sign on blank papers by the police officials. On 18.10.2023, the

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wife lodged a written complaint at the police station against her husband regarding ill treatment and torture. Wife tried her level best to contact the child but in vain. The wife moved application under Section 97 of Code of Criminal Procedure Code to Sub Divisional Magistrate, Tehsil Ratia, District Fatehabad for initiating action against the husband. The SDM issued search warrant on 25.10.2024 vide Ex. PW1/2 for search of minor. The husband filed CWP No.24956 of 2023 in this Court against the order Ex.PW1/2. Vide order dated 16.02.2024, Ex. PW1/3 (Annexure P-2), the custody of minor child was ordered to be handed over to mother. The husband challenged order dated 16.02.2024 Ex. PW1/3 by filing LPA i.e. LPA No.607 of 2024. Vide order dated 07.03.2024 (Ex.PW1/4) the said LPA was disposed of with liberty to the wife to file petition before the competent Family Court seeking therein custody of minor child. She was also granted liberty to file application for interim custody of the minor and the Family Court was directed to decide the matter within four months. It is further alleged by the wife that at the time of mediation proceedings in this Court, she was allowed meeting with the child. Whenever the child saw the mother, he used to start crying for his mother. The child is deprived of love and affection of the mother. The husband is having the habit of playing cricket match for 6-7 hours. On 07.10.2023, husband had gone to Dubai for 5-6 days. On 19.10.2023, he again went to play cricket match with his friends. On 29.10.2023, the husband was having a cricket match late night party with his friends and colleagues. Husband is habitual of staying out of India. He stayed in Jammu & Kashmir, Nikunj Hotel at



New Delhi and various other places. On many occasions, the husband and his mother went to Canada for 10-15 days each and they left the child at the hands of distant relatives. She alleged that husband is guilty of neglecting the child and prayed that the custody of child be handed over to her.

- 4 The husband filed written reply contesting the petition and raised preliminary objection regarding maintainability, locus standi of the wife to file petition and that the petition having been filed on false and frivolous grounds, the wife is estopped by her own act and conduct and that the petition is filed only to harass him. The husband admitted the marriage and birth of child and that the wife is living separately. The husband denied all other averments. The husband pleaded that during the initial period, both of them enjoyed a harmonious married life. Husband was taking care of every requirement of wife. He fulfilled all obligations of his married life, demands and requirements of his wife as per her wish. The wife never fulfilled her marital obligations. The husband alleged that the behaviour of the wife was intolerable, cruel and filthy towards him. He tried to keep her happy but she was never happy with him. She is habitual of coming late at home. She did not respect the elder family members of the husband. She used to leave the matrimonial home without informing anyone in the family. She pressurized the husband to live at her parental house. The wife and her family members physically assaulted the husband. She insisted that the husband should live separate from his parents otherwise she wanted divorce from him. She demanded Rs.35



lakhs from the husband. He further alleged that wife has no love and affection for the minor child. In March, 2022 the wife without any cogent reason left the company of husband. She always used abusive and filthy language with the mother of husband. In May 2022, the husband along with his family shifted to rented accommodation at Gurugram for enhancing their future prospectus but wife did not mend her ways. In June 2022, the wife again left the company of husband. The husband provided driver to the wife for her comfort but she created disturbance and nuisance with him in front of the neighbours and driver. The husband further alleged that the wife used to consume alcohol and under the influence of liquor, she abused and kicked him. She used to go to *kitty* parties, pubs and *hookah* bars. The husband tried many times to make her understand to fulfill her marital obligations, but she did not mend her ways. On 22.09.2023, she threatened the husband with dire consequences and on 27.09.2023, the wife along with some unknown persons came at the house and staged drama in the building. She has also filed a complaint at Women Police Station, Fatehabad. The husband prayed that the wife is not entitled for custody of minor child.

5. The learned trial Court framed following issues for determination:-
1. Whether the petitioner is entitled for custody of minor child?
OPP
 2. Whether the petition is not maintainable ? OPR
 3. Whether the petitioner is not having locus standi to file this petition? OPR



4. Whether the petitioner is estopped by her own act and conduct from filing this petition. OPR
5. Relief.
6. The wife herself stepped into the witness box as PW1 and in support of averments in the petition, she produced on record the following documents:-
 1. Ex. PW1/1-copy of complaint moved before Women Cell, Ratia, Fatehabad .
 2. Ex. PW ½-Copy of SDM order dated 25.10.2024,
 3. Ex. PW1/3 (which is also marked as Mark-F)-Copy of order dated 16.02.2024 in CWP-24956 of 2024 passed by Hon'ble High Court of Punjab and Haryana,
 4. Ex. PW1/4 (which is also marked as Mark-G)-Copy of order dated 07.03.2024 in LPA-607 of 2024 passed by Hon'ble High Court of Punjab and Haryana,
 5. Ex.PW1/5-Copy of profile of respondent/husband for cricket match,
 6. Ex.PW1/6-Photograph,
 7. Ex. PW1/7-Copy of rent agreement Ex. PW1/7,
 8. Ex.PW1/8-Copy of salary slips,
 9. Ex.PW1/9-Photograph of respondent/husband at cricket match,
 10. Ex.PW1/10-Copy of whatsapp chat with respondent/husband,



11. Ex. PW1/1-Copy of application under Section 12 of Protection of Women from Domestic Violent Act,
 12. Ex.PW1/12-Photographs of petitioner/wife,
 13. Ex. PW-1/13-Account statement of petitioner/wife in which car EMI is deducted,
 14. Ex. PW-1/14-Mobile detail of petitioner/wife photocopy of photo of the parties,
 15. Mark-A-Copy of proof of payment to Mrs. Sneha Shridhar Mishra,
 16. Mark-B-Copy of salary slip of petitioner/wife by Elan Avenue Ltd.,
 17. Mark-C-Copy of bank account statement of petitioner/wife,
 18. Mark-D-Copy of complaint before SHO Police, Fatehabad,
 19. Mark-E-Copy of warrant issued against the respondent/husband on the complaint of petitioner/wife filed before Ratia, Fatehabad,
 20. Mark-F-Copy of order dated 16.02.2024 in CWP-24956 of 2024 passed by Hon'ble High Court of Punjab and Haryana
 21. Mark-G-Copy of order dated 07.03.2024 in LPA-607 of 2024 passed by Hon'ble High Court of Punjab and Haryana,
 22. Mark-H-Copy of call recordings,
 23. Mark-I -Copy of whatsapp chat with respondent/husband.
7. The husband stepped into the witness box asRW-4 and corroborated the written reply in his affidavit Ex. RW4/A. He also examined Anand



Nehural, his office colleague as RW1, Gurmeet Singh, his relative as RW2 and Sandeep Tiwari, driver of his father as RW3. The husband brought on record the following documents:-

- (1) Ex. RW-4/1- photographs
- (2) Ex. RW-4/2-medical documents of petitioner/wife,
- (3) Ex.RW-4/3-copy of bank statement of respondent/husband,
- (d) Ex. RW-4/4-copy of flight ticket from Delhi to Udaipur of the parties,
- (e) Ex. RW-4/5-copy of whatsapp chat,
- (f) Ex. RW-4/6 copy of bank account statement of Pulkit Chowdhry
- (g) Ex.RW-4/7-affidavit under Section 65B of Indian Evidence Act
- (h) Ex. RW-4/8-affidavit of respondent/husband is also marked as,
- (i) Ex. RW-4/9-certificate in favor of the respondent/husband issued by Tulip Infratech Pvt. Ltd.
- (j) Ex. RW-4/9 (which is already marked as Ex. RW-4/6)-certificate under Section 65-B
- (k) Mark-R-4/A-He has also produced copy of FIR bearing No.28.09.2023,
- (l) Mark R-4/B-copy of FIR bearing No. 07.11.2023,
- (m) Mark R-4/C-copy of bill of Amazon of baby articles,
- (n) Mark R-4/D-copy of whatsapp chat



(o) Mark R-4/E-photographs

8. Learned trial Court after perusal of oral and documentary evidence dismissed the petition with direction to wife, that she “ shall have the right to continue having visiting at the house of respondent only on second and fourth Sunday from 3:00 pm to 5:00 pm for having meeting with her child in a cool and calm way ” as mentioned in para No.2 of this order.
9. The reason for declining full time custody of the minor child to the wife is that she is staying in paying guest, her working hours are from 10: 00 AM to 6:30 PM. The wife stayed with her friend as paying guest from 22.09.2022 to 18.10.2023 and did not call husband for inquiring the well being of the child. She has not apprised the Court as to who would keep the child, in case custody of the child is granted to her. She failed to prove that any member of her family is staying with her. Whereas, the husband is staying with his mother, brother and brother’s wife. Besides, the child is also looked after by a *Nanny* and that the atmosphere of the home of husband is more conducive for the child.
10. We have heard learned counsel for the parties and also interacted with both the parties. Both the parties expressed their willingness for shared parenting of the child but both of them are adamant to be primary care giver for the child.
11. Learned counsel for the wife further submitted that the trial Court erroneously declined the full time custody of the child to the wife by holding that she has no time for the child and that, she did not make a call to the husband to know about the welfare of the child and that she is



staying as paying guest whereas being working mother, a woman cannot be divested of her right to take the custody of minor child. It has been submitted that although the wife is staying on rent but in case, the custody of minor child is handed over to her, her mother will stay with her or she can arrange a *Nanny* or any other house help to take care of the minor child when she is away to her office. The mother has economic resources to look after the minor child. The trial Court failed to consider that husband remains out of home and come home at late night. He spends his time in playing cricket and sometimes goes abroad for days together with his mother and in their absence; child is being looked after by his distant relatives. He vehemently prayed that the full time custody of child may kindly be handed over to the wife with visitation rights in favour of husband.

12. *Per contra*, learned counsel for the husband submitted that learned trial Court rightly declined custody of minor child to the mother/wife. She is in habit of creating ruckus over minor issues. She is of habit of consuming liquor and *hookah*. She admitted during his cross examination that before marriage also she was consuming *hookah* and going to pubs. She is following this habit even after marriage and after birth of child. She after leaving the matrimonial home never bothered to know about the well-being of the child. The child is under the safe care and custody of the husband and is being looked after by husband, his mother, brother and brother's wife. He also submitted that the learned trial Court has correctly observed that the wife is staying as a paying guest and that she has no



arrangement for taking care of minor child in her absence when she will be away to her office.

13. Undisputedly, the child was born on 17.08.2022 and as of now the child is 03 years and 8 months of age. Learned trial Court in order to determine whether the mother is entitled for custody of minor child has formulated a number of points and one of the point was whether the wife is staying as paying guest or in a flat. Another point formulated was whether the mother of the wife is also staying in one room flat/paying guest and whether the wife herself left the company of husband on 22.09.2023 or not. One of the points formulated by learned trial Court is that whether the wife is consuming narghile and habitual of taking alcohol or not. The question whether the wife left the matrimonial home on her own or was turned out from the matrimonial home by the husband is not a major factor to be taken into consideration for adjudication of custody matter of the child. The issue is in whose custody the welfare of the child lies and who can be a better primary care giver for the child. Learned trial Court concluded that the wife is staying as a paying guest and her mother is not living with her. Learned trial Court took note of clause 15 of the rent agreement Ex.P1/7 which is reproduced as under:-

“if second party/tenant has any problem regarding Food, cleaning of room, the First Party should be informed immediately.”

On the basis of this condition, learned trial Court correctly came to the conclusion that the wife is not staying in the said one room flat/premises as tenant but as a paying guest. If the wife herself is living as a paying



guest, in order to get the custody of child, she has to prove that the landlord/in-charge/ owner of the premises where she is staying as paying guest is ready to accommodate her child along with care taker but there is no evidence to prove this fact. The mother during the course of cross-examination also admitted this fact by deposing that child of 21 months could not be brought up in a paying guest facility. Moreover, the wife claimed that her mother is staying in the same flat consisting of one room. She has not examined any other witness to prove this fact. She should have examined her mother to prove the fact that she is living with her and is in a position and willing to take care of the child personally or with care taker in the facility (paying guest). In the absence of any such evidence, learned trial Court rightly concluded that wife who is living as a paying guest, has no arrangement for taking care of the child and for this reason, she was not found suitable to be primary care giver and custody of the child was not handed over to her.

14. Learned trial Court also took into consideration the fact that the husband is residing in a flat with his mother, his brother as well as brother's wife. He has four room accommodation and otherwise also, he is providing care and protection of *Nanny* and maid. Thus, there is a whole house hold set up where the child is presently living i.e. father, grandmother, uncle and aunt. There is nothing on record that child is ill-treated by uncle and aunt of the child. If there is more than one member in a family, in that eventuality, if the father stays out of the house late at night or goes abroad



for couple of days in a year, the child still remains under the shade and protection of other family members.

15. In order to disentitle the mother from the custody of the child, the learned trial Court considered the answer of wife when she was asked whether she was habitual of taking drink, *hookah* or not and she answered the question in a positive way claiming that she was consuming *hookah* and going to pubs prior to her marriage and she further claimed that she is not consuming liquor and *hookah* after solemnization of marriage but learned trial Court considered the statement of RW1 Anand Nehural, colleague of the husband to support that even after marriage, the wife is taking liquor, *hookah* and smoking and that she is habitual of messing up with the husband. Even if, for the sake of arguments, it is presumed that the wife is not consuming liquor, *hookah* or smoking, the wife in any case, failed to prove that there will be any care taker of the child, in case, she has to stay late night for official or personal work and in whose hands, she can place the custody of child. For the purpose of grant of custody of the child, the superior and inferior claim of father and mother cannot be considered,, a child cannot be a battle ground for opposing claims of a warring couple. The welfare of the child or the “best interest of the child” is paramount consideration to be kept in mind. Now the question arises what is meant by welfare of child or the or the “best interest of the child”. Reference can be made hereto observation of Hon’ble Apex Court in *Lahari Sakhamuri versus Sobhan Kodali, 2019 AIR SC 2881*, in para No. 43, wherein it is held as under:-



“43. The expression “best interest of the child” which is always kept to be of paramount consideration is indeed vide in its connotation and it cannot remain the love and care of the primary care giver i.e. the mother, in case of the infant or the child, who is only a few years old. The definition of “best interest of the child” is envisaged in Section 2(9) of the Juvenile Justice (Care and Protection) Act, 2015, as to mean “the basis for any decision taken regarding the child, to ensure fulfillment of his basic rights and needs, identity, social well-being and physical, emotional and intellectual development.”

16. Although, Hon’ble Apex Court in *Roxann Sharma vs. Arun Sharma, 2015 INSC 129* observed that under Section 6 of Hindu Minority and Guardianship Act, 1956, custody of minor child below 6 years of age should ordinarily be with the mother, since the mother is *per se* best suited to care for the infant during his tender age. However, the facts of each case and circumstances of each household differ and if one set of circumstance is suitable for custody of child in favour of mother, another set of circumstance may not be suitable for the custody of the child in favour of the mother. Therefore, it cannot be generalized that in every case and situation, the custody of minor child below 6 years of age should be in favour of mother. In *Purvi Mukesh Gada Versus Mukesh Popatlal Gada, (2017) 8 SCC 819*, Hon’ble Apex Court observed that the welfare



principal would take primacy over all other pros and cons in courts decision making process. It was further observed that ‘welfare’ contained broad interpretation and it covers material and physical safety, emotional well-being, education, health, happiness, social interactions and moral welfare of child. In *Smriti Madaan Kansagra Versus Perry Kansagra, (2021) 12SCC 289*, Hon’ble Apex Court held that welfare principle is public interest that stands served with the optimal growth of the children. It is well recognized that children are supreme asset of the nation. The rightful place of the child in the seizable fabric has been recognized in many international covenants, which are adopted in this country as well. Child-centric human rights jurisprudence that has evolved over a period of time is founded on the principle that public good demands proper growth of the child, who are future of the nation. In *Gaurav Nagpal Versus Sumedha Nagpal, (2009) 1 SCC 42*, Hon’ble Apex Court observed that primary concern of the Court is the welfare of child. However, this welfare is not solely determined by financial means or physical comfort. The term ‘welfare’ should be interpreted in its broadest context, encompassing the child’s moral and religious wellbeing in addition to his physical health. The bond of affection must also be considered. In *Lahari Sakhamuri (supra)* the Hon’ble Apex Court held that the factors such as maturity and judgment, mental stability, ability to provide access to schools, moral character, ability to provide continuing involvement in the community, financial sufficiency and last but not the least the factors involving relationship with the child, as opposed to characteristic of the



parents as an individual are to be considered while determining the welfare of the child.

17. In this case, both the parties are ready for shared parenting of the child, but each party wants to be primary care giver. Shared parenting is for the best interest of the child as the presence of mother and father is important for the proper mental, physical and emotional growth of the child. Shared parenting means both the parents take joint decisions for the child and share financial and other responsibilities. This also involves both the parents take joint decisions regarding the health, safety, choice of school, extra-circular activities, social and religious life of the child. The issue of custody of the child is to be decided keeping in view the consideration of the best interest of the child and welfare of the child and not the conflicting or better rights of parents. In the case in hand, both wife and husband are working parents. It is a fact that both the parents being working, cannot be expected to be available round the clock to the child but in their absence, there must be someone to look after and to take care the child. The learned trial Court rightly held that *“she has not apprised the Court as how she is going to keep the child in case, the custody of the child is granted to her. The petitioner is serving in the department from 10:00 AM TO 6:30 PM. There is no time with the petitioner. There is nothing on record that any member of the family is staying with her since 2011.”* On the other hand, the father is residing with his family. He has better accommodation consisting of four rooms than wife, who is staying as paying guest. She has not examined her mother to prove that her



mother shall be available for the child to take care of him in her absence. Considering all these factors, learned trial Court rightly declined to hand over the custody of the child to wife. Therefore, the husband is allowed to be primary care giver of the child. Since the parties are *ad idem* for shared parenting of the child, this Court deems it fit to enhance the visitation rights in favour of the wife. The appeal is disposed of with following modifications to the impugned order:-

1. Wife shall be entitled to keep the child over night thrice in a month i.e. first, second and third Saturday till the evening of following respective Sunday.
2. However, in case, the wife has some official or personal engagement incapacitating her to keep the child, for the abovesaid period, the same can be changed with the mutual understanding of husband and wife for fourth Saturday and Sunday or any other day of the week and the arrangement should be made in such a manner that child is in a position to stay at least three nights in a month with the mother.
3. It is advised that both parents shall mutually agree upon the institution from where the child is to get pre-schooling and school education. Both parents shall also attend the parents-teacher meeting of the child in the said institute.
4. In case, the child is admitted in pre-school, he shall spend half of pre-school holidays with the mother and remaining half with the father and during those days, parents shall make



arrangement that there is someone among their family or care taker to look after the child round the clock and child should not be left alone or in the hands of strangers.

5. It is also advised that the parents will agree upon that the child spends half of the festivals in a year with either parent.
6. The child will spend his birthday jointly with both the parents and both shall make endeavour to ensure that there is no bickering or argument among them in the presence of child and that they provide congenial, harmonious and affectionate atmosphere to the child.
7. They shall not take the child out of the jurisdiction of India without the consent of each other.
8. The parties shall shall not make any endeavour/effort to feed anything unparliamentary and uncivilized ideas in the mind of child regarding each other or regarding their families because feeding any violent idea or image in the mind of the child is likely to hinder his mental and emotional maturity.

18. Hon'ble Supreme Court in **Neethu B. @ Neethu Baby Methew Versus Rajesh Kumar, Law Finder Doc Id # 2750880** also reminded both the parents (of the said litigation) as follows:-

37. Before parting with the judgment, we find it relevant to remind both the parents of their primary responsibility towards child's nurturing, which can be achieved by effective communication and smooth execution of the above arrangement, while exhibiting mutual respect. The



parties are advised not to let their bitter past experience impede the child's well-being, especially given the sensitive emotional state of the tender child. The petitioner is advised to encourage the child to accept and welcome both the parents in his life for a well-rounded development.”

19. In the present case also considering that both the wife and husband are involved in bitter war with each others, we advise the parties to keep in mind the above said observation/advise of Hon’ble Supreme Court, while communicating with each other regarding arrangement of the visitation of minor child.
20. Accordingly, the appeal in hand is disposed of with modification of the order of learned trial Court to the above noted extent.

(GURVINDER SINGH GILL)
JUDGE

(RAMESH KUMARI)
JUDGE

21.04.2026

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Whether speaking/reasoned: Yes/No.
Whether reportable : Yes/No