



THE HIGH COURT OF MEGHALAYA AT SHILLONG.

CRP. No. 5 of 2018

Shri Ming Thang Sun
Son of Shri Fushing Sun
Resident of Nongkynrih,
Laitumkhrah
Shillong-793003
East Khasi Hills District,
Meghalaya.

... Petitioner

- Versus -

Smti Cordeelia Manbhalin Shadap
Wife of Shri Ming Thang Sun
Resident of Nongrimbah,
Laitumkhrah
Shillong-793003,
East Khasi Hills District,
Meghalaya.

... Respondent.

BEFORE

**THE HON'BLE MR JUSTICE SR SEN
CHIEF JUSTICE (ACTING)**

For the Petitioner : Mr. M.F. Qureshi, Adv.

For the Respondent : None

Date of hearing : **27.04.2018**

Date of Judgment & Order : **27.04.2018**

JUDGMENT AND ORDER (ORAL)

Heard Mr. M.F. Qureshi, learned counsel appearing on behalf of
the petitioner.



2. The brief fact of the petitioner's case in a nutshell is that:

"The respondent filed an Application under section 10 read with Section 8 of the Guardians and Wards Act, 1890 before the court of District Judge, Shillong seeking for grant of Guardianship Certificate/custody of minor daughter Miss Alexia Kateleen Cheuxia Sun. The petitioner filed a show cause refuted the allegations made therein. The Respondent also filed an application under section 12 of the Guardians and Wards Act, 1890 for grant of temporary custody to the Respondent of the minor child on the ground of he did not have sufficient income and indulge in heavy drinking. The Learned Additional District Judge, Shillong after hearing the parties passed the impugned Order dated 23rd April, 2018 wherein granted the interim custody of the minor child to the Respondent and directed the Petitioner to produce the minor child Miss Alexia Kateleen Cheuxia Sun before the court on 27-04-2018 at 10.30 am to hand over custody of the minor child to the Respondent. The trial court ought not to have disturbed the custody of the minor child with the Petitioner pending disposal of the main application filed by the Respondent seeking the custody of the child. It may be submitted that the learned trial court ought have considered the Respondent is a father of the minor child and his fitness is required to be considered, determined and weighed predominantly in terms of the welfare of his minor children in the context of all the relevant circumstances, while the custody of the father in the instant case has been promoting her welfare equally or better than the custody of the Respondent. The Respondent cannot claim the custody of the minor child as her indefeasible right when she is mentally unsound and unable to look after the wellbeing and welfare of the child.

The impugned order 23-04-2018 passed by the Additional District Judge, Shillong in Misc. Case



No. 5 (H) of 2018 is bad in law and liable to be set aside. The Petitioner as a father, and the natural guardian, has his own responsibilities towards his minor child and the learned trial court could have considered him the best person to care the child.”

3. The learned counsel for the petitioner brought to the notice of this Court the judgment and order dated 23.04.2018 passed by the learned Addl. District Judge, Shillong in Misc.C/No. 5 (H) 2018.

4. I have perused the judgment and order referred above and on perusal of the said judgment and order; I find that the learned Court below has taken the submissions advanced by the learned counsel for the respondent as gospel truth. The Court should remember that before deciding any custody of a minor child, the primary duty of the Court is to see the well being of the child where he/she lies, but here it seems that without any enquiry, without following any proper procedure, without making any reconciliation has simply ordered to hand over the child in 3(three) days which is absurd and without the tune of law. As a result, I am of the considered view that the impugned order dated 23.04.2018 needs to be set aside. Accordingly, the impugned order dated 23.04.2018 passed by the learned Addl. District Judge, Shillong in Misc.C/No. 5 (H) 2018 is hereby set aside with following directions that the Court should make all endeavour to reconcile the dispute between the parties and thereafter, if all attempts fail, the Court should ascertain where the well being of the child actually lies.

5. With this observation and direction the instant civil revision petition is allowed at the motion stage and stands disposed of.



6. The Registry is directed to send a copy of this judgment and order to the learned Addl. District Judge, Shillong.

CHIEF JUSTICE (ACTING)

D. Nary