

WP (Crl.) No. 02/2016
Harka Bdr. Subba Vs. Nirmal Chaya, NGO & Ors.

BEFORE
MR. JUSTICE SATISH K. AGNIHOTRI, CJ.

07. 25.01.17 Present: Mr. Joginder Tuli, Advocate for the Petitioner.

Mr. J.B. Pradhan, Public Prosecutor with Mr. Karma
Thinlay, Addl. Public Prosecutor, Mr. S.K. Chettri and
Ms. Pollin Rai, Asstt. Public Prosecutors for the State.

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The petitioner, stated to be the father of the minor victim, namely, Kunzan had filed the instant application seeking custody of his daughter before final disposal of the present writ petition. Facts involved in the present case are narrated in the order dated 05.10.2016.

Having regard to the factual matrix whereunder the said minor girl has gone through several vicissitudes at a young age, on account of facing unwelcome and unpleasant conditions, this Court considered not to handover the custody of the minor girl to the father and she was kept at Mamtalaya under the protection and care of the Child Welfare Committee, Government of Sikkim.

The Commissioner-cum-Secretary, Social Justice, Empowerment and Welfare Department, Government of Sikkim in his affidavit dated 07.12.2016 had stated that

the minor child was happy and satisfied at Mamtalaya. It was also stated that the department had decided to make necessary arrangement to have the minor admitted in Tadong Secondary School for next session commencing from February 2017, as per the desire of the child and she will be kept at Balika Niketan Children's Home, Tadong.

Be that as it may, the natural parents cannot be denied the care and custody of their children. It appears that the father of the child was not careful earlier as he let her go to Delhi in search of employment, denying her right to education.

Having regard to the nature of the relationship, I am of the considered opinion that a Committee comprising of the Commissioner-cum-Secretary, Social Justice, Empowerment and Welfare Department, Government of Sikkim, as Chairman, one lady member of the Child Welfare Committee and Dr. Doma T. Bhutia, Amicus Curiae, be constituted to examine the father, mother and the minor to find out the relationship and financial status and submit a report as to whether it is desirable to handover the custody of the minor child to the parents and also whether the parents are in a position to extend

education to the minor child, who is entitled to under the constitutional provisions. The parents are permitted to visit their minor daughter as and when they desire in presence of the Protection Officer.

Call on 16.02.2017.

Sd/-
Chief Justice
25.01.2017

jk/to Index : ~~Yes~~ / No
Internet : Yes / ~~No~~