

Ramesh vs Laxmi Bai (Smt) on 29 August, 1997

Equivalent citations: 1999CRILJ5023, (1998)9SCC266, 1999 AIR SCW 4783, 1998 (9) SCC 266, 1999 CRI. L. J. 5023, 1998 SCC(CRI) 999

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Bench: V.N. Khare

ORDER

1. Leave granted.

2. The appellant divorced the respondent, Smt. Laxmi Bai through a decree of divorce dated 16-12-1993. Amit, son of the parties born on 26-2-987 was at that time living with the appellant. On 16-2-1995, the respondent sought search warrants under Section 97 of the CrPC for recovery of Amit. The learned Sub-Divisional Magistrate opined that the appellant was the natural guardian of Amit, the nine-year-old son of the parties, and, therefore, he could not be said to be under any illegal confinement and consequently the application for issuance of search warrants under Section 97 CrPC was dismissed vide an order dated 20-2-1995. It appears that the respondent in the meantime had filed an application under the Guardians and Wards Act in 1995. We are informed by learned counsel for the appellant that the said application is still pending. Against the order of the Sub-Divisional Magistrate dated 20-2-1995, the respondent filed a revision petition and the learned Additional Sessions Judge exercising his revisional jurisdiction allowed the petition and directed the custody of the child to be given to the respondent. A revision petition filed by the appellant against that order in the High Court was dismissed on 17-7-1996.

3. We have heard learned counsel for the appellant and the respondent, though served repeatedly, has chosen to remain absent.

4. From a perusal of the impugned order of the High Court, it appears to us that though the points which should weigh with a court while determining the question of grant of custody of a minor child have been correctly detailed, the opinion of the High Court that the revisional court could have passed an order of custody in a petition seeking search warrants under Section 97 CrPC in the established facts of the case is untenable. Section 97 CrPC prima facie is not attracted to the facts and circumstances of the case when the child was living with his own father. Under the circumstances, we are of the opinion that the orders of the High Court dated 17-7-1996 and that of the learned Additional Sessions Judge dated 9-7-1996 cannot be sustained and we accordingly set aside the orders and the directions given therein.

5. Learned counsel for the appellant submits that the minor child Amit is living with the father and is studying in an English medium school at Raipur. The appellant shall be responsible for the well being and maintenance of the child.

6. We wish to clarify that nothing said hereinabove shall be construed as any expression of opinion on the merits of the controversy regarding the custody of Amit, which is pending adjudication in an application filed under the Guardians and Wards Act by the respondent. That applicant shall be decided on its own merits, uninfluenced by the order made by us in this appeal.

7. The appeal succeeds and is allowed in the terms noticed above. No costs.