

Before the Maharashtra State Commission for
Protection of Child Rights.

Enquiry, under section 13(1) & 14 of the
Child Rights Protection Act, 2005

Case No.70 / 2013-14

Major Sumant B. Kadam ... Applicant

V/s

Mrs. Veena Bedekar Kadam ... Respondent

Background

This matter has been referred by National Commission for Protection of Child Rights requesting this Commission for appropriate action.

2. The history reveals that Major Sumant B. Kadam serving army officer has made an allegation against his wife Mrs. Veena Bedekar Kadam saying that his seven years old daughter is being mentally harassed by his wife. The relation between husband & wife were never cordial. His wife Respondent Mrs. Veena has threatened him not to come in pune. His daughter who is seven years old want to retain with complainant. The matter was listed by the Commission & notices were issued to parties. Detailed affidavit has been files by respondent Mrs.Veena Bedekar Kadam before Commission. In her reply respondent has refuted all charges saying that she has not received copy of complaint and demanded copy of complaint. The respondent has submitted that this matter is with the Family Court, Pune and in this matter Family Court has issued warrant directing Bavdhan police station to produce minor child. However complainant did not give any heed on the order passed by Family Court as 6 years old child is in custody of complainant. It is submitted by opponent that even being biological mother & natural guardian of child, she is not being allowed

to meet child since 22/1/2014. She has submitted copies of papers filed by her before Family Court, Pune, police station and order of child welfare committee. Documents shows that matter is going on before family court, Pune. The Family Court has partly allowed the application, directing police to produce child Pavani before the court. F.I.R. has already been filed before police against petitioner. Copy of order passed by Child Welfare Committee dated 5/3/14 reveals that child Pavani is with complainant's parent. The documents shows that request of Respondent to stay arrest warrant issued by Family Court has not been taken up by the court. The Complainant has filed unsigned report prepared by child specialist. In the report it does not say that child need the parental custody, Army authority's letter has also been produced by the complainant.

3. In the matter issues, which are needed to be considered are as :-

i) Whether child Pavani is required to place under custody of father who is far away from place or with the custody of mother.

4. Legal provisions in the matter :

i) The matter is under family court and some interim orders have been passed by Hon'ble judge of family court under Domestic Violence Act 2005.

ii) Section 6 of Hindu minority & Guardianship Act 1956 prescribe that natural guardian of child is father however till attaining age of 6 years in case of female, the child shall remain with mother.

iii) Section 21 of Domestic violence Act 2005 is prevailing clause which says that the appropriate court can take the decision to place the child under the custody either with mother or father. Therefore in order to enactment of Domestic Violence Act the satisfaction of Magistrate who deals matter prevail on any other laws.

iv) This matter is received by this Commission to look into the issue pertaining to the protection of right of child. Therefore Commission's role is limited only to look the issues which are related with violation of right of child. Since matter is before family court & Section 21 of Domestic Violence Act has overriding effect therefore it would be appropriate by court itself to take cognizance on rights of child.

5. In the light of relevant provisions of the laws the answer of the questions as raised is as under:

Re : Question No. i) Custody of child till attaining age of 6 years is with the mother however with enactment of Domestic Violence Act, Section 21 has overriding effect therefore concern magistrate has discretionary power to decide custody of child.

6. In view of foregoing paras, relevant legal provisions, documents, submission and answers of the questions as raised on the basis of the contentions, the Commission's observations is as under

I) As said matter is before Hon'ble family Court, therefore matter is disposed of without any recommendation.

By order and seal of the Commission.



31.10
(A.N.Tripathi)
I.F.S.

Secretary
Maharashtra state commission for
protection of child rights