

**IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**

**Cr. MMO No. 228 of 2016**

**Decided on : 31.10.2017**

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Major Som Nath Palde

...Petitioner

Versus

Pooja Kashyap

...Respondent

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**Coram**

**Hon'ble Mr. Justice Sureshwar Thakur, Judge.**

Whether approved for reporting? Yes.

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For the petitioner :

Ms. Neelam W. Bakshi, Advocate.

For the respondent :

Mr. Atul Jhingan, Advocate.

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**Sureshwar Thakur, Judge (oral)**

The instant petition is directed against the orders, concurrently pronounced by the learned courts below, whereby the interim custody of minor child Adhrit, was directed to be retained by the respondent herein.

2. The parties contested their respective capacities to take the optimum befitting care of male minor Adhrit. The petitioner/complainant had contended before the learned courts below that given the respondent being beset with a psychiatric disorder, thereupon she stood precluded to take an appropriate care of the male minor. However, the respondent had with her reply to the application, appended a certificate issued by a doctor,

wherein an echoing occurred, of hers being not beset with any psychiatric disorder, whereupon it was concluded that the misgiving of the applicant of the respondent being beset with a psychiatric disorder also hers lacking the befitting capacity to take an optimum care of the minor child, hence stood effaced. However, any imputation of reliance upon the certificate issued by the doctor concerned, with a pronouncement therein, of the respondent not suffering any psychiatric disorder, may not, render her to hold the appropriate *locus parentis*, given it being neither tendered into evidence nor it being proven in accordance with law. Consequently, both the learned courts below in imputing credence thereto, have committed a gross illegality besides an impropriety. In aftermath, the impugned orders are quashed and set aside. The matter is remanded to the learned Judicial Magistrate concerned, to, in accordance enable the respondent to prove the apposite certificate also to enable the petitioner/non-applicant, to adduce rebuttal evidence thereto, whereafter he shall, within three months, from 23.11.2017, make a pronouncement, upon an application cast under the provisions of Section 21 of Protection of Women from Domestic Violence Act. However, till a pronouncement is made upon the aforesaid application, the respondent/applicant shall continue to retain the

interim custody of the minor child. The petitioner/non-applicant shall in accordance with law, hold rights to visit the minor child. It is also clarified that both the contestants shall be permitted to adduce best documentary evidence, in respect of each, hence affirmatively proving the issue appertaining to each holding the befitting capacity, to take the optimum care, of the minor child. All pending applications also stand disposed of.

3. Records be sent back forthwith. The parties are directed to appear before the learned Judicial Magistrate on **23.11.2017.**

4. Any observation made herein above shall not be taken as an expression of opinion on the merits of the case and the trial Court shall decide the matter uninfluenced by any observation made herein above.

**(Sureshwar Thakur)**  
**Judge**

31<sup>st</sup> October, 2017  
(kck)