[2025] 9 S.C.R. 1085 : 2025 INSC 1123

Komal Krishan Arora & Ors.
v.
Sandeep Kumar & Ors.

(Criminal Appeal No. 4052 of 2025)

16 September 2025

[J.K. Maheshwari* and Vijay Bishnoi, JJ.]

Issue for Consideration

Issue arose whether the directions issued by the High Court that the interim custody of the minor son aged five years be handed over to the father from the custody of the maternal grandfather warrants interference.

Headnotes†

Custody – Child custody – Welfare of the minor children – Strained marital relationship of the parents – Mother left India for UK with both the children-minor daughter and son, allegedly without the father's knowledge or consent – Father initiated proceedings in UK High Court seeking return of the children – UK Court ordered the mother to facilitate video calls between the father and the children, however, during these calls, son was made unavailable – Later father got to know that his son was in India with his maternal grandfather – Writ of *habeas corpus* by the father, wherein the interim custody of the son was directed to be handed over to the father – Interference:

Held: Not called for – Welfare and best interest of the child would be served if he would continue with the father, as such the High Court justified in granting the interim custody of minor son to the father – Judgment of the UK High Court reveals that when the statement of the minor daughter was taken, the reflection of hate against father cannot been ruled out – While leaving the son in India, it was mother's primary duty to inform the father, which was not discharged, as also she did not disclose to UK High Court in the proceedings initiated by father that the son was not with her – Due to such conduct, the father was deprived of having virtual meetings

* Author

with the son despite orders from UK High Court and ultimately had to file the *habeas corpus* petition when the suspicion brewed – Displeasure is expressed over the conduct of the mother which is clearly not in favour of the welfare of the the son and the manner in which the son was left by her at Sonipat with the grandparents and the same is deprecated – Judicial system in India as well as UK had been taken for a ride by the mother for the reasons known best to her – Factum of leaving the child with the grandparents could only be unveiled when the proceedings were set in motion on filing of the writ of habeas corpus, wherein the interim custody of the child had been directed to be handed over to the father looking to the best interest of the child – In such circumstances, where the mother is staying in London with her daughter and son is staying with grandparents, despite the availability of father, who has sufficient means of sustenance to undertake the well-being of the child, the best interest of the son needs to be ascertained – Father is residing in Noida which is more suitably located than Sonipat, having better educational institutes, thus, welfare of the son, would be served if the interim custody of the child is given to the father who is also the natural guardian, subject to further orders by the competent Court of jurisdiction – Both the parties to file appropriate proceedings under the provisions of the Guardians and Wards Act, 1890, before the competent Court. [Paras 19-22]

Case Law Cited

Lahari Sakhamuri v. Sobhan Kodali **[2019] 5 SCR 240 : (2019) 7 SCC 311;** *Rajeswari Chandrasekar Ganesh v. State of Tamil Nadu and Others* **[2022] 5 SCR 232 : (2023) 12 SCC 472;** *Neethu B. v. Rajesh Kumar,* **2025 SCC OnLine SC 1435 – referred to.**

List of Acts

Guardians and Wards Act, 1890.

List of Keywords

Custody of the minor son; Custody; Welfare of the minor children; Strained marital relationship; UK High Court; Facilitate video calls; Maternal grandfather; Writ of *habeas corpus*; Interim custody; Displeasure expressed over the conduct of the mother; Deprecation; Judicial system in India; Father, natural guardian.

Case Arising From

CRIMINAL APPELLATE/INHERENT JURISDICTION: Criminal Appeal No. 4052 of 2025

From the Judgment and Order dated 16.11.2021 of the High Court of Punjab & Haryana at Chandigarh in CRWP NO. 8954 of 2021.

With

Contempt Petition (C) No. 325 of 2022 In Special Leave Petition (Crl) No. 9497 of 2021, Contempt Petition (C) Nos. 124-125 of 2024 In Special Leave Petition (Crl) No. 9497 of 2021 and SLP (Crl) No. 17530 of 2024

Appearances for Parties

Advs. for the Appellants:
Shadan Farasat, D. N. Goburdhan, Sr. Advs., Siddhant Sharma, Harshit Anand, Sanveer Mehlwal, Ms. Kamakshi S. Mehlwal, Govind Bali, Parth Agarwal.

Advs. for the Respondents:
D.N. Goburdhan, Shadan Farasat, Sr. Advs., Rohan K, Ms. N. Annapoorani, Akshay Amritanshu, Ms. Drishti Rawal, Ms. Drishti Saraf, Sarthak Srivastava, Mayur Goyal, Siddhant Sharma, Harshit Anand.

Petitioner in person

Judgment / Order of the Supreme Court

Judgment

J.K. Maheshwari, J.

Criminal Appeal No. 4052 of 2025 (@ SLP (Crl) No. 9497 of 2021)

1. Leave granted.

2. In an ongoing prolonged discord of ties between husband – Sandeep Kumar @ Sandeep Chugh (hereinafter referred as **'father'**) and wife – Latika Arora @ Latika Chugh (hereinafter referred as **'mother'**) who got married on 29.11.2010, leading to further dispute on visitation over their two children, minor daughter **'Miss N'** (currently staying with

mother in England and Wales) and minor son **'Master K'** (currently staying with grandfather – appellant No. 1), the writ petition seeking writ in the nature of habeas corpus came to be filed by father on an unhealthy note before the High Court of Punjab and Haryana at Chandigarh alleging illegal custody of children with appellants.

3. The case of the father in brief is that, the mother left India for United Kingdom on 08.05.2021 with both the children without informing him and his consent. The father being clueless about the whereabouts of his children, made an attempt to figure out the same through child helpline. Through correspondence and enquiry dated 01.06.2021, the child helpline informed that his children are not in India. It was further informed that as per his children and statement of wife, they are safe, secure and the wife is doing job over there. The said information was furnished by the child helpline indicating that the case is already pending in the Court. Followed thereafter, the father on 03.06.2021 lodged a formal complaint before the Police to know the exact whereabouts of his children.

4. Meanwhile, the mother filed an application for non-molestation and occupation order against father in UK on 07.06.2021. The father also filed a divorce petition on 05.07.2021 in Noida and simultaneously, moved an application invoking inherent jurisdiction of the UK High Court of Justice, Family Division (in short **"UK High Court"**), in relation to children, contending that the mother wrongly removed the children from India without his knowledge and consent. It was also asserted that the children are habitual residents of India and accordingly, the father sought their summary return to India with a further prayer to make children ward of the Court meanwhile. He further sought range of prohibitory step orders, including location of the children and passport.

5. The above petition came for hearing without notice on 13.07.2021 before **Mrs. Justice Judd**, who passed a location order against the mother. In compliance, the Tipstaff located mother and **Miss N** and later their passport and travel documents were seized. The mother was served with the notice of proceedings on 15.07.2021. The next hearing took place on 26.07.2021 before **Mrs. Justice Arbuthnot**, who *inter-alia* passed the following directions –

   (a) Mother is prevented from changing the location of the children without informing the father's solicitor 7 days in advance and

from taking the children outside the jurisdiction of England and Wales pending the conclusion of proceedings;

(b) Mother to make available the children to spend time with the Father by way of video and/or telephone calls every Monday, Wednesday and Friday at 18:00 GMT;

(c) Mother is prohibited from applying for a British passport or any other passport for the children pending the conclusion of the proceedings, without the consent of the Father.

6. Following the directives, the father made video calls at 18:00 GMT on Monday, Wednesday and Friday, however, as claimed by father, **Master K** was either asleep or unavailable most of the times for flimsy reasons stated by the mother. All the calls of **Master K** were always muted and his video background was also always hidden. As further contended, the call was portrayed to be originated from UK, however, the same was from India and in a collusive manner, the mother with the assistance of her parents, deliberately kept father away from **Master K** and avoided all sorts of communication with him. She also did not disclose to him about his whereabouts despite insistence. When the suspicion grew that the child is not with mother in UK, and having all the reasons to believe so, the father was compelled to file the habeas corpus petition before the High Court on 10.09.2021. It is also important to note that, amidst all of this, the mother filed a divorce petition in the UK on 31.07.2021.

7. Curiously, on 16.09.2021, when the father visited the residence of his father-in-law along with his brother, sister and mother, to his utter surprise, he found **Master K** playing in the locality with his mother-in-law. When the father tried to meet him, the mother-in-law denied that he is **Master K** and took him back from him. At the same time, the father-in-law (appellant no. 1) and appellant no. 3 (mother's brother) came there with neighbours, leading to physical altercation, wherein, the father suffered fractures in 5th and 6th rib. Thereafter, an application for preponement of hearing was filed before the High Court, and the matter was taken up on 24.09.2021, when the following order was passed: -

"Crl.M.No.1175 of 2021

The main case is fixed for 14.10.2021.

Prayer is for pre-poning the date of hearing.

Notice of the application.

Mr. Surender Singh, AAG, Haryana accepts notice on behalf of respondent – State of Haryana.

For the reasons recorded in the application, which is supported by an affidavit, the same is allowed. The hearing in the case is pre-poned to 28.09.2021.

Crl.M.No.1173 of 2021

Prayer is for placing on record additional affidavit of applicant/petitioner. Allowed, as prayed for.

Crl.M.No.1174 of 2021

By means of this application, the petitioner prays for appointment of a Warrant Officer to produce minor child Master K aged about two and half years, who is stated to be in illegal custody of respondent Nos.5 & 6.

Respondent No. 4 is the wife of the petitioner. Respondent No.5 is his father-in-law. Respondent No.6 is his brother-in-law. The marriage of the petitioner and respondent No.4 was solemnized on 29.11.2010. From this marriage they have two children namely Miss N (daughter) aged about ten years and Master K (son) aged about 2 ½ years. Due to matrimonial discord between the couple, respondent No.4 left the matrimonial home in March, 2020 without informing the petitioner, who was abroad at that time. She (respondent No.4) took along her both the minor children and went to her parental home in Sonepat. When the petitioner came back to India in October 2020 he visited respondent No.4 and requested her to return with the children but she refused. The petitioner has filed a petition under Section 9 of Hindu Marriage Act, 1955 before the Family Court at Jind on 03.02.2021 which is pending.

The petitioner filed the petition (CRWP-8954-2021) for issuance of a writ in the nature of habeas corpus seeking directions to respondent Nos. 2 & 3 i.e., Superintendent of Police, Sonepat, and the SHO, P.S

Shivaji Colony, Sonepat to get released minor children from the illegal custody of respondent Nos.4 to 6 and produce them before this Court. Notice of motion was issued to respondent Nos.4 & 5 for 14.10.2021.

The petitioner and respondent No.4 had been living and working in U.K from 2010 to 2018. They have permission for indefinite stay there. The petitioner filed an online application before the High Court Justice Family Division, London for an inherent jurisdiction order in relation to the minor children Miss N and Master K seeking relief of summary return of the children to India, for location and passport orders and for a range of other orders to ensure the well-being of the children. Respondent No.4 appeared before the Court in London through VC and stated that she had removed the children from India without the knowledge or consent of the petitioner because she did not know his whereabouts. She also agreed to make the children available for telephone and/or video contact with the petitioner as may be directed.

Vide order dated 26.07.2021, High Court Justice Family Division, London directed respondent No.4 to make the children available to spend time with the petitioner by way of video and/or telephone calls on every Monday, Wednesday and Friday at 18.00 GMT.

Pursuant to the order, the petitioner was on video conferencing (zoom calls) with his daughter and son. However, during those calls, the petitioner found that most of the times his son was half asleep. Sometimes respondent No.4 stated that he was asleep. Whenever he spoke to his son he was muted. The background was always hidden. Because of this the petitioner became suspicious of whereabouts of his son. On 16.09.2021, the petitioner, his brother Sunil Chugh, his sister-Poonam Rani and his mother Kamlesh Chugh visited residence of respondent Nos.5 & 6 at Sonepat at about 5.00 p.m. to clear their doubts about the whereabouts, well-being and welfare of the minor children. The petitioner was

shocked to see that his son Master K was playing with his maternal grand-mother Ms. Sushma Arora. On seeing the petitioner his son ran towards him. However, his maternal grand-mother snatched him away and told the petitioner that the child was not his son. Meanwhile, respondent Nos.5 & 6 arrived at the spot along with their neighbours. The petitioner was physically assaulted. He suffered 10 serious injuries and was referred to BPS Hospital, Khanpur. CT scan of his chest revealed fractures of the anterior ends of right 5th and 6th ribs. A copy of the medical record is Annexure P-3. The petitioner's statement was recorded by respondent No.3-SHO, P.S Shivaji Colony, Sonepat but despite his having suffered grievous injuries, no FIR was registered.

Sh. Anil Malhotra, Ld. Counsel for the petitioner submits that the 2 ½ year old son of the petitioner is presently in the illegal custody of respondent Nos. 5 & 6. Respondent No.4 has gone to U.K. leaving him behind. The petitioner apprehends that his son may be removed to an undisclosed destination abroad or any other place beyond the jurisdiction of this Court.

In view of the aforesaid, respondent No. 2-Superintendent of Police, Sonepat is requested to immediately depute a senior Police Official to visit the residence of respondent Nos. 5 & 6 at #25, Shivaji Colony, Sonepat, locate the whereabouts of the son of the petitioner and satisfy that he is in the safe custody of respondent No.5 and 6. The passport of Master K be taken into possession and retained in safe custody of respondent No. 2. The concerned police official would also ensure that the child is produced before the Court on the next date of hearing through Video Conferencing mode from the residence of respondent No. 5 and 6.

List on 28.09.2021. To be shown in the ***Urgent List.***

Meanwhile, Respondents No. 5 and 6 are directed not to remove/ take away Master K - the son of the

petitioner to any place beyond the borders of District Sonepat.

A copy of this petition and the connected application be served on respondent Nos.5 & 6 through respondent No.2.

*A copy of this order be provided **Dasti** to Ld. State counsel for onward transmission to concerned quarters for compliance."*

8. As such, Superintendent of Police, Sonipat was requested to depute a senior police official to visit the residence of appellant nos. 1 & 3 to locate the whereabouts of **Master K** and satisfy that he was in the safe custody. It was directed that the passport of **Master K** be taken into possession and retained in safe custody. **Master K** was also to be produced before the High Court through video conferencing from the residence of the appellant nos. 1 & 3 on 28.09.2021. When the matter was taken up on 28.09.2021, the High Court passed the following order, which is also relevant, hence, reproduced as under: -

"*Pursuant to the directions contained in the order dated 24.9.2021, the police officials visited the house of respondents No. 4 to 6 at Sonipat. The minor child Master K was present in the house alongwith respondents No. 5 and 6.*

Respondents No. 5 and 6 have appeared alongwith minor child Master K in Court today through video conferencing.

Mr. Surender Singh, learned AAG Haryana states that Mr. Hans Raj, DSP who was deputed to visit the house of respondents No. 5 and 6 has specifically inquired about the passport of minor child Master K. Respondents No. 5 and 6 have stated that the passport is not in their possession and they are not aware about the passport.

Mr. Sandhu, Advocate has put in appearance on behalf of respondents No.4 to 6. He states that respondents are trying to locate the passport. As and when the same is located, it would immediately be handed over to DSP concerned who is inquiring the matter.

Mr. Malhotra, learned counsel for petitioner has stressed that if the minor child Master K is presently in the custody of respondents No. 5 and 6, then interim custody of minor child be handed over to him as he is the natural guardian.

Mr. Sandhu prays for time to address arguments. He undertakes on behalf of respondents No.5 and 6 that they would not remove/take away minor son of petitioner Master K to any place beyond the borders of District Sonipat during pendency of this petition.

Adjourned to 1.10.2021.

To be shown in urgent list."

9. Thereafter, the counsel for the appellant nos. 1 & 3 appearing before the High Court had undertaken that they would not remove/ take away **Master K** beyond the borders of district Sonipat during pendency of the habeas corpus petition. Later, the undertaking was acknowledged, and the hearing was concluded. The High Court vide order impugned dated 16.11.2021 allowed the habeas corpus petition and passed the following directions: -

"Taking into consideration the totality of circumstances, in my view:

*(i) it would not be in the interest of **Master K** (sic) to be permitted to travel to U.K. pending a determination of the various disputes between the parties in the Courts in U.K. In U.K. respondent No.4 would have to single handedly care for **Master K** (sic) and her daughter **Miss N** (sic), which may be difficult in view of the demands of her career. In India, apart from his father - the petitioner, **Master K** (sic) can enjoy the care, love and affection of his grandparents and other members of the family both on the paternal and maternal side. Though born in U.K. **Master K** (sic) has been in India since 29.06.2019 (He was a little over four months then. He is now about two years eight months. His date of birth being 15.02.2019);*

*(ii) pending a final determination of the issues of custody between the petitioner and respondent No. 4 in a properly instituted proceeding, the best interest of **Master K** (sic) would be served if his custody is handed over to the*

*petitioner. Petitioner's mother (paternal grandmother of **Master K** (sic) resides with the petitioner and would be available to care for him.*

*Respondents No. 4 to 6 are directed to hand over **Master K** (sic) to the petitioner on 6th December, 2021. Respondents No. 5 and 6 would take **Master K** (sic) to the Court of Chief Judicial Magistrate, Sonepat on 6th December, 2021 at 10.00 AM where petitioner along with his mother would be present. **Master K** (sic) would be handed over to the petitioner in the presence of CJM Sonepat. Respondents No. 5 and 6 would not directly or indirectly hinder or obstruct the petitioner from leaving the place with Master K.*

*Once the custody of **Master K** (sic) is handed over to him, the petitioner would make available **Master K** (sic) to spend time with respondent No. 4 (mother) by way of video and/or telephonic calls every day.*

*Considering that **Master K** (sic) has been living with respondents No. 5 and 6 for the last over one year when respondent No. 4 started residing there along the children (**Miss N** (sic) and **Master K** (sic) petitioner would also facilitate telephone/ video contact between **Master K** (sic) and his maternal grandparents at least thrice a week.*

*As **Master K** (sic) would take some time to settle in the new place and would initially need greater care and affection to make him comfortable, the petitioner would not travel abroad for six months from the date the custody of **Master K** (sic) is handed over to him."*

10. The said order has been assailed by the mother, her father and her brother by filing the present appeal. In the proceeding dated 13.12.2021 notice was issued and the stay was granted on execution of the order of the High Court subject to the condition that **Master K** will not be taken abroad. On perusal of submissions and records, it appears that the Family Court in UK *vide* order dated 21.12.2021 passed a decree of divorce in the petition filed by the mother, though, the said decree is under challenge in appeal filed by father. On the contrary, the Family Court at Jind, Haryana, by order dated 20.09.2022 had granted *ex-parte* decree of divorce in favour of the father in the divorce petition filed by him, which has been put to

challenge in the appeal filed by mother. Amidst all this cross-country litigation and pendency of the present appeal this Court *vide* order dated 20.04.2022 granted visitation right for **Master K** to the father on every Sunday between 12 to 5 p.m. Be that as it may, it further appears that after conclusion of the hearing of the case before the High Court on 14.10.2021 and prior to pronouncement of judgment on 16.11.2021, the judgment dated 12.11.2021 passed by the UK High Court in final hearing of the application preferred by father seeking return of his children was not available before the High Court.

11. In the said backdrop, the aforesaid judgment assumes significance and is necessary to be referred to. In the said judgment, the UK High Court has referenced the previous orders passed and in particular, recorded the conduct of the mother along with conduct of father as per the averments made by the mother. In paras 39 and 40 of the said judgment observations made against the mother are as under:

> *"39. It has since been brought to the attention of this court and the father that Master K did not leave India with his mother and sister. As stated above, Master K has been in the care of his maternal grandparents in Sonipat since 8 May 2021. It is inconceivable that Mrs Justice Arbuthnot would have issued the order in those terms had she known that Master K was not in the UK with his mother, but rather in India with his maternal grandparents. The order refers to the fact that the mother "confirmed that she removed the children from India" and agreed to "make the children available for telephone and/or video contact". I underline and highlight the plural form of "children". Mrs Justice Arbuthnot ordered that both of the children, Miss N and Master K, be made available for video contact calls at 18:00 GMT. 18:00 GMT translates to 22:30 in Sonipat during the summer and, with the end of BST, now translates to 23:30. She would never have made such an order had she known that Master K was in fact in India.*
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> *40. It is clear from the above that the mother lured the court into error by failing to disclose that she had only removed Miss N to the UK and that Master K remained in India. This crude subterfuge, which was*

always going to be found out, does the mother no credit at all."

emphasis supplied

12. On the basis of the statement of **Miss N**, apprehension regarding father has been recorded in the said judgment, however, the Court proceeded to decide the issue of 'habitual residence' and applying the 'test of sufficiency of integration', observed that **Miss N** has sufficiently reintegrated so as to become the habitual resident of UK as she is staying since May 2021 continuously. Though for **Master K**, the Court noted that **Master K** immediate after birth visited the India and has mostly spent his life there. He cannot be said to be a habitual resident. The UK High Court disposing-of the case, passed the following the order: -

"67. Since June 2019 neither parent has behaved well towards the other. The father has harassed and bullied the mother in the ways I have described. The mother has behaved deceptively and high-handedly. She has not conducted her case with propriety for which I had to admonish her at the start of the case.

68. This poor behaviour must not distract me from my essential task, which is to determine what is in the best interests of Miss N. I am satisfied that it would be in the best interests of Miss N that she should be reunited with Master K and that they should be brought up together under the primary care of their mother in London. The wishes and feelings of Miss N very strongly favour that. Miss N enjoys a social network in London, and is well settled here. The mother wishes to become economically independent and has convinced me that this is more easily achievable in London where there are more facilities to be able to balance work with her responsibilities to the children. It makes little odds whether the mother primarily cares for the children in London or in some city in India far away from the father's abode. I consider it likely that the father will not stay working in India for long. He has been working in the USA for Credit Suisse

and, although he says that he is intending to return to India permanently, I sensed a degree of forensic positioning during his answers on this subject. If the father returned to work in the USA, then it makes absolutely no difference to him whether the children are under the primary care of the mother in England or in India.

69. I have concluded that the appropriate course is for me to adjourn the father's application for the return of Miss N to India pending the decision of Mr Justice Singh Sidhu about the future of Master K.

70. My order will contain a respectful request to Mr Justice Singh Sidhu to consider allowing the mother to relocate Master K to London to be reunited with his sister, provided, of course, that he is satisfied that such a disposal would be in his best interests."

13. In view of the foregoing discussions, the UK High Court in para 72 ordered as under: -

"72. My order will therefore provide that:

i) The father's application for the return of Miss N to India shall stand adjourned;

ii) The father's application that the children be made wards of court is dismissed.

iii) Miss N shall live with the mother and have contact with her father;

iv) If the court in India permits Master K to relocate to London, he shall live with the mother and have contact with his father;

v) In the event that the court in India permits Master K to relocate to London, the father's return application shall stand dismissed;

vi) If by 12 February 2022 the court in India has not permitted Master K to relocate to London, the father's return application shall be restored before me;

vii) In any event the travel documents of the mother and Miss N are to be returned to the mother; and

viii) A copy of this judgment shall be made available at the earliest opportunity to Mr Justice Singh Sidhu.

14. In view of the foregoing factual backdrop, in our viewpoint, it is required to be seen that whether the directions as issued by the High Court warrant interference in this appeal or not. It is further required to be looked into whether the interim custody of the **Master K** be continued with appellant no. 1 till final determination of the issues between the parties and whether without proper instituted proceedings of custody of **Master K**, continuation of his custody with grandfather would be in his best interest or it should be with the father.

15. During pendency of the present appeal, we deemed it proper to have an interaction with the child to gain his inclination and *vide* order dated 08.05.2024, **Master K** was called for discussion in Chamber. Upon interaction and looking to his age, which was approximately 5 years, we found that **Master K** was not in a position to substantially express anything for anyone, and therefore, the matter posted for final hearing.

16. After having heard learned counsel appearing for the parties and to answer the questions as posed hereinabove, we are constrained to refer the judgment of this Court in the case of ***'Lahari Sakhamuri v. Sobhan Kodali[1]'***, where this Court was dealing with question qua jurisdiction of Family Court, Hyderabad to decide the application for custody of minor children (both US citizens), filed by their mother who had come to India for attending her grandmother's funeral. The said application was filed by concealing the application for custody already filed in Court in US by her. Balancing the doctrine of comity of Courts with the best interest of the child, this Court on the issue of whether it was in the best interest of the children to return to US observed as under: -

> *"42. The essence of the judgment in Nithya Anand Raghavan v. State (NCT of Delhi), (2017) 8 SCC 454, is that the doctrines of comity of courts, intimate connect, orders passed by foreign courts having jurisdiction in the matter*

1 (2019) 7 SCC 311

regarding custody of the minor child, citizenship of the parents and the child, etc. cannot override the consideration of the best interest and the welfare of the child and that the direction to return the child to the foreign jurisdiction must not result in any physical, mental, psychological, or other harm to the child.

xx xx xx

49. The crucial factors which have to be kept in mind by the courts for gauging the welfare of the children equally for the parent's can be inter alia, delineated, such as (1) maturity and judgment; (2) mental stability; (3) ability to provide access to schools; (4) moral character; (5) ability to provide continuing involvement in the community; (6) financial sufficiency and last but not the least the factors involving relationship with the child, as opposed to characteristics of the parent as an individual.

50. While dealing with the younger tender year doctrine, Janusz Korczar a famous Polish-Jewish educator & children's author observed:

> *"children cannot wait too long and they are not people of tomorrow, but are people of today. They have a right to be taken seriously, and to be treated with tenderness and respect. They should be allowed to grow into whoever they are meant to be — the unknown person inside each of them is our hope for the future."*

Child rights may be limited but they should not be ignored or eliminated since children are in fact persons wherein all fundamental rights are guaranteed to them keeping in mind the best interest of the child and the various other factors which play a pivotal role in taking decision to which reference has been made taking note of the parental autonomy which courts do not easily discard.

17. Similarly, this Court in ***'Rajeswari Chandrasekar Ganesh Vs. State of Tamil Nadu and Others[2]'***, while allowing the writ petition under

2 (2023) 12 SCC 472

Article 32 filed by the mother seeking issuance of writ in the nature of habeas corpus to trace and produce her minor children (both residents of US) and deliver their custody so as to repatriate them back to US, reiterated the paramount importance best interest of child and observed as thus: -

> ***"91.*** *While considering the competing rights of natural guardianships vis-à-vis the welfare of the child, the test for consideration by the court was held to be; what would best serve the welfare and interest of the child. Referring to the earlier decisions in Sumedha Nagpal v. State (NCT of Delhi) (2000) 9 SCC 745; Rosy Jacob v. Jacob A. Chakramakkal, (1973) 1 SCC 840; Elizabeth Dinshaw v. Arvand M. Dinshaw, (1987) 1 SCC 42 and Muthuswami Chettiar v. K.M. Chinna Muthusami Moopanar, 1934 SCC OnLine Mad 280, it was also held that the welfare of child prevails over the legal rights of the parties while deciding the custody of minor child. The observations made in the judgment in this regard are as follows: [See Anjali Kapoor v. Rajiv Baijal, (2009) 7 SCC 322, SCC p. 325, paras 14-15]*
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> > *"14. The question for our consideration is, whether in the present scenario would it be proper to direct the appellant to hand over the custody of the minor child Anagh to the respondent.*
> >
> > *15. Under the Guardians and Wards Act, 1890, the father is the guardian of the minor child until he is found unfit to be the guardian of the minor female child. In deciding such questions, the welfare of the minor child is the paramount consideration and such a question cannot be decided merely based upon the rights of the parties under the law. [See Sumedha Nagpal v. State (NCT of Delhi), (2000) 9 SCC 745, SCC p. 747, paras 2 & 5.]*
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> ***92.*** *In Rosy Jacob v. Jacob A. Chakramakkal, (1973) 1 SCC 840], this Court has observed that : (SCC p. 847, para 7)*
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> > *"7. … the principle on which the court should decide the fitness of the guardian mainly*

depends on two factors : (i) the father's fitness or otherwise to be the guardian, and (ii) the interests of the minors."

93. *This Court considering the welfare of the child also stated that : (SCC p. 855, para 15)*

"15. … The children are not mere chattels : nor are they mere playthings for their parents. Absolute right of parents over the destinies and the lives of their children has, in the modern changed social conditions, yielded to the considerations of their welfare as human beings so that they may grow up in a normal balanced manner to be useful members of the society…."

94. *In Elizabeth Dinshaw v. Arvand M. Dinshaw, (supra), this Court has observed that whenever a question arises before a court pertaining to the custody of the minor child, the matter is to be decided not on consideration of the legal rights of the parties but on the sole and predominant criterion of what would best serve the interest and welfare of the child.*

95. *The question as to how the court would determine what is best in the interest of the child was considered McGrath (Infants), In re [McGrath (Infants), In re, (1893) 1 Ch 143 (CA)] , and it was observed by Lindley, L.J., as follows : (Ch p. 148)*

"… The dominant matter for the consideration of the Court is the welfare of the child. But the welfare of a child is not to be measured by money only, nor by physical comfort only. The word welfare must be taken in its widest sense. The moral and religious welfare of the child must be considered as well as its physical well-being. Nor can the ties of affection be disregarded."

96. *The issue as to the welfare of the child again arose "O" (An Infant), In re ["O" (An Infant), In re, 1965 Ch 23 (CA)] , where Harman, L.J., stated as follows : (Ch p. 29)*

> *"… It is not, I think, really in dispute that in all cases the paramount consideration is the welfare of the child; but that, of course, does not mean you add up shillings and pence, or situation or prospects, or even religion. What you look at is the whole background of the child's life, and the first consideration you have to take into account when you are looking at his welfare is : who are his parents and are they ready to do their duty?"*

97. *The question as to what would be the dominating factors while examining the welfare of a child was considered in Walker v. Walker & Harrison [Walker v. Walker & Harrison, 1981 New Ze Recent Law 257] and it was observed that while the material considerations have their place, they are secondary matters. More important are stability and security, loving and understanding care and guidance, and warm and compassionate relationships which are essential for the development of the child's character, personality and talents. It was stated as follows:*

> *"Welfare is an all-encompassing word. It includes material welfare; both in the sense of adequacy of resources to provide a pleasant home and a comfortable standard of living and in the sense of an adequacy of care to ensure that good health and due personal pride are maintained. However, while material considerations have their place they are secondary matters. More important are the stability and the security, the loving and understanding care and guidance, the warm and compassionate relationships that are essential for the full development of the child's own character, personality and talents."*

98. *In the context of consideration of an application by a parent seeking custody of a child through the medium of a habeas corpus proceeding, it has been stated in American Jurisprudence, 2nd Edn., Vol. 39 as follows:*

> *"… An application by a parent, through the medium of a habeas corpus proceeding, for custody of a child is addressed to the discretion of the court, and custody may be withheld from the parent where it is made clearly to appear that by reason of unfitness for the trust or of other sufficient causes the permanent interests of the child would be sacrificed by a change of custody. In determining whether it will be for the best interest of a child to award its custody to the father or mother, the court may properly consult the child, if it has sufficient judgment."*

99. *Thus, it is well established that in issuing the writ of habeas corpus in the case of minors, the jurisdiction which the Court exercises is an inherent jurisdiction as distinct from a statutory jurisdiction conferred by any particular provision in any special statute. In other words, the employment of the writ of habeas corpus in child custody cases is not pursuant to, but independent of any statute. The jurisdiction exercised by the court rests in such cases on its inherent equitable powers and exerts the force of the State, as parens patriae, for the protection of its minor ward, and the very nature and scope of the inquiry and the result sought to be accomplished call for the exercise of the jurisdiction of a court of equity. The primary object of a habeas corpus petition, as applied to minor children, is to determine in whose custody the best interests of the child will probably be advanced. In a habeas corpus proceeding brought by one parent against the other for the custody of their child, the Court has before it the question of the rights of the parties as between themselves, and also has before it, if presented by the pleadings and the evidence, the question of the interest which the State, as parens patriae, has in promoting the best interests of the child."*

18. Recently, this Court in ***'Neethu B. Vs. Rajesh Kumar[3]'***, was dealing with a review petition preferred by mother on the ground

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of deteriorating mental health of child due to order of handing over custody by this Court to the father. The same was corroborated by medical reports on record. While allowing the review petition and granting custody back to mother, this Court observed as thus –

> *"15. The core and inalienable standard is the paramount consideration of the child's welfare, which is affected by an array of factors, is ever evolving and cannot be confined in a straitjacket. Therefore, each case has to be dealt with on the basis of its unique facts and take into account any change in circumstances which have an impact on the quality of a child's upbringing.*
>
> *xx xx xx*
>
> *25. ….The factors defining the best interests of a child are multiple and range from quality education, a nurturing family environment, healthy worldly experiences, provision of basic amenities of life, meeting of financial requirements, access to a friendly social system to imparting of spiritual and cultural learnings. The list is naturally not an exhaustive one. However, the essential feature is that a secure, supportive and loving family forms the bedrock of a healthy childhood experience and helps one grow into a balanced, positive and confident adult.*

19. In view of the foregoing discussion and after considering the facts as outlined above, we are constrained to observe that the present case reflects a deep-rooted conflict between the mother and father, arising from their divergent intentions regarding staying together and raising their children in India. This discord has not only strained their marital relationship but has also adversely impacted their children. It is evident from the conduct of both parties that, although the mother has obtained a divorce from the Family Court in London, she has challenged the divorce decree granted by the Family Court in Jind, Haryana, in India. Conversely, the father—having secured a divorce from the Family Court in Jind, India—has contested the divorce decree passed by the UK Family Court. In essence, while both parties seek divorce, they refuse to accept the decrees granted by courts in different jurisdictions and continue to challenge them, which they are legally entitled to do. Attempts at mediation have failed. It appears that both parties wish to obtain divorce only from the court

of the jurisdiction in which they currently reside. This is not merely a clash of egos, but *prima-facie*, reflects a concerning mindset that may ultimately come at the cost of the welfare of the minor children. While we refrain from making any definitive comment on the intentions of the parties, the circumstances compel us to focus on how best the welfare and interests of the children can be safeguarded.

20. In the said sequel, after going through the judgment dated 12.11.2021 of the UK High Court, it reveals that when the statement of **Miss N** was taken, the reflection of hate against father cannot been ruled out. It is also to be noted that **Miss N** is staying with mother since long and the father is staying in India, then how far such hate may be good for the father. If we look the conduct of the mother, it can safely be observed that while leaving **Master K** in India, it was her primary duty to inform the father, which was not discharged. It was also her duty to disclose to UK High Court that **Master K** is not with her in the proceedings initiated by father, but the said disclosure was also not made, though only at a later stage, i.e., after father filed the application seeking return of her children before UK High Court and a habeas corpus petition before High Court of Punjab and Haryana. We are constrained to express our displeasure at such conduct of the mother and deprecate the same. It is to be noted that, due to such conduct, the father was deprived of having virtual meetings with **Master K** despite orders from UK High Court and ultimately he had to file the habeas corpus petition when the suspicion brewed. **Master K** throughout was living with appellant no. 1 and father was deliberately not informed about the same despite the Court orders. As such, it appears that mother never intended **Master K** to meet his father and to say the least, honour the Court orders. The judicial system in India as well as UK had been taken for a ride by the mother for the reasons known best to her. Be that as it may, the entire whirlpool of litigation has been set into motion by the parents, wherein the children are being pulled in and at this stage, we are concerned with the welfare of **Master K** and certainly, in our view, such conduct is clearly not in favour of the welfare of the **Master K**.

21. With the above, we abstain from observing much about the conduct of the mother and the manner in which **Master K** was left by her at Sonipat with the grandparents. The factum of leaving the child with the grandparents could only be unveiled when the proceedings were set in motion on filing of the writ in the nature of habeas corpus, wherein the

interim custody of the child had been directed to be handed over to the father looking to the best interest of the child. In such circumstances, where the mother is staying in London with **Miss N** and **Master K** is staying with grandparents, despite the availability of father, who has sufficient means of sustenance to undertake the well-being of the child, as reflected from affidavit dated 27.08.2025 filed by him in compliance of directions given by this Court, the best interest of **Master K** needs to be ascertained. On perusal of affidavit, it reveals that father is a qualified engineer having Master's degree in Computer Science with a post-graduate diploma in Business Administration. He was also employed in Singapore, United Kingdom and US for time being. Thus, his academic credentials and professional competence cannot be doubted. Similarly, looking to other factors, his earning is sufficient, and he is owner of residential flat in Sector-70, Noida and currently residing there with his mother and younger sister. In our considered opinion, Noida is more suitably located than Sonipat, having better educational institutes, therefore, in our view, welfare of the **Master K**, would be served if the interim custody of the child is given to the father who is also the natural guardian, subject to further orders by the competent Court of jurisdiction, wherein the proceedings for custody under the provisions of the Guardians and Wards Act, 1890 be initiated in this regard. The affidavit dated 27.08.2025 filed by the father shall be treated as an undertaking and the contents thereof be treated as part of this order.

22. In the light of the above discussion, in the facts and circumstances of the case, we are of the considered view that the welfare and best interest of the child would be served if he would continue with the father, as such in the opinion of this Court the High Court was justified to grant the interim custody of **Master K** to the father. Therefore, the findings as recorded by the High Court does not warrant any interference in this appeal. In view of the foregoing, the present appeal stands dismissed with the following directions: -

    a. The custody of minor K shall be handed over by the appellant no. 1 (mother's father) to father within a period of fifteen days from the date of uploading of this judgment on or before 30.09.2025. The place of stay for **Master K** along with mobile number and email address of father be supplied to the Registry of this Court within a period of three days from today;

b. After handing over the custody of **Master K**, father/mother, as the case may be, shall file appropriate proceedings under the provisions of the Guardians and Wards Act, 1890, before the competent Court within a period of one month. On filing the same, it shall be decided in accordance with law uninfluenced by any of the observations made in this case;

c. Mother/sibling of **Master K** shall have the right to audio/video access to him on every Saturday from 5 p.m. (IST) to 7 p.m. (IST). On mother's visit to India, she shall have further right of visitation on every Sunday from 1 p.m. to 5 p.m. at a place of mutual choice decided by the parties;

d. The maternal grandparents of **Master K** shall also have visitation rights every Sunday from 1 p.m. to 5 p.m. at a place of mutual choice decided between the parties;

e. The father shall not take **Master K** outside the jurisdiction of India without the leave of the jurisdictional High Court;

f. The issue of citizenship of **Master K** shall be subject to the outcome of the proceedings initiated under the Guardians and Wards Act, 1890. We expect from the parties not to violate such conditions until the issue of guardianship is decided by the competent Court;

g. After registration of the proceedings under the provisions of Guardians and Wards Act, 1890, parties are at liberty to seek audio/video access and visitation rights. On filing such application, the concerned Court shall pass appropriate order uninfluenced by the directions passed by this Court which are interim in nature;

h. The Juvenile Justice Board/ Magistrate (Juvenile Justice) of the place where **Master K** would stay with father in future shall oversee and monitor the physical and psychological well-being of **Master K** through the Child Welfare Committee or any Social Welfare Officer available within the District. In case any adverse report on those issues is received, information in this regard be sent to the Registry of this Court through the Principal District Judge of the concerned district. On receipt of such information, it be registered as Miscellaneous Application and the matter be immediately listed for further orders.

i. A copy of this order be sent by the Registry of this Court to the concerned District Judge, Magistrate (Juvenile Justice) and Child Welfare Committee for ensuring compliance of the directions contained hereinabove.

CONTEMPT PETITION (C) NO. 325 OF 2022

CONTEMPT PETITION (C) NOS. 124-125 OF 2024

SLP (CRL) NO. 17530 OF 2024

23. In view of the above directions, Special Leave Petition (Crl) No. 17530 of 2024, Contempt Petition (C) No. 325 of 2022 and Contempt Petition (C) Nos. 124-125 of 2024 stand disposed of. Pending application(s) if any shall stand disposed of.

Result of the case: Matters disposed of.

[†]*Headnotes prepared by:* Nidhi Jain