



In the High Court of Punjab and Haryana at Chandigarh

FAO No. 2116 of 2020 (O&M)

Reserved on: 31.8.2024

Date of Decision: 13.9.2024

Suman

.....Appellant

Versus

Virender Kumar and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. Dushyant Godara, Advocate for
Mr. Vivek Suri, Advocate
for the appellant.

Mr. Vikas Chatrath, Advocate
for the respondents.

SURESHWAR THAKUR, J.

1. Appellant Suman filed a petition under Section 25 of the Guardian and Wards Act, 1890 read with Section 6 of Hindu Minority and Guardianship Act, before the learned Principal Judge, Family Court, Pehowa, thus seeking the custody of her minor daughter and son, who were respectively aged about 6 years and 3 years at the time of filing of the petition (supra), before the learned Family Court concerned.
2. Through a decision made, on 06.02.2020, on the petition (supra), the said petition became dismissed, but with the rights of visitation vis-a-vis her minor children, inasmuch as, the appellant being permitted to visit her minor children once in a month, thus becoming conferred upon the present appellant.
3. The passing of the aforesaid verdict, has thus led the appellant-wife to make an appeal thereagainst.

**Brief facts of the case**

4. The marriage of the appellant was solemnized with the respondent No. 1 on 1.11.2009, at Patiala, according to Hindu rites and ceremonies. Out of the said wedlock one daughter 'M' and one son 'V' were born respectively on 13.8.2010 and on 8.6.2013. Both the said children are in the custody of the respondents i.e. father and the grandparents, and the respondents are alleged to not taking adequate care of the minor children. After one month of the marriage, the respondents had beaten the appellant and called her parents to take her away from the matrimonial home. The parents of the appellant tried to pacify the respondents but in vain. Thereafter respondent No. 1 had left the appellant at Patiala. The appellant remained at Patiala for about 30 days. Subsequently, the parents of the appellant pacified the respondents, whereupon, they agreed to take the appellant to her matrimonial home but the attitude of the respondents did not improve. The respondents are alleged to start harassing, maltreating and beating the appellant on account of hers bringing lesser dowry and cash, and, started demanding a big car and cash from the appellant. However, the appellant requested them that her parents had already spent a huge amount on marriage, hence they were unable to fulfill their illegal demands. When the appellant was six months pregnant, respondent No. 1 left her at Patiala and a female child was born at the parental home of the appellant. All the expenditure were borne by the parents of the appellant. After three months of the delivery, respondent No. 1 took the appellant along with her daughter to the matrimonial home. The respondents started maltreating the child and the appellant as they wanted a male child. The parents of respondent No. 1 kicked out the appellant along with her female minor child from the



matrimonial home and they started living at Patiala in a rented accommodation in the year 2011. After one year appellant along with respondent No. 1 and the female minor child shifted to Kalka as respondent No. 1 was having Government Job at Haryana Vidhan Sabha at Chandigarh and the appellant was also transferred to Kalka. The appellant became pregnant for the second time and went to Sandholi at the time of delivery i.e. on 1.6.2013 and stayed there for approximately three months. After three months, she came back to Kalka along with one Santosh, her sister-in-law (Nanad), who used to reside with them at Kalka and interfered in their married life. The respondents started visiting the relatives of the appellant and requested them to create pressure to give him divorce. The respondents after humiliating the appellant for not bringing adequate dowry and cash, thus threw her out from the matrimonial home along with her minor children. The respondents also retained with them all the jewellery and dowry articles of the appellant. The parents of the appellant along with the Panchayat member approached the respondents to mend their behaviour but they flatly refused to accede to their request. Thereafter, the appellant along with respondent No. 1 shifted to Sector 12-A, Panchkula, and, after one year they shifted to Government Quarter No. 308, First Floor, Sector-14, Chandigarh. The respondents demanded Rs. Five lacs from the appellant for the marriage of one Santosh. Upon refusal by the appellant, she became confined in a room. On 29.3.2016, the appellant was again beaten by the respondents. On 30.3.2016, the appellant was turned out from her matrimonial home by the respondents. However, they kept the custody of the minor children with them and did not allow her to take the children with her. The minor daughter of the appellant, who was studying in a Convent



School at Panchkula, was taken to village Sandholi and became not admitted in the next class. The minor male child, aged about three years, is also in the custody of the respondents. The minor children have been deprived from the love and affection of their mother. On 27.5.2016, when the petitioner appellant went to Pehowa to meet her children, thereupon respondents used criminal force against her and did not allow her to meet the children. The appellant also reported the matter to the police and got registered a DDR.

Submissions of the learned counsel for the appellant

5. (i) The learned counsel for the appellant has argued before this Court that since the relevant parameters enshrined in the Indian Evidence Act, rather remained uncomplied with, thus at the time of adduction of electronic evidence, for thereby proving the alleged adulterous relations of the present appellant with her purported paramour. Therefore, the learned counsel for the appellant has argued, that the adduced electronic evidence for proving the factum of hers living in adultery with the adulterer concerned, but could not constrain the learned Family Court concerned, to record an affirmative finding to the said effect. He has further argued, that the said parameters are embodied in Section 65-B of the Indian Evidence Act, provisions whereof become extracted hereinafter, and, unless the enshrined therein statutory certification became made by the service provider concerned, vis-a-vis, the adduced electronic evidence, thereupon the adduced electronic evidence becoming both inadmissible in evidence, and, also unreadable in evidence.

(ii) Furthermore, the learned counsel for the appellant has submitted that since yet the learned Family Court concerned, has placed reliance upon the adduced electronic evidence, thereby the placing of



reliance thereons, thus is a misplaced reliance, and/or reiteratedly the said apposite electronic evidence was inadmissible as well as unreadable in evidence.

“Section 65B - Admissibility of electronic records.

(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:--

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was



regularly performed by computers, whether--

(a) by a combination of computers operating over that period; or
(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, --

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment; --

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer



operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.”

(iii) In addition, he has argued, that even if assumingly the present appellant was living in adultery with the adulterer concerned, yet therebys since there is no severance of her maternity with the minor children, especially given their respective minorities, wherebys, there was an imperative requirement qua motherly love and affection becoming endowed upon them. In addition, he has pointedly urged that the minor daughter of the married couple, who is extantly undergoing biological changes, thus needs the care of her mother. Therefore, he has argued, that the apposite deprivation to the female minor child of the married couple, has resulted in the well being and best care takings of the female minor child, rather not becoming adequately attended to, by the learned Family Court concerned.

(iv) In addition, the learned counsel has submitted, that the minor children born out of wedlock of the present appellant with the respondent No. 1, do evidently become afflicted with Parental Alienation Syndrome (PAS), inasmuch as, they are brain-washed by the respondents. Resultantly he has argued, that the impugned verdict requires an interference being made by this Court, as the dependence made by the learned Family Court concerned, on the confabulations adversarial to the present appellant, as made by the learned Family Court concerned, thus with the minor children, rather is an ill-made dependence thereons.



Submissions of the learned counsel for the respondents

6. On the other hand, the learned counsel for the respondents has argued before this Court that since the minor children are residing with the respondents since 16.2.2016, and, they are enjoying the care and custody of the respondents. Therefore, he has further argued before this Court, that since at the time of interactions occurring between the appellant and the minor children, before the Family Court concerned, the minor children showed their unwillingness to join the company of the appellant. Resultantly, the learned counsel has argued that the desire of the minor children is required to be revered. Moreover, the learned counsel has further argued, that since the respondents have adduced in evidence, thus various documents, hence for proving the allegations of adultery reared against the appellant, and when she has failed to rebut the same by adducing cogent thereto rebuttal evidence, thereby the allegations (*supra*) become unclinchingly proven. Resultantly, thereby the present appellant is disentitled to seek the custody of the minor children..

**Reasons assigned by the learned Family Court while dismissing
the petition (*supra*)**

7. The learned Family Court concerned, while dismissing the petition (*supra*) preferred by the appellant has observed, that it would not be in the interest of the minor children if their custody is granted to the appellant herein. The reason for making the said conclusion became embedded in the factum, that the minor children appeared to be happy in the company of their father and grandparents. Moreover, it has also been observed in the impugned verdict, that the appellant has nowhere stated that



her absence. Moreover, since the learned Family Court has also observed that on its confabulating with the minor children concerned, on 9.1.2020, when rather resulted in theirs evincing their unwillingness to join the company of their mother. In addition when before the taking place of the apposite inter se confabulations by the Court concerned, hence with the minor children, thus upon the minor children becoming directed to meet their mother, yet then theirs refusing to meet her and theirs starting to weep in the Court room. In sequel, all the above inferences (supra) ultimately led the learned Family Court concerned to decline the espoused relief to the present appellant.

8. Be that as it may, the issues which are required to be determined by this Court are hereunders.

1. Whether this case is of Parental Alienation Syndrome (PAS)?
2. Whether on account of the alleged adulterous relations of the present appellant, who is the mother of the minor children,, whether thereupon, the restoration of the custody of the minor children to her from the respondents concerned, can yet be denied ?
3. Whether the alleged adulterous relations of the present appellant with the adulterer concerned, has been sufficiently proven, and, the effects thereof upon the petition, thus confined to the relief of custody of the minor children becoming restored from the respondents to their mother i.e. the present appellant.

Reasons for concluding that the minor children are prima facie afflicted with Parental Alienation Syndrome vis-a-vis the present appellant



Singh versus Romani Singh reported in (2017) 3 Supreme Court Cases, 231, has recognized the concept of Parental Alienation Syndrome. The relevant paragraph of the verdict (supra) is extracted hereinafter.

“16. The aforesaid observations, contained in para 31 of the order of the High Court extracted above, apply with greater force today, when Saesha is 8 years' old child. She is at a crucial phase when there is a major shift in thinking ability which may help her to understand cause and effect better and think about the future. She would need regular and frequent contact with each parent as well as shielding from parental hostility. Involvement of both parents in her life and regular school attendance are absolutely essential at this age for her personality development. She would soon be able to establish her individual interests and preferences, shaped by her own individual personality as well as experience. Towards this end, it also becomes necessary for parents to exhibit model good behaviour and set healthy and positive examples as much and as often as possible. It is the age when her emotional development may be evolving at a deeper level than ever before. In order to ensure that she achieves stability and maturity in her thinking and is able to deal with complex emotions, it is necessary that she is in the company of her mother as well, for some time. This Court cannot turn a blind eye to the fact that there have been strong feelings of bitterness, betrayal, anger and distress between the appellant and the respondent, where each party feels that they are 'right' in many of their views on issues which led to separation. The intensity of negative feeling of the appellant towards the respondent would have obvious effect on the psyche of Saesha, who has remained in the company of her father, to the exclusion of her mother. The possibility of appellant's effort to get the child to give up her own positive perceptions of the other parent, i.e., the mother and change her to agree with the appellant's view point cannot be ruled out thereby diminishing the affection of Saesha towards her mother. Obviously, the appellant, during all this period, would not have said anything about the positive traits of the respondent. Even the matrimonial discord between the two parties would have been understood by Saesha, as perceived by the appellant. Psychologist term it as 'The Parental Alienation Syndrome' [29] It has at least two psychological destructive effects:

[29] The Parental Alienation Syndrome was originally described by Dr. Richard Gardner in "Recent Developments in Child Custody Litigation", The Academy Forum Vol. 29 No. 2: The American Academy of Psychoanalysis, 1985).

(i) First, it puts the child squarely in the middle of a contest of loyalty, a contest which cannot possibly be won. The child is asked to choose who is the preferred parent. No matter whatever is the choice, the child is very likely to end up feeling painfully guilty and confused. This is because in the overwhelming majority of cases, what the child wants and needs is to continue a relationship with each parent, as independent as possible from their own conflicts.

(ii) Second, the child is required to make a shift in assessing reality. One parent is presented as being totally to blame for all problems, and as someone who is devoid of any positive



characteristics. Both of these assertions represent one parent's distortions of reality."

10. The above extracted paragraphs, as become carried in the verdicts (supra) rendered by the Apex Court, do cast an onerous duty upon the Courts of law, to attend to the dire necessity qua the omnibus needs' of the growing child, relating to his or her becoming endowed with bilateral parentings, whereby, the omnibus prosperity, maturity and thinking about his or her future well being, would thus become well attended to. The abovesaid traits become stated therein to become instilled in the minor child, only if both the parents do engage themselves in nourishing and grooming the personality of the minor child. The paternal affection towards the minor children along with the father bearing all the expenses towards the well being and care of the minor children, thus do favourably inch towards providing omnibus nourishings and groomings of the personality(ies) of the minor children. Likewise, the mother of the minor children is also required to ensure that the requirements of motherly affection vis-a-vis the minor children, do become purveyed to them. Therefore, both fatherly affection, and, motherly care givings do become the sheet anchor, thus for potentializing the innate talents which every minor child possesses.

11. Initially, for gaugings being made, vis-a-vis the abilities and the innate potential of a minor child, which are thus required to be potentialized by care givings being meted to the minor child, both by the father and the mother, thus does encumber a joint responsibility upon the parents, to unearth the said innate talents, hence through regular interactions occurring inter se both the parents with their minor children. Though, segregation of any of the parents from the minor child but naturally has a consequent ill-effect upon the personality of the minor child. The above may also lead to



upon prolonged separation of the minor child from one of the parents, to the building up of the Parental Alienation Syndrome. The fostering of the said Parent Alienation Syndrome in the minor child, thus would also result in reluctance of the minor child to engage herself or himself with the parents from whom he or she becomes alienated. As such, there may be some family members of the minor child in whose custody the minor child does live, thus becoming the enabling factor for the building up of the said syndrome. Furthermore, thereby the potentialities of the minor child which are required to become unearthed, through interactions being made with the minor child by both the mother and the father, rather would become the ill-casuality. The above would ultimately hold a cascading ill-effect upon the potential and innate talent which the minor child possesses. Therefore, as *parens patriae*, an incumbent duty becomes cast upon the Courts of law to initially diagnose the said syndrome, and, thereafter to proceed to make such efforts, whereby the said etched syndrome in the minds of the minor child, thus becomes evacuated, so that he or she becomes the well recipient of bilateral parentings.

12. Be that as it may, the exercises which are engaged into by the Family Courts concerned, thus for objectively unearthing the desire and willingness of a minor child, rather to live with one or the other parent, but are bereft of deep profound exercises becoming embarked, rather for unearthing whether the Parental Alienation Syndrome has made its ill onset, upon the mindset of the minor child, whereby it may have a consequential ill-effect upon the personality building of the minor child. Therefore, the confabulations entered into by the Family Courts concerned, with the minor child, thus in Court ambience, and, which ultimately may lead to the



declining orders becoming passed, on the petitions relating to the custody of the minor children, rather prima facie appear to be perfunctorily made ill mechanical exercises. Therefore, to the considered mind of this Court, no deference is required to be meted to the said made mechanical exercises by the Family Courts concerned, whereby they ultimately on the wish or aspiration of the minor children, as become declared by the minor children, do ultimately hand over the custody of the minor children to the one or the other parent, and, also ultimately are led to deprive the custody of the minor children to one or the other parent.

13. Though, the Family Court concerned, in engaging themselves in confabulation(s) with the minor children, thus for ascertaining their wish to live with one or the other parent, do thereby well function as *parens patriae* towards the minor children. However, the said embarked exercises, thus in Court ambience, which but naturally has a domineering effect upon the psyche of the minor child, whereby the exercising of objective discretion at the instance of the minor child, does become obviously curtailed, besides especially given the prolonged retention of the custody of the minor child, with the person concerned, whereby he or she may have ultimately succeeded in creating an escalated level of animosity or ill-will towards the alienated parent. Therefore, the said engagements in Court rather may not prima facie inspire confidence nor can lead to a firm conclusion, that the refusal of the minor children to live with the alienated parent rather is a well made objective refusal, and/or that any reliance can be placed thereons.

14. However, for the completest effectivity becoming leveraged, thus for curbing the ill-potential of the Parental Alienation Syndrome, thus making its ill onsetting onto the psyche of the minor child, thereupon as



parens patriae, the Courts of law are bounden to initially detect the ill onsettings of the said syndrome, upon, the mindset of the minor child, wherebys but obviously on negation thereof, thus the well building of the personality of the minor children to the fullest and optimum level, rather would become ensured. Resultantly, the Family Courts concerned, may initially deem it fit to refer child custody matters to the counsellors concerned, working in the Mediation Centres concerned, who on receiving the said references, may seek the assistance of the child psychologist, who may after prolonged deliberation with the minor child, thus make unearthings whether the child is afflicted with the malady of Parental Alienation Syndrome, rather leading to the fostering of animosity towards the alienated parent. If such a report is made by the psychologist concerned, thereupon, the said report is required to be forwarded to the Family Courts concerned. Resultantly, in terms of the said report, the Family Courts would become fully enabled to effectively function as *parens patriae*. Moreover, therebys they may ensure that the ill-effects, if any, of Parental Alienation Syndrome, are promptly erased, through given the evident infancy and nascent age of the minor children, thus their custody being handed over to the mother, who otherwise is their natural guardian. Consequently therebys the beneficent effects of motherly affection, at a nascent age, can become fully and optimally endowed upon the minor child, wherebys not only the innate talent of the minor children, does become potentialized but may also lead to the well building of virtuous traits in the minor children.

15. Moreover, the Apex Court in a verdict rendered in case titled as ***Col. Ramneesh Pal Singh versus Sugandhi Aggarwal*** reported in **2024 INSC, 397** has thus discussed the concept of Parental Alienation Syndrome.



The relevant paragraph of the verdict (supra) is extracted hereinafter.

“20. PAS is a thoroughly convoluted and intricate phenomenon that requires serious consideration and deliberation. In our considered opinion, recognising and appreciating the repercussions of PAS certainly shed light on the realities of long-drawn and bitter custody and divorce litigation(s) on a certain identified sect of families, however, it is equally important for us to remember that there can no straitjacket formula to invoke the principle laid down by this Court in Vivek Singh (Supra).

x x x x

23. Accordingly, it is our considered opinion that Courts must endeavour to identify individual instances of 'alienating behaviour' in order to invoke the principle of parental alienation so as to overcome the preference indicated by the minor children.”

**Adultery of any parent is of no consequence for deciding
child custody matters**

16. This Court while dealing with the issue of adultery, thus in a verdict rendered in case titled as ***Mandeep Kaur versus State of Punjab*** reported in ***2021 SCC Online P&H 1060***, in the relevant paragraph thereof, para whereof becomes extracted hereinafter, thus has observed as under:-

“17. The respondent No. 4 has levelled allegations pertaining to the character of the petitioner that she was in an extra-marital relationship with a relative of the petitioner. Aside of the bald assertion in the petition, no supporting material has been brought before this Court. It would be worthwhile to note that in a patriarchal society, it is fairly common to cast aspersions on the moral character of a woman. More often than not these allegations are made without any basis or foundation. Even assuming a woman is or has been in an extramarital relationship, the same by itself cannot lead to the conclusion that she would not be a good mother to deny her the custody of her child.”

17. The Hon'ble Delhi High Court while dealing with the issue of adultery, thus in a verdict rendered in case titled as ***Vineet Gupta versus Mukta Aggarwal*** reported in ***2024 SCC OnLine Del 678***, hence in the relevant paragraph thereof has observed as under:--

*“Adulterous Spouse” is not equivalent to “Incompetent Parent”.
Points for consideration in Divorce proceedings and custody*



matters may be co-related but are always mutually exclusive. Any adulterous relationship or extramarital affair of either spouse, cannot be the sole determining factor to deny custody of a child, unless it is proved that the adulterous relationship in itself is pernicious/detrimental/injurious to the welfare of the child."

18. The Apex Court in a verdict rendered in case titled as ***Somprabha Rana and others versus The State of Madhya Pradesh and others*** reported in (2024) LiveLaw (SC) 666, answered the question qua why instead of writ Courts the Regular Civil Courts or Family Courts are in an advantageous position for dealing with cases appertaining to the custody of the child. The relevant paragraph of the verdict (supra) becomes extracted hereinafter.

"10. We believe that considering the peculiar facts of the case and the child's tender age, this is not a case where custody of the child can be disturbed in a petition under Article 226 of the Constitution of India. Only in substantive proceedings under the GW Act can the appropriate Court decide the issue of the child custody and guardianship. Regular Civil/Family Court dealing with child custody cases is in an advantageous position. The Court can frequently interact with the child. Practically, all Family Courts have a child centre/play area. A child can be brought to the play centre, where the judicial officer can interact with the child. Access can be given to the parties to meet the child at the same place. Moreover, the Court dealing with custody matters can record evidence. The Court can appoint experts to make the psychological assessment of the child. If an access is required to be given to one of the parties to meet the child, the Civil Court or Family Court is in a better position to monitor the same."

19. The reasons for making the said conclusion become obviously embodied in the hereinabove inferences which become drawn by this Court.

20. While determining the custody of the minor children the most important factor which is to be considered is the welfare of the children.



21. The parameter (supra) has been approbated by the Apex Court in the verdict rendered in case titled as ***Yashita Sahu versus State of Rajasthan*** reported in ***AIR 2020 Supreme Court 577***, wherein it has been observed as under:-

17. It is well settled law by a catena of judgments that while deciding matters of custody of a child, primary and paramount consideration is welfare of the child. If welfare of the child so demands then technical objections cannot come in the way. However, while deciding the welfare of the child it is not the view of one spouse alone which has to be taken into consideration. The courts should decide the issue of custody only on the basis of what is in the best interest of the child.

18. The child is the victim in custody battles. In this fight of egos and increasing acrimonious battles and litigations between two spouses, our experience shows that more often than not, the parents who otherwise love their child, present a picture as if the other spouse is a villain and he or she alone is entitled to the custody of the child. The court must therefore be very wary of what is said by each of the spouses.

19. A child, especially a child of tender years requires the love, affection, company, protection of both parents. This is not only the requirement of the child but is his/her basic human right. Just because the parents are at war with each other, does not mean that the child should be denied the care, affection, love or protection of any one of the two parents. A child is not an inanimate object which can be tossed from one parent to the other. Every separation, every reunion may have a traumatic and psychosomatic impact on the child. Therefore, it is to be ensured that the court weighs each and every circumstance very carefully before deciding how and in what manner the custody of the child should be shared between both the parents. Even if the custody is given to one parent the other parent must have sufficient visitation rights to ensure that the child keeps in touch with the other parent and does not lose social, physical and psychological contact with any one of the two parents. It is only in extreme circumstances that one parent should be denied contact with the child. Reasons must be assigned if one parent is to be



denied any visitation rights or contact with the child. Courts dealing with the custody matters must while deciding issues of custody clearly define the nature, manner and specifics of the visitation rights.”

22. Since, as stated (*supra*), the minor child is required to be the well recipient of both motherly and fatherly care givings, nor when the said endowments can become the ill-casualties. Therefore, even if assumingly the mother of the minor child, is in a live-in relationship, thereby the care, affection or the endowment of motherliness, upon the minor child, but cannot become curtailed or fettered in any manner. The above is a dire biological need, and/or is a biological bondage inter se the mother and the minor children, which cannot be snapped, even if marital ties amongst the husband and the wife becomes severed or become snapped.

23. In the light of the above, the entering of any live-in relationship by any partner to a lawful marital relationship, which may have overtones of adultery, thus is not required to be working as an obstacle rather for the mother to receive the custody of her infant/nascent children, as thereby the completest motherly love and affection becomes bestowed upon them.

24. Now assuming that there were some evidence on record with respect to the present appellant purportedly entering into an adulterous relationship with her paramour, but initially the said was not in terms of what is stated above, thus an issue which was required to be either delved into nor was required to be adjudicated upon. The said was not the apt res controversia, which otherwise it could be, only in case it was a Hindu Marriage Petition filed by the husband seeking the dissolution of his marital ties with the present appellant, thus on the ground of adultery. Resultantly, the scope of the petition has been untenably widened, and, has resulted in the



minor child being the ill- casualty thereof.

25. Now, even if assumingly that there is some evidence in respect of the above, thereupon the said evidence was required to be cogently proven through adduction of best electronic evidence. However, though electronic evidence becomes adduced but yet there is no statutory certification in respect thereof, rather in terms of the hereinabove provisions, as carried in Section 65-B of the Indian Evidence Act, whereas, only upon the makings of the said statutory certification by the service provider concerned, that the said adduced electronic evidence, thus required qua credence thereto being meted, and/or, therebys alone the said adduced electronic evidence became both readable and admissible in evidence. Therefore, the effect of the omissions in the making of the statutory certification (supra) by the service provider concerned, vis-a-vis the adduced electronic evidence, is that, the said adduced electronic evidence became both inadmissible, besides unreadable in evidence, nor thereupon any striking conclusion, as has been untenably made by the learned Family Court concerned, could have been made. The said conclusion but has a stigmatic effect upon the reputation of the present appellant, wherebys ultimately she has been untenably deprived from seeking the restoration of custody to her of the minor children rather from the respondents, who are respectively their father and the grandparents, who otherwise cannot bestow any motherly love, and, care to the minor children, so indispensable for their growth, and who for the reasons (supra) prima facie appear to erect in the psyche of the minor children, the ill Parental Alienation Syndrome.

Final Order

26. Consequently, the impugned order is quashed and set aside. The



matter is remanded to the Family Court concerned, who after receiving the instant case, shall refer the same to the counsellors concerned. The counsellor concerned, on receiving the reference, may seek the assistance of the child psychologist, who may after prolonged deliberations with the minor children thus shall make unearthings whether the children are afflicted with the malady of Parental Alienation Syndrome. The respondents are directed not to interfere in the making of such deliberations by the counsellor concerned, with the minor children, during course whereof, they can under strict vigil, thus make visitations, upon the minor children. If such a report is made by the psychologist concerned, thereupon, the said report shall be forthwith forwarded to the Family Court concerned, so that in terms of the said report, the Family Court concerned, may ably and effectively function as *parens patriae*, and, thereby ensure that the ill-effects of Parental Alienation Syndrome rather become promptly erased.

27. The matter be positively decided within six months from today but after hearing all the concerned.

28. Since this Court has quashed the impugned order, and, has also made an order of remand to the extent (*supra*), therebys till the remanded lis is decided, thereupto the respondents concerned, are directed to forthwith restore the custody of the minor children to her mother i.e. the present appellant. However, the said restoration of custody of the minor children to the mother-appellant would be subject to the outcome of the remanded lis.

29. Resultantly since the child psychologists are required to assist the counsellors working at the Mediation Centres concerned, therefore, a direction is made upon the District Health Officers concerned, in the States of Punjab and Haryana and in the State of Union Territory, Chandigarh, to



on a regular basis appoint child psychologists at all the Mediation Centres, in the States of Punjab, Haryana and in U.T., Chandigarh.

- 30. The compliance report in the above regard, be placed on record within a month from today.
- 31. List only for the afore purpose, on 14.10.2024.
- 32. With the afore observations and directions (supra), the instant appeal stands disposed of.
- 33. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

September 13th, 2024
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No