

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

Writ Petition No.2888 of 2018

DATED:16-03-2018

Between:

Tippa Srihari ... Petitioner

And

State of Andhra Pradesh
Represented by Principal Secretary
Home Department, Secretariat Office,
Velagapudi, Andhra Pradesh
and others ... Respondents

COUNSEL FOR THE PETITIONER: Mr. Prabhjit Jauhar,
for Mr. T. Anirudh Reddy

COUNSEL FOR RESPONDENT NOS.1 to 3:
Mr. C.S. Suryaprakasha Rao,
Special Government Pleader (AP)
COUNSEL FOR RESPONDENT NO.4: Mr. P. Jagadish Chandra
Prasad

THE COURT MADE THE FOLLOWING:

JUDGMENT: *(per the Hon'ble Sri Justice C.V. Nagarjuna Reddy)*

The petitioner and respondent No.4 are man and wife. Their marriage was performed on 12.2.2009 in India. Even prior to his marriage with respondent No.4, the petitioner was living in United Kingdom (UK) since 2004. He has been working as Physiotherapy Team Manager with National Health Services, UK for the last fourteen years. After her marriage, respondent No.4 joined the company of the petitioner in UK in March, 2009 and acquired the permanent UK residency, i.e. Indefinite Leave to remain in UK, and till May 2017 respondent No.4 lived with the petitioner in UK. The couple were blessed with two male children, by name, Abhinav Tippa and Divit Tippa. The first son was born on 3.1.2011 and the second son was born on 7.7.2015. Both of them having been born in UK, they acquired UK citizenship by birth. The elder son was admitted in a school called Jellybabies Nursery and has studied Nursery and Pre-school during 2013-2015 and was admitted in Reception School in 2015-16 and Colmers Farm Primary School in 2016-17. There is no dispute about the aforementioned facts.

2. The marital life of the couple ran into rough whether with respondent No.4 giving a police complaint leading to

registration of a criminal case against the petitioner on 13.5.2017 and the latter was arrested for the alleged domestic violence against respondent No.4 in the UK. The petitioner remained in judicial custody for 24 hours and was thereafter granted conditional bail with the restraint order that he shall not enter his home in UK for four weeks. During this period of four weeks, respondent No.4 has come down to India along with the two minor children on 28.5.2017. The petitioner filed a petition for divorce/dissolution of marriage on 5.7.2017 in a UK Court. Respondent No.4 has submitted herself to the jurisdiction of the Court and filed a reply in response to the divorce petition. The petitioner also filed a Wardship petition before the High Court of Justice, Family Division, UK under Child Protection and Custody Act, 1985. Vide its order dt.18.10.2017 the UK Court declared the two minor children as its wards with a direction to respondent No.4 to cause return of the minor children to the jurisdiction of England and Wales by 6.11.2017. On an another petition filed by the petitioner, the High Court of Justice, Family Division, vide order dt.18.12.2017 directed that both the minor children shall remain wards of the UK Court during their minority or until further order and also directed respondent No.4 to return the children

forthwith to England & Wales within fourteen days of receipt of the said order. The Court has also rendered a finding that the two minor children were wrongfully removed from the jurisdiction of the UK Court which has exclusive jurisdiction in matters of parental responsibility over the child pursuant on articles 8 and 18 of Brussels II Regulation (BIIR).

3. After coming to India, respondent No.4 has filed G.W.O.P. No.92 of 2017 in the Court of the Additional District Judge, Madanapalle, *inter alia* to declare the petitioner as unfit to act as natural guardian and to declare respondent No.4 as legal guardian to the two minor children till the date of attaining their majority both personally as well as for their properties. As respondent No.4 has not responded to the orders passed by the UK Court to return the custody of the minor children to the Court, the petitioner has filed the present writ petition for habeas corpus directing the respondents to produce the two minor children in court to enable them to go back to the UK.

4. In response to the notice issued by this Court, respondent No.4 has filed a counter affidavit. She has *inter alia* stated that the UK Court has passed the orders after she left the country and therefore they do not bind her. She denied the allegation

that she removed the two minor children from UK illegally. She averred that she purchased return tickets to go back to UK and that she was shocked to know that soon after her reaching India the petitioner has filed the petition for divorce and other applications and added to the same, she has received threatening calls from the petitioner due to which she could not return to UK nor even cancelled the return tickets. She further averred that the UK Court has no jurisdiction to entertain the petitions and pass orders. That the petitioner wantonly with a mala fide intention did not obtain UK citizenship to respondent No.4 and that the petitioner has hypertension due to which she and her two children faced harassment in his hands, that the conduct of the petitioner has an impact on the life of the kids and that due to the rude behaviour and harassment meted out to respondent No.4 and her kids, they suffered without food before coming down to India and that with the help and support of Orphanage Home, Amirah Foundation and the Police Officials, she could return to India along with her minor children. That the petitioner has abused respondent No.4 as 'Bloody Indian' number of times and the domestic violence committed by the petitioner on herself and her children was taken on file by the Bournville Police Station.

That the family of the petitioner attacked her family in India and her grand-father was seriously injured in such attack. That the petitioner used to beat her and the children in front of his friends and family gatherings and that as the writ petition is not maintainable, the same may be dismissed.

5. Mr. Prabhjit Jauhar, learned counsel for the petitioner, referred to the judgments in **Aviral Mittal v. State**¹, **Shilpa Aggarwal v. Aviral Mittal**², **Arathi Bandi v. Bandi Jagadrakshaka Rao**³, **V. Ravi Chandran (Dr.)(2) v. Union of India**⁴, **Sarita Sharma v. Sushil Sharma**⁵, **Surinder Kaur Sandhu v. Harbax Singh Sandhu**⁶, **Elizabeth Dinshaw v. Arvind Dinshaw**⁷, **Surya Vadanam v. State of Tamil Nadu**⁸, **Dhanwanti Joshi v. Madhav Unde**⁹, **Nithya Anand Raghavan v. State (NCT of Delhi)**¹⁰, and **K.G. v. State of Delhi**¹¹, and submitted that the two minor children were born in the UK, that they are UK citizens, that the elder child has spent in school for four years before he was abruptly withdrawn by respondent No.4 and surreptitiously taken to

¹ 163 (2009) DLT 627

² (2010) 1 SCC 591

³ (2013) 15 SCC 790

⁴ (2010) 1 SCC 174

⁵ (2000) 3 SCC 14

⁶ (1984) 3 SCC 698

⁷ (1987) 1 SCC 42

⁸ (2015) 5 SCC 450

⁹ (1998) 1 SCC 112

¹⁰ (2017) 8 SCC 454

¹¹ 245(2017) DLT 1

India, that the child has enjoyed the schooling as evident from the photographs filed along with the writ petition, that the entire family having made UK their habitat, the removal of the children from the UK immensely affects their future and that the same is not in their best interest. Terming the allegation of harassment made by respondent No.4 as wholly baseless, the learned counsel has drawn our attention to the material filed by respondent No.4 before this Court showing that the Police have closed the criminal complaint made by respondent No.4 against the petitioner on 13.05.2017, that the conduct of respondent No.4 in filing the criminal complaint leading to the petitioner's police custody for twenty-four hours and barring his visit to his own home for one month, prompted the petitioner to file an application for divorce and that if she is willing to join the company of the petitioner, he will unconditionally withdraw the said petition and also the guardianship petitions filed by him in the UK Court.

6. Mr. P. Jagadishchandra Prasad, learned counsel for respondent No.4, submitted that due to the harassment meted out to and humiliation suffered by respondent No.4 and her two minor children at the hands of the petitioner, the former had no option other than coming away from UK and that the

children were admitted in a school in Madanapalle and they are presently studying there. He has further submitted that in **Nithya Anand Raghavan** (10 supra) the Supreme Court has disagreed with the conclusions drawn in **Surya Vadan** (8 supra) laying down the “first strike” principle that weightage should be given to the order of the foreign court which has jurisdiction, and held that best interest and welfare of the children is of paramount importance and that if handing over of the children to the foreign court’s jurisdiction would harm their best interest and welfare, the Court would not direct their return to the place falling within the jurisdiction of the foreign court. That if without applying the principles laid down in the said case, the two minor children, who are happily placed in the company of respondent No.4 and her parents, are entrusted to the foreign court’s jurisdiction, the same is not in their best interest and welfare.

7. We have carefully considered the respective submissions of the learned counsel for the parties with reference to the case law referred to above. Before we proceed further, we would like to place on record as to what transpired during the hearing of this writ petition. In pursuance of the notice issued by this Court, the petitioner and respondent No.4 along with the two

minor children appeared before the Court on 14.02.2018. On being counselled, the petitioner and respondent No.4 have agreed to discuss with each other and iron out their differences. The case was accordingly adjourned to 15.02.2018. On the next date of hearing, we have counselled the petitioner and respondent No.4 for nearly one hour and we have explained to them the futility of the litigation, enormous loss they suffer and the serious mental conflict which the two minor children would suffer if they continue to fight. With great difficulty, we were able to persuade the couple to stay in a hotel along with the two minor children for a week. We have accordingly adjourned the case to 22.02.2018. On the adjourned date, both the counsel, to our disappointment, informed that the parties have not stayed together as agreed by them and requested for an adjournment to address their arguments on merits. Accordingly, the case was posted to 08.03.2018, on which date we have heard the arguments and reserved the judgment.

8. The custody of minor children presents considerable difficulty in adjudication by the Courts apart from raising delicate issues, especially when the spouses are Non-Resident Indians (NRIs). The case law on the subject needs to be carefully analysed and understood based on the facts of each

case. The earliest case involving disputes between NRI spouses was dealt with by the Apex Court in **Surender Kaur Sandhu** (6 supra). The spouses who are Indians got married in Faridkot and thereafter moved to England. They remained Indian citizens but their baby boy born within one year of marriage in England was a British citizen. A case of attempt to murder his wife was registered against the husband and he was convicted and sentenced for the said offence. On his wife's intervention, he was let out on probation. After his release on probation, the husband removed the child from England and brought to India. On the date on which the husband removed the child, the wife secured an order from the UK Court declaring the minor child as the ward of the Court. An initial attempt of the wife to take the custody of the child by filing a petition under Section 97 of the Code of Criminal Procedure, 1973, before the jurisdictional Magistrate having failed, she secured another order from the foreign court to handover the custody of the child to the mother. The wife thereafter filed a writ in the High Court of Punjab and Haryana seeking production and custody of the child. The said writ petition was dismissed on the ground that the mother's status in England was that of a foreigner, that she was a factory worker and she had no

relatives in England, as opposed to the father, who was living in an affluent atmosphere with his parents and in a welcoming environment. It applied the triple principles of ‘welfare of the child’, ‘comity of courts’, and ‘jurisdiction of the State which has most intimate contact with the issues arising in the case’, in deciding the case. The following portion of the judgment is apposite for reproduction:

“10. ... The boy is a British citizen, having been born in England, and he holds a British passport. It cannot be controverted that, in these circumstances, the English Court had jurisdiction to decide the question of his custody. The modern theory of Conflict of Laws recognises and, in any event, prefers the jurisdiction of the State which has the most intimate contact with the issues arising in the case. Jurisdiction is not attracted by the operation or creation of fortuitous circumstances such as the circumstance as to where the child, whose custody is in issue, is brought or for the time being lodged. To allow the assumption of jurisdiction by another State in such circumstances will only result in encouraging forum-shopping. Ordinarily, jurisdiction must follow upon functional lines. That is to say, for example, that in matters relating to matrimony and custody, the law of that place must govern which has the closest concern with the well-being of the spouses and the welfare of the offsprings of marriage. The spouses in this case had made England their home where this boy was born to them. The father cannot deprive the English Court of its jurisdiction to decide upon his custody by removing him to India, not in the normal movement of the matrimonial home but, by an act which was gravely detrimental to the peace of that home. The fact that the matrimonial home of the spouses was in England, establishes sufficient contacts or ties with that State in order to make it reasonable and just for the courts of that State to assume jurisdiction to enforce obligations which were incurred therein by the spouses. (See *International Shoe Company v. State of Washington* [90 L Ed 95 (1945) : 326 US 310] which was not a matrimonial case but which is regarded as the fountainhead of the subsequent developments of jurisdictional issues like the one involved in the instant case.) It is our duty and function to protect the wife against the burden of litigating in an inconvenient forum which she and her husband had left voluntarily in order to make their

living in England, where they gave birth to this unfortunate boy.”

9. In **Elizabeth Dinshaw** (7 supra), the Supreme Court was guided by the factors such as the longer time spent by the child in the USA in which the child was born and became American citizen and also the fact that the child has not taken roots in India and who was still not accustomed and acclimatized to the conditions and environment obtaining in the place of his origin in the United States of America. The Supreme Court also took note of the fact that the child's presence in India is the result of an illegal act of abduction and the father who is guilty of the said act cannot claim any advantage by stating that he has already put the child in some school in Pune.

10. In **Aviral Mittal** (1 supra), the facts are almost identical to that in the present case. There also the parents were permanent residents of UK. A girl child was born to them in England. The child has British Passport. After the couple travelled to India, the wife refused to travel back to UK along with the child. The husband initiated proceedings before the High Court of Justice, Family Division, UK, seeking an order that the minor be made a ward of the Court. An interim order to that effect was passed by the UK Court. As the wife did not comply with the direction of the UK Court, the husband filed a

habeas corpus writ petition in the Delhi High Court. The Delhi High Court has allowed the writ petition taking into consideration the interests of the child as paramount and applying the doctrine of intimate connection and also the theory of comity of nations and comity of the courts. The wife filed an appeal before the Supreme Court. Affirming the judgment of the Delhi High Court, the Supreme Court, apart from the welfare of the child, has given due weight to the wardship order passed by the UK Court. The Supreme Court has construed the order of the English Court as not intending to separate the child from the mother until a final decision was taken with regard to the custody of the child. It further observed that the ultimate decision in that regard has to be left to the English Courts having regard to the nationality of the child and the fact that both the parents had worked for gain in the UK and had also acquired permanent residents status in the UK. The Supreme Court also upheld the observation of the High Court that as held in **Surender Kaur Sandhu** (6 supra) the English Courts which had the most intimate contact with the issue in question have to decide the same.

11. In **V. Ravi Chandran** (4 supra), the husband, an American citizen, married a lady who is a native of Tirupati. A

son was born to them in the US. Pending dissolution of the marriage between the parties, a consent order granting joint custody of the child to both the parties was passed. Post dissolution of the marriage, the Family Court in USA passed a consent order laying down conditions for joint custody and upbringing of the minor child. The wife brought the child to India in June 2017 and started living with her parents in Chennai. On a petition filed by the husband, the Family Court has modified the order granting temporary and sole custody of the minor child. The Court further directed the wife to return the child immediately to the father, apart from issuing non-bailable warrants against the wife. The husband came down to India and filed a petition for habeas corpus in the Supreme Court for production of the minor child and for a direction to handover the child to him. On considering the judgment of the Court of Appeal in **L (Minors) in re**¹², **Dhanwanti Joshi** (9 supra), **McKee v. McKee**¹³ apart from other judgments, the Supreme Court discussed the legal proposition as under:

“29. While dealing with a case of custody of a child removed by a parent from one country to another in contravention of the orders of the court where the parties had set up their matrimonial home, the court in the country to which the child has been removed must first consider the question whether the court could conduct an elaborate enquiry on the question of

¹² (1974) 1 All ER 913 (CA)

¹³ 1951 AC 352

custody or by dealing with the matter summarily order a parent to return custody of the child to the country from which the child was removed and all aspects relating to the child's welfare be investigated in a court in his own country. Should the court take a view that an elaborate enquiry is necessary, obviously the court is bound to consider the welfare and happiness of the child as the paramount consideration and go into all relevant aspects of welfare of the child including stability and security, loving and understanding care and guidance and full development of the child's character, personality and talents. While doing so, the order of a foreign court as to his custody may be given due weight; the weight and persuasive effect of a foreign judgment must depend on the circumstances of each case.

30. However, in a case where the court decides to exercise its jurisdiction summarily to return the child to his own country, keeping in view the jurisdiction of the court in the native country which has the closest concern and the most intimate contact with the issues arising in the case, the court may leave the aspects relating to the welfare of the child to be investigated by the court in his own native country as that could be in the best interests of the child. The indication given in *McKee v. McKee* [1951 AC 352 : (1951) 1 All ER 942 (PC)] that there may be cases in which it is proper for a court in one jurisdiction to make an order directing that a child be returned to a foreign jurisdiction without investigating the merits of the dispute relating to the care of the child on the ground that such an order is in the best interests of the child has been explained in *L (Minors), In re* [(1974) 1 WLR 250 : (1974) 1 All ER 913 (CA)] and the said view has been approved by this Court in *Dhanwanti Joshi* [(1998) 1 SCC 112] . Similar view taken by the Court of Appeal in *H. (Infants), In re* [(1966) 1 WLR 381 (Ch & CA) : (1966) 1 All ER 886 (CA)] has been approved by this Court in *Elizabeth Dinsshaw* [(1987) 1 SCC 42 : 1987 SCC (Cri) 13].”

While holding that on the facts of the case elaborate enquiry need not be held by it, the Supreme Court further held as under:

“32. Admittedly, Adithya is an American citizen, born and brought up in the United States of America. He has spent his initial years there. The natural habitat of Adithya is in the United States of America. As a matter of fact, keeping in view the welfare and happiness of the child and in his best interests, the parties have obtained a series of consent orders concerning his custody/parenting rights, maintenance, etc. from the competent courts of jurisdiction in America. Initially, on 18-4-2005, a consent order governing the issues of custody and

guardianship of minor Adithya was passed by the New York State Supreme Court whereunder the court granted joint custody of the child to the petitioner and Respondent 6 and it was stipulated in the order to keep the other party informed about the whereabouts of the child. In a separation agreement entered into between the parties on 28-7-2005, the consent order dated 18-4-2005 regarding custody of minor son Adithya continued.

33. In 8-9-2005 order whereby the marriage between the petitioner and Respondent 6 was dissolved by the New York State Supreme Court, again the child custody order dated 18-4-2005 was incorporated. Then the petitioner and Respondent 6 agreed for modification of the custody order and, accordingly, the Family Court of the State of New York on 18-6-2007 ordered that the parties shall share joint legal and physical custody of the minor Adithya and, in this regard, a comprehensive arrangement in respect of the custody of the child has been made.

34. The fact that all orders concerning the custody of the minor child Adithya have been passed by the American courts by consent of the parties shows that the objections raised by Respondent 6 in the counter-affidavit about deprivation of basic rights of the child by the petitioner in the past; failure of the petitioner to give medication to the child; denial of education to the minor child; deprivation of stable environment to the minor child; and child abuse are hollow and without any substance. The objection raised by Respondent 6 in the counter-affidavit that the American courts which passed the order/decreed had no jurisdiction and being inconsistent with Indian laws cannot be executed in India also prima facie does not seem to have any merit since despite the fact that Respondent 6 has been staying in India for more than two years, she has not pursued any legal proceeding for the sole custody of the minor Adithya or for declaration that the orders passed by the American courts concerning the custody of minor child Adithya are null and void and without jurisdiction. Rather it transpires from the counter-affidavit that initially Respondent 6 initiated the proceedings under the Guardians and Wards Act, 1890 but later on withdrew the same.

In the aforementioned judgment, the Supreme Court once again reiterated the principles of the closest concern, most intimate contact with the issues arising in the case, natural habitat of the minor child, best interest of the child and comity

of Courts. The Supreme Court eventually directed the child to be taken to the USA from where he was removed to enable the parties to establish their right in the native State of the child, i.e., USA.

12. **Surya Vadanan** (8 supra) is also a case where the spouses were of Indian origin and later the husband became a citizen of UK. They got married in India and had two daughters in UK. The wife also became a British citizen and had a British passport. After matrimonial disputes arose between them, the wife returned to India with her two daughters and filed a petition under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 seeking divorce in the Family Court, Coimbatore. The husband has filed a petition in the High Court of Justice. The said Court has passed an order making the children wards of the court during their minority or until further orders of the court and the wife was directed to return the children to the jurisdiction of the foreign court. As the wife did not comply with the order of the UK Court, the husband filed a writ of habeas corpus in the Madras High Court. The writ having been dismissed by the High Court, the husband has carried the matter to the Supreme Court. The Supreme Court applied the principles of (i) “the first strike”, i.e., the UK Court has passed

effective and substantial order declaring the children of the parties as wards of that court, (ii) the comity of courts and (iii) the best interest and welfare of the child. It also held that the “most intimate contact” doctrine and the “closest concern” laid down in **Surinder Kaur Sandhu** (6 supra) are very much alive and cannot be ignored only because their application might be uncomfortable in certain situations. The Court also reiterated that the best interest and welfare of the child are of paramount importance which shall also be kept in mind by the courts while adjudicating the disputes.

13. A three-Judge Bench of the Supreme Court struck a different note in **Nithya Anand Raghavan** (10 supra). In that case, the couple married on 30.11.2006 at Chennai and shifted to UK in early 2007. Disputes between the spouses arose. The wife has conceived in December 2008, came to New Delhi in June 2009 and stayed with her parents and she gave birth to a girl child – Nethra on 07.08.2009 at Delhi. After the husband arrived in India, the couple went back to UK in March, 2010 and following certain unsavoury events, the wife and the daughter returned to India in August 2010. After exchange of legal correspondence, the wife and her daughter went back to London in December, 2011, and in January 2012 the daughter

was admitted in a nursery school in UK. In December, 2012, the child was granted UK citizenship and the husband was also granted UK citizenship in January 2013. They bought a home in UK to which they shifted their family. In September, 2013 the child was admitted in a primary school in UK and she was around four years old. In July, 2014 the wife returned to India along with her daughter, she again returned to UK along with the child, between late 2014 and early 2015 the child became ill and was diagnosed with cardiac disorder. On 02.07.2015 the wife returned to India with her daughter due to the alleged violent behaviour of her husband. On 16.12.2015, the wife filed a complaint against the husband at the CAW Cell, New Delhi, and in spite of the notices to the husband and her parents, neither of them appeared. The husband filed a custody/wardship petition on 08.01.2016 in UK to seek return of the child. On 23.1.2016 he has also filed habeas corpus petition in Delhi High Court which was allowed on 08.07.2016. The wife carried the case to the Supreme Court. The Supreme Court heavily relied upon its earlier judgment in **Dhanwanti Joshi** (9 supra), which in turn referred to **Mckee** (13 supra) where the Privy Council held that the order of foreign court would yield to the welfare of the child and that the comity of

courts demanded not its enforcement, but its grave consideration. While taking note of the fact that India is not a signatory to the Hague Convention of 1980, on “Civil Aspects of International Child Abduction”, *inter alia* held as under:

“40. ... As regards the non-Convention countries, the law is that the court in the country to which the child has been removed must consider the question on merits bearing the welfare of the child as of paramount importance and reckon the order of the foreign court as only a factor to be taken into consideration, unless the court thinks it fit to exercise summary jurisdiction in the interests of the child and its prompt return is for its welfare. In exercise of summary jurisdiction, the court must be satisfied and of the opinion that the proceeding instituted before it was in close proximity and filed promptly after the child was removed from his/her native state and brought within its territorial jurisdiction, the child has not gained roots here and further that it will be in the child's welfare to return to his native state because of the difference in language spoken or social customs and contacts to which he/she has been accustomed or such other tangible reasons. In such a case the court need not resort to an elaborate inquiry into the merits of the paramount welfare of the child but leave that inquiry to the foreign court by directing return of the child. Be it noted that in exceptional cases the court can still refuse to issue direction to return the child to the native state and more particularly in spite of a pre-existing order of the foreign court in that behalf, if it is satisfied that the child's return may expose him to a grave risk of harm. This means that the courts in India, within whose jurisdiction the minor has been brought must “ordinarily” consider the question on merits, bearing in mind the welfare of the child as of paramount importance whilst reckoning the pre-existing order of the foreign court if any as only one of the factors and not get fixated therewith. In either situation—be it a summary inquiry or an elaborate inquiry—the welfare of the child is of paramount consideration. Thus, while examining the issue the courts in India are free to decline the relief of return of the child brought within its jurisdiction, if it is satisfied that the child is now settled in its new environment or if it would expose the child to physical or psychological harm or otherwise place the child in an intolerable position or if the child is quite mature and objects to its return. We are in respectful agreement with the aforementioned exposition.

The Supreme Court also relied upon the judgment in **V. Ravi Chandran** (4 supra) and *inter alia* held that the role of the High Court in examining the cases of custody of a minor is on the touchstone of principle of parens patriae jurisdiction, as the minor is within the jurisdiction of the Court. It has held that the High Court while dealing with the petition for issuance of habeas corpus concerning a minor child in a given case, may direct return of the child or decline to change the custody of the child keeping in mind all the attending facts and circumstances including the settled legal position discussed therein. It has further added that the decision of the Court, in each case, must depend on the totality of the facts and circumstances of the case brought before it while considering the welfare of the child which is of paramount consideration and that the order of the foreign Court must yield to the welfare of the child and the remedy of writ of habeas corpus cannot be used for mere enforcement of the directions given by the foreign court against a person within its jurisdiction and convert that jurisdiction into that of an executing court. It has further observed that the writ petitioner can take recourse to such other remedy as may be permissible in law for enforcement of the order passed by the foreign court or resort

to any other proceedings as may be permissible in law before the Indian Court for the custody of the child, if so advised.

The Supreme Court has disapproved paragraph 56 (a) to (d) in **Surya Vadan** (8 supra) which reads as follows:

“56. However, if there is a pre-existing order of a foreign court of competent jurisdiction and the domestic court decides to conduct an elaborate inquiry (as against a summary inquiry), it must have special reasons to do so. An elaborate inquiry should not be ordered as a matter of course. While deciding whether a summary or an elaborate inquiry should be conducted, the domestic court must take into consideration:

(a) The nature and effect of the interim or interlocutory order passed by the foreign court.

(b) The existence of special reasons for repatriating or not repatriating the child to the jurisdiction of the foreign court.

(c) The repatriation of the child does not cause any moral or physical or social or cultural or psychological harm to the child, nor should it cause any legal harm to the parent with whom the child is in India. There are instances where the order of the foreign court may result in the arrest of the parent on his or her return to the foreign country. [*Arathi Bandi v. Bandi Jagadrakshaka Rao*, (2013) 15 SCC 790 : (2014) 5 SCC (Civ) 475] In such cases, the domestic court is also obliged to ensure the physical safety of the parent.

(d) The alacrity with which the parent moves the foreign court concerned or the domestic court concerned, is also relevant. If the time gap is unusually large and is not reasonably explainable and the child has developed firm roots in India, the domestic court may be well advised to conduct an elaborate inquiry.”

As regards (a) to (c) of paragraph 56 above, the Supreme Court termed the same as tending to drift away from the exposition in

Dhanwanti Joshi (9 supra) and **V. Ravi Chandran** (4 supra)

and with regard to clause (d), the Court disagreed with the same. For better appreciation, paragraphs 62, 63 and 66 of the report are extracted hereinbelow.

“62. As regards clauses (a) to (c) above, the same, in our view, with due respect, tend to drift away from the exposition in *Dhanwanti Joshi case* [*Dhanwanti Joshi v. Madhav Unde*, (1998) 1 SCC 112] , which has been quoted with approval by a three-Judge Bench of this Court in *V. Ravi Chandran (2)* [*V. Ravi Chandran (2) v. Union of India*, (2010) 1 SCC 174 : (2010) 1 SCC (Civ) 44] . In that, the nature of inquiry suggested therein inevitably recognises giving primacy to the order of the foreign court on the issue of custody of the minor. That has been explicitly negated in *Dhanwanti Joshi case* [*Dhanwanti Joshi v. Madhav Unde*, (1998) 1 SCC 112] . For, whether it is a case of a summary inquiry or an elaborate inquiry, the paramount consideration is the interests and welfare of the child. Further, a pre-existing order of a foreign court can be reckoned only as one of the factor to be taken into consideration. We have elaborated on this aspect in the earlier part of this judgment.

63. As regards the fourth factor noted in clause (d) of para 56, *Surya Vadanani case* [*Surya Vadanani v. State of T.N.*, (2015) 5 SCC 450 : (2015) 3 SCC (Civ) 94] , we respectfully disagree with the same. The first part gives weightage to the “first strike” principle. As noted earlier, it is not relevant as to which party first approached the court or so to say “first strike” referred to in para 52 of the judgment. Even the analogy given in para 54 regarding extrapolating that principle to the courts in India, if an order is passed by the Indian Court is inapposite. For, the Indian Courts are strictly governed by the provisions of the Guardians and Wards Act, 1890, as applicable to the issue of custody of the minor within its jurisdiction.

...

66. The invocation of first strike principle as a decisive factor, in our opinion, would undermine and whittle down the wholesome principle of the duty of the court having jurisdiction to consider the best interests and welfare of the child, which is of paramount importance. If the Court is convinced in that regard, the fact that there is already an order passed by a foreign court in existence may not be so significant as it must yield to the welfare of the child. That is only one of the factors to be taken into consideration. The interests and welfare of the child are of paramount consideration. The principle of comity of courts as observed in *Dhanwanti Joshi case* [*Dhanwanti Joshi v. Madhav Unde*, (1998) 1 SCC 112] , in relation to non-Convention countries is that the court in the country to which the child is removed will consider the question on merits

bearing the welfare of the child as of paramount importance and consider the order of the foreign court as only a factor to be taken into consideration. While considering that aspect, the court may reckon the fact that the child was abducted from his or her country of habitual residence but the court's overriding consideration must be the child's welfare.”

Finally the Supreme Court in **Nithya Anand Raghavan** (10 supra), concluded as under:

“69. We once again reiterate that the exposition in *Dhanwanti Joshi* [*Dhanwanti Joshi v. Madhav Unde*, (1998) 1 SCC 112] is a good law and has been quoted with approval by a three-Judge Bench of this Court in *V. Ravi Chandran (2)* [*V. Ravi Chandran (2) v. Union of India*, (2010) 1 SCC 174 : (2010) 1 SCC (Civ) 44] . We approve the view taken in *Dhanwanti Joshi* [*Dhanwanti Joshi v. Madhav Unde*, (1998) 1 SCC 112] , inter alia, in para 33 that so far as non-Convention countries are concerned, the law is that the court in the country to which the child is removed while considering the question must bear in mind the welfare of the child as of paramount importance and consider the order of the foreign court as only a factor to be taken into consideration. The summary jurisdiction to return the child be exercised in cases where the child had been removed from its native land and removed to another country where, may be, his native language is not spoken, or the child gets divorced from the social customs and contacts to which he has been accustomed, or if its education in his native land is interrupted and the child is being subjected to a foreign system of education, for these are all acts which could psychologically disturb the child. Again the summary jurisdiction be exercised only if the court to which the child has been removed is moved promptly and quickly. The overriding consideration must be the interests and welfare of the child.”

14. The essence of the judgment in **Nithya Anand Raghavan** (10 supra) is that the doctrines of comity of courts, intimate connect, orders passed by foreign courts having jurisdiction in the matter 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.

15. We will be leaving the discussion incomplete if we do not refer to the painstaking judgment of a Division Bench of the Delhi High Court in **K.G.** (11 supra). The facts in the said case and the present case are somewhat similar. The couple in that case lived in USA. In that case also the minor child was born in USA and has automatically become a citizen of the USA. The husband has acquired the USA citizenship in 2005 and holds American Passport. The wife acquired permanent residentship and also applied for American citizenship. They made USA their domicile. They spent most of their time in USA except during their short visits to India. A baby girl was born to them on 15.02.2014 in USA. The child was being taken care of by her parents and her paternal grand-parents. The child joined pre-school in July 2016. On 25.12.2015 the couple along with the minor child came to India for a short trip and they were scheduled to return to Chicago on 07.1.2017. Eleven hours before their departure, the wife and the daughter went missing. The wife has then filed a petition under Section 13(1) of the Hindu Marriage Act, seeking dissolution of marriage on the

ground of cruelty, along with an application under Section 26 of the said Act seeking a restraint order against the husband from taking away the child from the jurisdiction of Indian Courts. The husband moved an emergency petition for temporary sole allocation of parental responsibilities and parenting time in his favour, or in the alternative, an emergency order of protection for possession of his minor daughter before the Circuit Court of Cook County, Illinois, USA on 09.01.2017. A notice of emergency motion was served by e-mail upon the wife informing her of the proposed hearing on 13.01.2017. On 11.1.2017, the Patiala House Family Court issued a fresh notice to the husband and passed an *ex parte* order restraining the husband from removing the minor child from the jurisdiction of the court. On 13.01.2017 the Circuit Court of Cook County passed interim order which reads as follows.

- "1) The child M G born on Feb 15, 2014, in Chicago, Illinois and having resided in Chicago solely for her entire life (specifically at 360 East Randolph Street, Chicago, IL 60601) is also a US citizen.
- 2) The child is a habitual resident of the state of Illinois, United States of America having never resided anywhere else. Illinois is the home state of the child pursuant to the Uniform Child Custody Jurisdiction Enforcement Act.
- 3) K G is the natural father of the minor child and granted interim sole custody of the minor child. Child is to be immediately returned to the residence located in Cook County, Illinois, USA by Respondent.
- 4) The Cook County, Illinois Court having personal and subject matter jurisdiction over the parties and matter.
- 5) All further issues regarding visitation, child support are reserved until further Order of Court."

As the wife did not comply with the said order of the Circuit Court of Cook County, the husband has filed habeas corpus petition in Delhi High Court for production of his minor daughter and her return to the USA. After elaborate and extensive consideration of the entire case law, the Delhi High Court applied the principles laid down in **Surinder Kaur Sandhu** (6 supra), **Aviral Mittal** (1 supra), **Shilpa Aggarwal** (2 supra), **V. Ravi Chandran** (4 supra) and **Nithya Anand Raghavan** (10 supra), and concluded that the Courts in US seem to be most appropriate to decide the issue of custody of the child considering that it has the most intimate contact with the parties and the child. Turning on the allegations made by the wife against the husband, the High Court while opining that it does not have to return any finding on the averments or counter averments of the warring parents of the child, it has examined whether there are any such compelling reasons disclosed by the wife so as to persuade the Court not to direct return of the child to her place of nationality and the environment where she was brought up, and held that in its considered view, her going back to the environment – so as to be able to live with both her parents – though not at the same time, would be in her best interest. In the process, the High

Court adverted to the photographs filed by the husband along with the petition to show that the child was having a healthy and normal upbringing while she was in USA and seen enjoying the love, care and company of her parents and others including the children of her age. The High Court therefore observed that there was no reason why she should be allowed to be uprooted from the environment in which she was naturally growing up and to be retained in an environment where she would not have the love, care and attention of her father and parental grandparents, apart from her peers, teachers and other care givers who were till recently with her. The High Court further held that the decision by the wife to stay away from USA clearly deprived the child the love and affection that she is entitled to receive from her father, her parental grandparents, the care and learning that she was getting from her Nanny and her instructors; and the love, companionship and joy that she was deriving from her peers at pre-school. The High Court further held that the expression “best interest of child” as used by the Supreme Court in the decisions referred by it, is wide in its connotation and the same cannot be read as being only the love and care of the primary care giver, i.e., the mother in the case of an infant, or a child who is only a few years old. The

Court has referred to the definition of “best interest of the child” in Section 2(9) of the Juvenile Justice (Care & Protection) Act, 2015, as to mean “the basis for any decision taken regarding the child, to ensure fulfilment of his basic rights and needs, identity, social well-being and physical, emotional and intellectual development.” The High Court also took note of the provisions of the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations on 20.11.1989, which was ratified by the Government of India on 11.12.1992 and reproduced the relevant paragraphs from the said preamble which read as under:

"Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

X X X X X X X X X X

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

X X X X X X X X X X

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,"

The High Court also referred to the relevant Articles of the Convention, which read as under:

"Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life."

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and

family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to reestablishing speedily his or her identity.

Article 9:

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

x x x x x x x x x

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

Article 10:

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 18:

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the

child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible."

Article 20:

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background."

The High Court also referred to the Resolution passed by the Government of India, Ministry of Human Resource Development, vide Resolution No.6-15/98-C.W., dated 09.02.2004 framing the "National Charter for Children, 2003" and extracted the preamble to the Charter which reads as under:

"Whereas we affirm that the best interest of children must be protected through combined action of the State, civil society, communities and families in their obligations in fulfilling children's basic needs.

Whereas we also affirm that while State, Society, Community and Family have obligations towards children, these must be viewed in the context of intrinsic and attendant duties of

children, and inculcating in children a sound sense of values directed towards preserving and strengthening the Family, Society and the Nation.

X X X X X X X X X

Underlying this Charter is our intent to secure for every child its inherent right to be a child and enjoy a healthy and happy childhood, to address the root causes that negate the healthy growth and development of children, and to awaken the conscience of the community in the wider societal context to protect children from all forms of abuse, while strengthening the family, society and the Nation."

The High Court finally concluded as under:

138. Thus, best welfare of the child, normally, would lie in living with both his/her parents in a happy, loving and caring environment, where the parents contribute to the upbringing of the child in all spheres of life, and the child receives emotional, social, physical and material support - to name a few. In a vitiated marriage, unfortunately, there is bound to be impairment of some of the inputs which are, ideally, essential for the best interest of the child. Then the challenge posed before the Court would be to determine and arrive at an arrangement, which offers the best possible solution in the facts and circumstances of a given case, to achieve the best interest of the child.

139. In the light of the aforesaid, we are more than convinced that respondent No. 2 should, in the best interest of the minor child M, return to USA along with the child, so that she can be in her natural environment; receive the love, care and attention of her father as well - apart from her grandparents, resume her school and be with her teachers and peers. Pertinently, respondent No. 2 is able-bodied, educated, accustomed to living in Chicago, USA, was gainfully employed and had an income before she came to India in December 2016 and, thus, she should not have any difficulty in finding her feet in USA. She knows the systems prevalent in that country, and adjustment for her in that environment would certainly not be an issue. Accordingly, we direct respondent No. 2 to return to USA with the minor child M. However, this direction is conditional on the conditions laid down hereinafter.

140. Respondent No. 2 has raised certain issues which need to be addressed, so that when she returns to USA, she and the minor child do not find themselves to be in a hostile or disadvantageous environment. There can be no doubt that the

return of respondent No. 2 with the minor child should be at the expense of the petitioner; their initial stay in Chicago, USA, should also be entirely funded and taken care of by the petitioner by providing a separate furnished accommodation (with all basic amenities & facilities such as water, electricity, internet connection, etc.) for the two of them in the vicinity of the matrimonial home of the parties, wherein they have lived till December 2016. Thus, it should be the obligation of the petitioner to provide reasonable accommodation sufficient to cater to the needs of respondent No. 2 and the minor child. Since respondent No. 2 came to India in December 2016 and would, therefore, not have retained her job, the petitioner should also meet all the expenses of respondent No. 2 and the minor child, including the expenses towards their food, clothing and shelter, at least for the initial period of six months, or till such time as respondent No. 2 finds a suitable job for herself. Even after respondent No. 2 were to find a job, it should be the responsibility of the petitioner to meet the expenses of the minor daughter M, including the expenses towards her schooling, other extra-curricular activities, transportation, Attendant/Nanny and the like, which even earlier were being borne by the petitioner. The petitioner should also arrange a vehicle, so that respondent No. 2 is able to move around to attend to her chores and responsibilities.”

16. A Division Bench of this Court in **Sobhan Kodali v. The State of Telangana** (judgment dt.8.2.2018 in W.P. No.36945 of 2017) placing heavy reliance on the Delhi High Court Judgment in **K.G.** (11 supra), allowed the writ petition filed by the husband for handing over the custody of his two minor children, who are US citizens, by wife, in terms of the order of the jurisdictional US court.

17. We shall now consider whether any circumstances exist in the present case, suggesting that entrustment of custody of the two minor children to the petitioner so as to be able to produce before the UK Court, are against their welfare and best interest,

which the law laid down as discussed above, would override all other doctrines, concepts and considerations.

18. Undisputedly both the minor children are British citizens. The petitioner is also a British citizen and respondent No.4 acquired permanent UK residency, i.e, Indefinite Leave to remain in UK. The petitioner is a Physiotherapy Team Manager with National Health Services, UK. For the last fourteen years he has been working there. As stated hereinbefore, the elder son Mr. Abhinav Tippa studied pre-school, nursery and primary school for four years till May, 2017 in UK, and he was removed and brought to Madanapalli, a moderate town in Chittoor District of the State of Andhra Pradesh in India. Being the citizen of the UK, having spent most of his life after his birth in UK, the Court in UK has the most intimate contact/connect with the said child. More importantly, while the child was firmly grounded in UK, he has not taken his roots in India as he is made to live here only for the last nine months. That the child had been enjoying his life in UK is evident from the photographs filed by the petitioner, the authenticity of which is not disputed by respondent No.2. The photographs taken in various schools in which he studied show that he has gelled himself well with the native students

and the teachers. These photographs include the Child Graduation Photos and show his playing with the co-children in the school and enacting a play on the stage and so on and so forth. It is seen from these photographs that the child was absolutely enjoying his school environment and the company of his peers and teachers. Though it is not our intention to belittle the educational standards and environment in a town like Madanapalli, we have no reason to think that the standards of amenities, the environment, social togetherness, exposure to various dimensions of life etc., there are in no way comparable with that in the UK. It would be a great pity if such a boy is forcibly deprived of access to such environment and standards of life in the UK.

19. As regards the second child, having been born on 7.7.2015, he will be completing three years by 7.7.2018 whereafter he may be ripe to be joined in Nursery. When his brother could enjoy the environment in the UK, we do not find any reason why this boy also would not relish the life in the UK. Whatever applies to his brother would equally apply to him as well. Hence, we have no reason to entrust his custody to his mother, especially when the ultimate decision on custody and guardianship of the two minor children will be taken by the

Court in UK, which has the exclusive jurisdiction to take the decision as the children happened to be the UK citizens.

20. No doubt, respondent No.2 has levelled serious allegations against the petitioner and expressed apprehension about the safety of the children if they stay with the petitioner. From the pleadings of the parties and the material filed by them, it could be seen that after twenty-four hours of custody following a complaint made by respondent No.4, the petitioner was released subject to his being barred to visit his home for a month. The communication dt.13.10.2017 sent by the UK Police to the petitioner, a copy of which has been filed by respondent No.4 herself, would show that latter's complaint was investigated by the Police and they have opined that no further action is needed in the matter. During the hearing, learned counsel for respondent No.4 fairly admitted that in the course of investigation, the UK Police have talked to respondent No.4 on phone and ascertained her views on the complaint before it was formally closed. Respondent No.4 has filed a copy of the report of an agency called 'GP' wherein it was stated that on 24.3.2017 respondent No.4 revealed to the representative of the said agency, as under:

“* Physical abuse has occurred, including father pushing her down the stairs from top to bottom, father pulling her around

the house by her ponytail, father banging her head off the wall, father scratching mothers arms until they bled, father hitting her across the face and marking her, father hitting her with a wooden spoon.

* Emotional abuse has occurred, father has not spoken to mother for a period of a few months. He is angry and shouts and screams at 6 year old Abhinav.

* Mum wants to flee to India but father has hidden the boy's passports. Mum will not flee without the children. Mum does not have a British passport and so dad has said that if she leaves he will tell the police that she is kidnapping the children.

*Mum said that when dad gets angry he shouts and screams in Abhinav's face. I asked mum directly if dad physically hurts Abhinav. She looked down and said, "it's just terrible" "

21. While we do not propose to render conclusive findings on the correctness or otherwise of the allegations made by respondent No.4, what is quite apparent is that she has not even claimed that for the alleged injuries sustained by her on account of her being pushed on the stairs from top to bottom, her head being banged against a wall, her arms being scratched until they bled, hit across her face and also being hit with a wooden spoon, she has not got herself treated in any hospital either as in patient or outpatient. Even during our interaction with her in the presence of the petitioner, except making a vague allegation of the physical assault by her husband, she has not given the details of such assaults. She has not informed us that she has received bodily injuries and visited the hospitals for treatment. Significantly, when a question was put to respondent No.4 by the person belonging to the

aforementioned agency as to whether the petitioner physically hurts Abhinav Tippa, she looked down and said “it is just terrible”. This answer looks evasive. All that she has mentioned in paragraph 7 of the counter affidavit filed in this case is that the petitioner himself has admitted before the UK Police that he is having hyper tension, with that herself and the children had faced harassment, and that if the kids are allowed to stay with him it will have impact on their life.

22. At one place she has stated that the petitioner not only beat her, but also the kids. This statement remained unsubstantiated. Along with the counter affidavit, respondent No.4 has filed photograph of an elderly person receiving an injury to his hand. In paragraph 8 of the counter affidavit she has stated that when the petitioner’s family attacked her family members in India and her grandfather was seriously injured. No further details have been given as to who had attacked them and when the attack took place and whether any Police report was given. These stray incidents are not sufficient for this Court to form an opinion that the life and safety of respondent No.4 or the two minor children could be endangered if they travel to UK.

23. Though the petitioner is a Team Manager in Physiotherapy, National Health Services, UK, he has stayed back in India for more than six weeks in pursuing this writ petition. This shows his commitment towards his children. We have no reason to believe that he intends to take his two children to UK with a view to cause harm to their interests. Ordinarily, no father would resort to such heinous acts and the facts of this case in particular do not warrant any such conclusion. On a holistic consideration of the entire case, we are thoroughly satisfied that all the criteria, such as comity of courts, orders of foreign court having jurisdiction over the matter regarding custody of the children, citizenship of the petitioner and the children, intimate connect, and above all, welfare and best interest of the minor children are satisfied by the petitioner.

24. One final aspect to be discussed is whether any arrangement needs to be made to facilitate respondent No.4 to go and stay with her children in UK. During the hearing, we have asked the counsel for the petitioner whether his client is willing to bear the expenditure for the travel and stay of respondent No.4 along with the children in UK. The petitioner readily conveyed his willingness by even offering

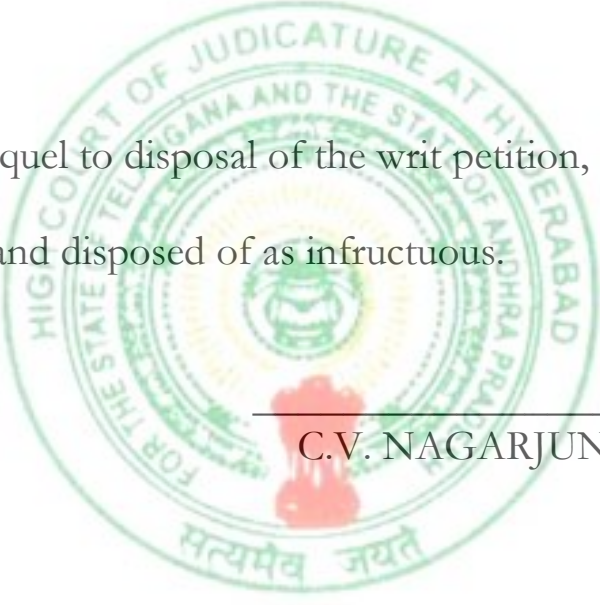
to allow his wife along with the children to stay in his house and himself staying elsewhere. We have summoned respondent No.4 and personally enquired with her whether she is also willing to travel to UK along with the minor children, but she has not shown any interest to accompany the children in spite of the fact that she was informed that the petitioner is willing to provide for stay of herself and her children at his house exclusively without his presence. We find this conduct of respondent No.4 very unreasonable.

25. We are conscious of the fact that by allowing the writ petition, we will be separating the minor children from the company of respondent No.4, but unfortunately she took an adamant posture that she would not like to visit UK, and rather continue to live in India. However, for this reason, we do not intend to deprive respondent No.4 of facility of her travelling to UK and visit her children should she feel so in future. Therefore, to facilitate this, we direct the petitioner to deposit Rs.5,00,000 (Rupees Five Lakhs only) in the Bank Account of respondent No.4 as a condition for taking the custody of his two minor children for being taken to UK and handedover to the jurisdictional Court. Proof of such deposit shall be shown to respondent No.2, who shall

thereupon direct the Police concerned to take the custody of the two minor children along with passports and other travel documents of the children from respondent No.4 and handover the same to the petitioner. The petitioner shall not have any claim for the sum of Rs.5,00,000/- (Rupees Five Lakhs only), whether respondent No.4 utilises the same in connection with her visit to UK or not.

26. Subject to the above directions, the writ petition is allowed.

As a sequel to disposal of the writ petition, I.A. No.1 of 2018 shall stand disposed of as infructuous.



C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

16-3-2018

bnr

Note: LR copies to be marked.
(B.O)
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