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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 29.08.2023

+ CM(M) 1404/2023 & CM APPL. 44495/2023

PANKAJ JAIN

..... Petitioner

Through: Mr.Prashant Mendiratta,
Mr.Rishabh Bansal,
Ms.Himanshi Malhotra,
Ms.Somyashree, Mr.Sanchit
Saini & Ms.Tanya Bhutani,
Adv. along with petitioner in
person.

versus

PARUL JAIN

..... Respondent

Through: Mr.Ramakant Sharma,
Mr.Prateek Avasthi, Ms.Sajal
Arora & Ms.Purva Dua, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed by the petitioner praying for the following relief:-

“a. Direct the Ld Family Court to allow the Petitioner to confront the Respondent with the Videos and Audios pertaining to the event of 25.03.2023 and 08.05.2023 respectively, and ask questions regarding the same in G.P No. 54 of 2018 titled “Pankaj Jain vs. Parul Jain;”

2. The learned counsel for the petitioner, drawing the attention of this Court to the cross-examination of the respondent herein recorded by the learned Judge, Family Court-

Signature Not Verified, West District, Tis Hazari Court, Delhi (hereinafter referred

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to as the 'Family Court') on 03.08.2023 in GP No. 54/2018 titled **Pankaj Jain v. Parul Jain**, submits that learned Family Court has erred in refusing to allow the petitioner herein to confront the respondent with the video recording of the visit of the learned Court Counsellor appointed by the learned Family Court on 25.03.2023 to take the custody of the child from the petitioner. He submits that the petitioner had also sought to confront the respondent with the audio recording of the visit of the learned Local Commissioner on 08.05.2023, however, the same was also disallowed by the learned Family Court.

3. The learned counsel for the petitioner, placing reliance on the order dated 31.05.2022 of this Court passed in CRL.M.C. 340/2022 titled **Dushyant Kumar v. Central Bureau of Investigation**, submits that in view of the earlier judgment of the Supreme Court in **Bipin Shantilal Panchal v. State of Gujarat**, (2001) 3 SCC 1, this Court has opined that even if the Court finds that any question put by the party to the other is inadmissible or not relevant, the Court should record its observation, and thereafter permit the witness to answer the question. The issue whether the evidence is to be included or excluded from consideration while pronouncing the final verdict, is to be taken at the end and not at the time of the examination of the witness. He submits that in the present case as well, the learned Family Court should have allowed the petitioner to confront the respondent with the video and the audio recording, and the question whether the same are



admissible or relevant should have been postponed for consideration at the stage of the final adjudication.

4. On the other hand, the learned counsel for the respondent, who appears on advance notice, submits that the video and the audio recording made by the petitioner was in total defiance of the order dated 09.12.2022 of the learned Family Court, which prohibits either party and their relatives to make any audio or video recording of the visitation of the child for proceedings in the Guardianship Petition or for any other purposes. He submits that as far as the visit of the learned Court Counsellor to the premises of the petitioner on 23.05.2023 is concerned, the objections of the petitioner against the report of the learned Court Counsellor already stand rejected by the learned Family Court vide its order dated 05.07.2023. The said order was challenged by the petitioner before a Division Bench of this Court in form of MAT.APP.(F.C.) 194/2023, titled ***Pankaj Jain v. Parul Jain***. The same also stands dismissed by this Court vide its judgment dated 10.07.2023. He submits that the issue is now pending adjudication before the Supreme Court in form of Special Leave Petition filed by the petitioner herein, being SLP(C) no. 14915/2023. He submits that the Supreme Court vide its order dated 01.08.2023 has specifically directed the learned Family Court to proceed with the adjudication of the Guardianship Petition notwithstanding the pendency of the said petition. He submits that this Court, vide its order dated 28.11.2022 passed in CONT.CAS(C) 392/2021 titled ***Pankaj Jain v. Parul Jain***, has directed the learned Family Court to



expedite the adjudication of the Guardianship Petition and to complete the trial by 31.07.2023. The said deadline already stands breached. He submits that the petitioner is challenging each and every order of the learned Family Court only to delay the adjudication of the Guardianship Petition.

5. The learned counsel for the petitioner, in rejoinder, submits that the issue qua the challenge of the petitioner against the visit of the learned Court Counsellor on 25.03.2023 is now pending adjudication before the Supreme Court. He submits that the petitioner should be allowed to confront the respondent with the audio and video recording, subject to the outcome of the proceedings before the Supreme Court. He submits that the petitioner has not delayed the adjudication of the Guardianship Petition and the cross-examination of the respondent is being conducted.

6. The learned counsel for the petitioner submits that the order dated 09.12.2022 passed by the learned Family Court restrained only the use of the audio and video recordings made during the course of the visitation of the child and not from making video and audio recordings during the course of other proceedings. He submits that, therefore, there was no restraint on the petitioner making the audio or the video recording of the proceedings of the Local Commissioners.

7. I have considered the submissions made by the learned counsels for the parties.

8. The learned Family Court, vide its order dated 09.12.2022, has inter alia directed as under:-



“(B) *Mother’s application seeking restrain order that petitioner-father be directed not to make video or audio recordings of the child during the period the child remains in his custody.*

By way of this application the mother has sought restrain order against the petitioner-father that he should not record any conversation of the child during the period the child remains in his custody.

Counsel for mother has argued that the father on each and every visit of the child with him makes video or audio recording which is not in the welfare of the child and thereafter, he also tried to uses the recording in the court proceedings,therefore, he be restrained from making any video or audio recordings of the child. To support his arguments, Ld. Counsel for mother has pointed out on para no. 4 of the order dated 25.09.2022, passed by my Ld. Predecessor wherein the court has taken note of the fact that the video recording placed on record by the petitioner-father shows suggestion to the child to arrive at a desired result. Be that as it may, this court is of the view that it would be appropriate and in the interest of justice to restrain the parties and their relatives from using either video or audio recording of the child during exercise of visitation rights for the present court proceedings or for any other purposes whatsoever. Ordered accordingly.

The application of the mother is disposed off accordingly.”

9. In the course of the cross-examination of the respondent, the petitioner sought to confront the respondent with the video recording of the visit of the learned Court Counsellor on 25.03.2023. This was disallowed by the learned Family Court, observing as under:-

“Q. Is it correct that you told the child during the visit of 25.03.2023 that you are dead for the child.



Ans. Whatever transpired during that visit is apparent from the counselor's report and I do not have anything additional to state.

At this stage, the witness is confronted with the video recordings of the visit of 25.03.2023 submitted by the petitioner. (objected to counsel for respondent on the ground that the recording has been illegally done in defiance of this court's order).

Question disallowed as the objections filed by the petitioner relating to the visitation of the respondent on 25.03.2023 have already been dismissed by this court."

10. The petitioner also sought to confront the respondent with an alleged audio recording of the visit of the learned Local Commissioner on 08.05.2023. The relevant observation of the learned Family Court refusing the witness to be confronted with the same is reproduced hereinunder:-

"Q. The Witness is confronted with audio recording titled "Audio 2" recorded during Local Commissioner's visit on 08.05.2023, submitted by the petitioner in a pen drive on 01.06.2023. I put it to you that the child has told you that you spoke to her friends and told them not to share any information with her? (Objected to by respondent's counsel as the recording done in defiance of order dated 09.12.2022 & Local Commissioner's report is already on record).

Question disallowed."

11. As far as the visit of the learned Court Counsellor on 25.03.2023 is concerned, the learned Family Court in its order dated 05.07.2023 has already rejected the objections of the petitioner against the said report. In rejecting the said objections, the learned Family Court has *inter alia* observed as

under:-



"10. The petitioner-father has filed his objections on the Court Counselor's report dated 27.03.2023, mentioning that the order was not complied as per the directions contained in the order dated 25.03.2023 since one male police official came at his house which was not so directed by the court and a female police official was in uniform instead of plain cloths as ordered by the Court. He has also stated that the Court Counselor and the respondent used inappropriate words and threatened the child saying that "Judge is very strict and she will punish you and your father". The petitioner has also mentioned other objections on the Court Counselor's visit at his house on 25.03.2023, but the holistic reading of the objections do not reflect any kind of malice either on the part of Court Counselor, respondent-mother or the police officials. I have already observed in the preceding paras that whatever is said to the child or done by the people who visited petitioner's house on 25.03.2023, was only with intention to persuade the child so that she may accompany her mother. The petitioner has alleged that due to the visit of respondent at his house on 25.03.2023, the child is under stress and is traumatized, therefore, she is not even ready to come to the court but surprisingly since filing of the petition in the year 2018, the father is alleging that his daughter is under stress and he has maintained his stand of child's depression till now when we are in the year 2023. In order to find out whether there is any substance in the petitioner's contention regarding stress of the child, this court saw the progress report of the child from her class 3 to class 5 and found that she (child) is performing well in her school and has scored A-1 or A-2 in almost all her subjects and she is even actively participating in the extra-curriculum activities of the school and not only this, she has also cleared a competitive written exam as well as interview of highly reputed Shri Ram School, therefore, the submission of the petitioner that child is under great stress due to respondent's visit at his



house on 25.03.2023, is completely without any basis. In view of above discussion, the objections filed by the petitioner-father against the Court Counselor's report dated 27.03.2023, are hereby dismissed.

11. The petitioner's further arguments that the child is not ready to go with the mother because she is apprehending that the mother will change her school for which the child is not ready at all has already been dealt in the order dated 01.04.2023 passed by this court and for the sake of repetition, I would again like to observe that this contention of the petitioner is not acceptable since if the child was so strong in her mind for not going to Shri Ram School, she had an opportunity by not performing well in the written exam and in oral interview of the said school but admittedly she has cleared the exam and interview of the top ranked school of Delhi/NCR which reflects that child initially was not against the decision of her mother for changing her school but she was subsequently tutored by the petitioner against the mother's said decision and in order to achieve his goal that the respondent-mother could not succeed in changing the child's school, he went to the extent of disobeying the orders passed by the Courts and also played with the future of his own daughter by not sending her school from last 2 ½ months. The petitioner has already been restrained from communicating with the school authorities of the child and this court finds no reason to review those directions passed by my Ld. Predecessor vide orders dated 04.04.2018 & 19.04.2021 and there is also no reason that the mother be restrained from communicating with the school authorities, interacting with the child or to go for any kind of counseling, accordingly, all the prayers sought by the petitioner-father in his applications are hereby rejected. This court is concerned only about the well being of the child which on the face of it is adversely affecting since the child has not gone to the school since April-2023 and even now also



after Summer Vacations she is not going to the school, therefore, the custody of the child should immediately go to the mother who only has access in the school of the child. Despite repeated directions given by the court, the petitioner is not returning back the custody of the child to the respondent- mother, hence, he (petitioner-father) is in open violation of disobeying the orders passed by this court by not bringing the child in court and failing to hand over the custody of the child to the mother, therefore, while exercising powers U/s 45 of the Act, I initially direct the petitioner-father to hand over the custody of the child to the mother tomorrow i.e. 06.07.2023 at 10:00 AM for which father himself will go at the respondent's residence or to produce the child before the court tomorrow i.e. 06.07.2023 at 02:00 PM, in case of failure of complying with these directions, fine of Rs.100/- is imposed upon him and further fine of Rs. 10/- for each day default (Rs.500/- in aggregate) and warrants of arrest be issued against him through concerned SHO, for his civil imprisonment until he undertakes to return the child back to the respondent-mother. After the arrest of the petitioner-father, he be immediately produced before the court.”

12. Thereafter, while dismissing the appeal filed by the petitioner against the above order of the learned Family Court, the Division Bench of this Court, vide its judgment dated 10.07.2023 in MAT.APP. (F.C.) 194/2023, has *inter alia* observed as under:-

“7. On the last date of hearing i.e., 07.07.2023, we had interacted with the daughter of the parties in the Chamber for sufficient time and found that she is extremely intelligent and having excellent memory. Our opinion is that the daughter has been tutored and therefore she is not willing to go with her mother, was also conveyed to both the parties in the Chamber as well as in the open Court.



8. *Though, as per the Order dated 07.07.2023, despite our passing specific direction to the parties to remain present along with their daughter in the Court on the next date of hearing, the appellant is not present in Court, and the same amounts to contempt of the Court, however, we refrain ourselves from passing any adverse order against the appellant since it is a matrimonial case."*

13. Though the order passed by the Division Bench has been challenged by the petitioner before the Supreme Court, the Supreme Court vide its order dated 01.08.2023, has allowed the learned Family Court to proceed with the adjudication of the Guardianship Petition.

14. From the above sequence, two aspects are very apparent:-

- ii) The video and audio recording(s) by which the petitioner wishes to confront the respondent have been made in total defiance of the order dated 09.12.2022 of the learned Family Court. The petitioner would, in fact, be in contempt of the said order. It is settled law that no party can be allowed to take advantage of contempt.
- ii) Even otherwise, the petitioner seeks to confront the respondent with the happening of the visit of the learned Court Counsellor on 25.03.2023. The same is sought to be used for contending that the child refused to go with the respondent and that there were Police Officers present during the proceedings of the learned Local Commissioner.



Both these aspects have been dealt with in detail by the learned Family Court and the objections in this regard have already been rejected by the learned Family Court. Though the challenge of the petitioner against the said observations is before the Supreme Court, as the Supreme Court has allowed the learned Family Court to proceed with the adjudication of the Guardianship Petition, the petitioner cannot take the benefit of the pendency of the Special Leave Petition to re-agitate the issue(s) which already stand closed, by confronting the respondent with these aspects.

15. On the issue of the petitioner wanting to confront the respondent with certain audio and video recordings, I may also observe that the intent of the order dated 09.12.2022 passed by the learned Family Court is clear from a bare reading of the same. It prohibits the parties from using any audio or video recordings made for any purpose whatsoever. In fact, this order was passed in the interest of the child as the child could not be subjected to such acts of the parents which would only harm the psychology of the child. It is indeed shocking that the petitioner would not understand the mandate of the said order and would still insist on making audio/video recordings of the child. Such blatant abuse cannot be allowed by this Court.

16. As far as the challenge of the petitioner to the report of the learned Local Commissioner is concerned, the same is



pending adjudication before this Court. The outcome of the said adjudication has to be awaited. In the meantime, the petitioner could not have been allowed to confront the respondent with an audio recording in defiance with the order passed by the learned Family Court.

17. For the above reasons, the judgment of the Supreme Court in *Bipin Shantilal Panchal* (supra) and of this Court in *Dushyant Kumar* (supra), will also not come to the aid of the petitioner. Though, the normal rule is that the witness should be allowed to ask question and be confronted with documents, leaving the question of the admissibility and relevance thereof to be adjudicated at the final stage of the proceedings, in the present case, to allow the petitioner to do so would only amount to allowing the petitioner to take benefit of his own contemptuous conduct; the same cannot be allowed.

18. Accordingly, I find no merit in the present petition. The same is dismissed with costs quantified at Rs.25,000/- to be deposited by the petitioner with the Delhi High Court Legal Services Committee within a period of four weeks.

NAVIN CHAWLA, J

AUGUST 29, 2023/rv/rp