

**IN THE HIGH COURT AT CALCUTTA**  
**Constitutional Writ Jurisdiction**  
**APPELLATE SIDE**

Present:

**The Hon'ble Justice Tapabrata Chakraborty**  
**&**  
**The Hon'ble Justice Raja Basu Chowdhury**

**WPA 6937 of 2020**  
**with**  
**I.A. No. CAN 1 of 2020**  
**with**  
**I.A. No. CAN 2 of 2020**  
**with**  
**I.A. No. CAN 3 of 2020**  
**with**  
**I.A. No. CAN 4 of 2021**

**Pranav Khaitan**  
**versus**  
**The State of West Bengal & Others**

*For the Petitioner* : *Mr. Subir Sanyal,*  
*Mr. Abhijit Basu,*  
*Mr. Dwarika Nath Mukherjee,*  
*Mr. Ratul Biswas,*  
*Mr. Bratin Kumar Dey,*  
*Ms. Sumouli Sarkar.*

*For the Respondent No.6* : *Mr. Bikash Ranjan Bhattacharyya,*  
*Mr. Nilanjan Bhattacharya,*  
*Mr. Vivek Singh,*  
*Mr. Rathindra Nath Bandyopadhyay,*  
*Ms. Komal Toshniwal.*

*Hearing is concluded on* : *17<sup>th</sup> November, 2022.*

**Judgment On** : **21<sup>st</sup> December, 2022.**

**Tapabrata Chakraborty, J. :**

1. During infancy and impressionable age, the care and warmth of the parents are required for the welfare of the child. However, in the instant case two educated persons have failed to discharge their mutual obligations and are not even agreeable to set right their broken home for the sake of their child. The petitioner, namely, Pranav Khaitan (in short, Pranav) has preferred the instant *habeas corpus* petition levelling serious allegations against his wife, namely, Neha Singhal (in short, Neha) and her parents and relatives and seeking a writ of *habeas corpus* for production of his child, namely, Ishaan to enable him to take the child with him to United States of America (in short, USA) *inter alia* on the grounds that Neha had illegally detained Ishaan and had violated the orders of the foreign Court.

2. The petitioner's case is that he is a permanent resident of the County of Santa Clara, California, United States of America. He married Neha on 15<sup>th</sup> July, 2014. Such marriage was solemnized at Rourkela and was registered under the Special Marriage Act, 1954. In the month of December, 2014, he along with his wife returned to USA. They were blessed with a male child, namely, Ishaan on 27<sup>th</sup> January, 2016. Ishaan is a citizen of USA by birth. The couple, along with Ishaan, travelled to India on 15<sup>th</sup> October, 2018. Pranav returned to USA on 20<sup>th</sup> October, 2018 and Neha stayed back and was supposed to return to California on 24<sup>th</sup> February, 2019. After Pranav's return

to USA, Neha was initially residing along with her parents-in-law in New Town and was admitted in a school in New Town where he studied till the month of May, 2019. In the midst thereof, Neha left her matrimonial house and went back to her parental house at Rourkela. The relationship between the two families deteriorated. Pranav's mother lodged a complaint case at Barasat on 16<sup>th</sup> April, 2019 under the provisions of Protection of Women and Domestic Violation Act (in short, DV Act). Coming to learn about such complaint, Pranav's parents were threatened and as such Pranav's father, namely, Pawan Khaitan (in short, Pawan) lodged a complaint at New Town police station on 25<sup>th</sup> June, 2019. Immediately thereafter Neha filed an application under the Guardians and Wards Act being G.Misc. Case No. 18 of 2021 at Rourkela and the same is still pending. She lodged a further complaint under Sections 498A, 307 and 506 of the Indian Penal Code (in short, IPC) against Pranav and his parents on 5<sup>th</sup> July, 2019. Thereafter, Pranav filed an application for custody of child before the Superior Court of California. On 24<sup>th</sup> July, 2019 a temporary order was passed awarding custody of Ishaan to Pranav and the matter was made returnable on 15<sup>th</sup> August, 2019. In spite of notice, Neha did not appear on the said date and recording such absence the Court directed Neha to return Ishaan to Pranav. Thereafter, on 12<sup>th</sup> September, 2019, the Court passed an order observing *inter alia* that *'it is detrimental to the child's best interest for NEHA KHAITAN to have any custody of ISHAAN KHAITAN and that NEHA KHAITAN is abusing ISHAAN KHAITAN and must stop, and that ISHAAN KHAITAN is best protected by removal from NEHA KHAITAN and returned to*

*Pranav KHAITAN's sole custody in California'*. In the midst thereof, Pranav obtained an order of dissolution of marriage from USA Court on 19<sup>th</sup> June, 2020 and he was also granted complete legal and physical custody of Ishaan. Stating such facts a complaint was lodged by Pawan at Chetla Police station at Kolkata on 27<sup>th</sup> July, 2020 but in vain and as such on 3<sup>rd</sup> September, 2020, Pranav was constrained to prefer the present writ petition.

3. Neha entered appearance and filed an affidavit in opposition denying the averments made in the writ petition and stating that this Court does not have the territorial jurisdiction since the marriage was solemnized at Rourkela, Odisha and she along with her son resides at Rourkela and Ishaan is studying in Carmel school at Rourkela since the year 2019. It is her case that Pranav obtained the alleged orders from the foreign Court behind her back without serving any notice and by practicing fraud. After the said orders were passed, Pawan filed an application under Section 25 of the Guardians and Wards Act being Act VIII Case No. 45 of 2020 on 24<sup>th</sup> July, 2020 at Alipore.

4. Mr. Sanyal, learned advocate appearing for Pranav submits that Ishaan had been illegally detained by Neha and her parents. Neha had deliberately violated the orders passed by the Superior Court of California by which Ishaan's custody was granted to Pranav upon arriving at a finding that Neha was abusing Ishaan, who is a citizen of USA. The Court called upon all government entities or law enforcement authorities to return the abducted and abused child to Pranav but in vain. Neha had thus illegally detained Ishaan.

5. He contends that Pranav is presently working in the post of Engineering Director at Google in California. He always took care of Ishaan. While in USA, Ishaan was admitted in a renowned school at California. In the month of October, 2018, Neha persuaded Pranav to travel to India. Keeping her wishes, Pranav came over but had to return to USA within a few days. Thereafter Neha and Ishaan were residing with Pranav's parents at New Town, Kolkata. Neha was supposed to return to USA on 24<sup>th</sup> February, 2019. Taking advantage of Pranav's absence, she went to her paternal house in the month of February, 2019 and illegally detained Ishaan and refused to return to USA.

6. Mr. Sanyal strenuously argues that Pranav has the financial competence to maintain her child and is entitled to Ishaan's custody. Ishaan's quality of life is bound to improve if Pranav is granted custody and is allowed to bring back Ishaan to USA. Keeping in view the facilities of education at USA, Ishaan should not be deprived of the same only on the ground that Neha does not want to return to USA. Safety and welfare of Ishaan can be assured only if his custody is given to Pranav. Ishaan is already more than 6 years of age and as such Neha does not have any preferential right to claim custody. Ishaan was illegally taken away from Pranav's paternal house in Kolkata and was shuttled to Rourkela.

7. According to Mr. Sanyal the entitlement of the petitioner to the custody of the child is not disputed. The orders passed by the foreign Court clearly reveal the conduct of Neha. There are clinching materials to show that the

welfare of the minor children is at peril. The trauma that the child is facing needs to be appreciated and as such interference is called for in the present petition.

8. In support of his arguments, Mr. Sanyal has placed reliance upon the judgments delivered in the cases of *Vasudha Sethi and Others –vs- Kiran V. Bhaskar and Another*, reported in 2022 SCC OnLine(SC) 43, *Rohith Thammana Gowda –vs- State of Karnataka and Others*, reported in 2022 SCC OnLine (SC) 937, *Yashita Sahu –vs- State of Rajasthan & Ors.*, reported in (2020) 3 SCC 67, *Dr. V. Ravi Chandran –vs- Union of India & Ors.*, reported in (2010) 1 SCC 174 and *Surya Vadanana –vs- State Tamilnadu & Ors.*, reported in AIR 2015 SC 2243. Reliance has also been placed upon three unreported judgments delivered in the cases of *Dr. Prithwiraj Choudhury –vs- State of West Bengal & Ors.*, *Sri Nilanjan Bhattacharya –vs- The State of Karnataka and Others* and *Rajeswari Chandrasekar Ganesh –vs- The State of Tamilnadu & Ors.*

9. Mr. Bikash Ranjan Bhattacharyya, learned senior advocate, assisted by Mr. Nilanjan Bhattacharya, learned advocate, appearing for Neha submits that this Court does not have the territorial jurisdiction to entertain the present writ petition and through a *habeas corpus* petition the petitioner cannot seek enforcement of a foreign decree. The petition is thus liable to be summarily rejected. No part of the cause of action had arisen within the territory of the State of West Bengal. The marriage was solemnized at Rourkela. On the date of filing of the petition, Neha along with Ishaan was residing at Rourkela. Prior

to filing of the writ petition, Pawan preferred a custody application at Alipore though subsequently withdrawn. In course of the hearing of the writ petition itself, a Coordinate Bench of this Court on 14<sup>th</sup> October, 2020 observed as follows :

*‘What appears at the present stage is that the minor son of the petitioner may be in Rourkela. Notwithstanding the Second Clause of Article 226 of the Constitution, in such a scenario when a writ in the nature of habeas corpus is sought and it appears reasonably certain that the relevant person may be in another State, in deference to the principle of comity of courts, the petitioner should be required to work out his further remedies elsewhere.*

*It will be open to the petitioner to obtain copies of the report filed by the police. The matter will appear four weeks after the vacation. Since the object of the exercise is, in effect, to enforce a foreign decree pertaining to the custody of a child, the petitioner is left free to take whatever appropriate steps may be available to him in accordance with law.’*

On 8<sup>th</sup> April, 2021 the Court also passed an interim order as follows:

*‘This matter has to be decided finally after final hearing. For the time being, we are inclined to direct that the child shall continue to be with his mother at Rourkela. Neither the mother shall go out of India nor shall take the child out of India or permit the child to be taken out of India without the leave of the Court until further order. The visitation right that the writ petitioner is enjoying through video conferencing shall continue until disposal of this application.’*

10. He further submits that Neha filed custody application being G. Case No. 18 of 2021 at Rourkela and the same is pending. In child custody matters, the ordinary remedy lies under the Hindu Minority and Guardianship Act or the Guardians and Wards Act. The lap of a mother is the natural cradle where the safety and welfare of the children can be assured and there is no substitute for the same. The child is with the mother and such custody cannot be construed to be an illegal one. For determination of the issue of custody of child, it is not the right of the parties but welfare of the child, which is of determinative significance and applies with equal force to a situation like the case in hand.

11. He submits that Neha along with Ishaan is residing at Rourkela along with her parents and uncles in a joint family. There are three more children in the family. Company of such family members inextricably binds Ishaan. Ishaan is presently studying at Rourkela. All his expenses are being borne by Neha and her family members. Claim for custody has to be judged on the touch stone of the welfare of the child. The child had already gained roots at Rourkela and issuance of any direction to hand over his custody to the petitioner would affect him psychologically and his welfare would be at peril.

12. He argues that Ishaan cannot be detached from his mother and his maternal family members on a pretext that his future would be secure if he is allowed to stay at USA. At this stage it also cannot be ruled out that Pranav may enter into a new relationship as his marriage with Neha stands dissolved.

Pranav is staying in USA alone and there would be none to take care of Ishaan at California in the event Ishaan's custody is handed over to Pranav.

13. In reply, Mr. Sanyal submits that the foundation and affectation of the petitioner's right originated in the State of West Bengal and complaining about such illegal detention of his child the petitioner lodged his first complaint in Kolkata. The subsequent events are inextricably bound with the above facts and as such it cannot be denied that a part of the cause of action arose within the territory of West Bengal and the present petition is, thus, maintainable.

14. He further submits that Pranav's parents want to travel to USA and stay at California after Ishaan returns and as such the apprehension that there would be none at home to take care of Ishaan is absolutely unfounded.

15. In the order dated 14<sup>th</sup> October, 2022 it was observed '*it appears reasonably certain*' that the petitioner '*should be required to work out his further remedies elsewhere*'. There was no conclusive finding as regards maintainability of the writ petition. The proposition of law that can be culled out pertaining to maintainability of the writ petition, is that on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial, it has to be explicit that a part of cause of action has arisen within the jurisdiction of the Court. In the present case, after returning from USA, Neha was residing at her matrimonial house at Kolkata along with her child. Ishaan was also admitted in a school in New Town which he was attending regularly. Complaint was lodged at Kolkata when Neha left for Rourkela. From

the averments made in the writ petition, we are of the opinion that the petitioner has been able to establish that a part of the cause of action had arisen within the jurisdiction of this Court. The application being I.A. No. CAN 3 of 2020 preferred by Neha is, accordingly, dismissed.

16. It is well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight distinction in fact or an additional fact may make a lot of difference in decision making process. The judgment is a precedent for the issue of law that is raised and decided and not observations made in the facts of any particular case. Plentitude of pronouncements leaves cleavage in the opinions formed in the respective cases. By its very nature, in a custody case, the facts cannot be similar. What is in the welfare of the child depends on several factors. A custody dispute involves human issues which are always complex and complicated. There can never be a straitjacket formula to decide the issue of custody of a minor child as what is in the paramount interest of a minor is always a question of fact. There is no dispute as regards the proposition of law as laid down in the judgments upon which reliance has been placed by Mr. Sanyal, however, the same are distinguishable on facts. In the case of *Vasudha Sethi (supra)* the child was suffering hydronephrosis and the husband had temperamental issues. In the case of *Rohith Thammana Gowda (supra)* the child was about eleven years of age and he spent about a decade in USA since his birth. In the case of *Dr. Prithwiraj Choudhury (supra)* the issue which weighed with the Court was that the child was suffering from an allergy caused

by eating peanuts and nuts in general and in India such an allergy cannot be treated. The said allergy is life threatening and in America such kind of disease can best be treated. The facts in the case of *Tejesvini Goud (supra)* do not have any striking resemblance to the facts of the case at hand inasmuch as in the said matter custody of the child was sought by a parent from persons, who were not the parent/ local guardian. In the case of *Jashmeet Kaur (supra)* the appellant filed a guardianship petition which was rejected by the family Court under Order 7 Rule 11 of the Code on the ground that the parties were nationals of USA and that the USA Court had ‘intimate contact’ with the matter. In the case of *Nithya Ananda Ragavan (supra)* the child was removed from a foreign country (UK) by mother in violation of interim order of foreign Court. In the case of *Surya Vadanana (supra)*, directions were issued taking into consideration the fact that the father agreed to and did temporarily shift his residence to Coimbatore and apparently met the children. In the said case divorce petition was filed by the mother. In the case of *Sri Nilanjan Bhattacharyya (supra)* the challenge was against the conditions imposed by the Hon’ble Court while allowing the appellant to take the child back to USA. In *Yashita Sahu (supra)* the child was brought to India in violation of orders of jurisdictional Court in USA. It was held that Courts of one jurisdiction shall give respect to the orders of the Court of competent jurisdiction even if it is beyond its territories; however, welfare of the child is of paramount importance. In the case of *Rajeswari Chandrasekar Ganesh (supra)* a shared parenting plan was arrived at between the parties and initially they got joint custody of their

children on the basis of an order passed by the foreign Court but later the father acted in violation of the same and removed the children from the foreign country.

17. The proposition of law that can be culled out from the judgments is that the Court in exercise of *habeas corpus* jurisdiction may decline the relief of return of the child to the country from where he/she was removed irrespective of any pre-existing order of return of the child by a foreign Court. Both in summary inquiry or an elaborate inquiry, the crucial question to be considered is the welfare of the child and the decision needs to be taken in the totality of facts and circumstances of each case independently. The principle of comity of Courts cannot be given primacy or more weightage for deciding the matter for custody.

18. *Habeas corpus* proceedings are not to justify or examine the legality of the custody. It is a medium through which the custody of the child is addressed to the discretion of the Court. It is true that in child custody matters a detailed enquiry is required, however, there is nothing which can stand in the way of the Court exercising its *parens patriae* jurisdiction. The claim for custody can only be judged on the touch stone of the welfare of Ishaan.

19. Where the dispute as to the custody of a child is essentially between two parents, such dispute stands on a different footing and extraordinary writ jurisdiction can be invoked on the principle of welfare only. The principle consideration is as to whether the welfare of the child requires that the present

custody should be changed or the child should be left in care and custody of someone else.

20. Welfare of the minor is a broad and elastic expression. Every factor which bears upon the overall development of the child needs to be given due weightage. The approach of the Court in ascertaining and determining the welfare of the minor ought to be well informed and pragmatic. It is thus said that the Court is called upon to deal with a human problem with a humane touch. The welfare of the child shall include various factors like ethical upbringing, economic well-being of the guardian, child's ordinary comfort, health, education etc.

21. Pranav is working as the Engineering Director of Google and is financially well placed. According to him, Ishaan's quality of life is bound to improve if he is granted custody and is allowed to bring back Ishaan to USA. Such contention of the petitioner needs to be weighed with the contention of Neha that Ishaan was in USA hardly for a period of about 2 years, 8 months. Since the month of May, 2019, he is residing with Neha at Rourkela. He had been admitted in a renowned school in Rourkela and is presently studying there. Neha, her parents and uncles are taking care of Ishaan. Ishaan is growing up in a joint family atmosphere. Money cannot be a factor towards overall development of the child. Admittedly, Pranav is residing alone at California. His parents are in Kolkata. Thus, there is no family member of Pranav to look after the child in California if custody is granted to Pranav.

However, Mr. Sanyal has submitted that appropriate steps would be taken by the petitioner to shift her parents to California so that Ishaan can grow up in their company. Another important factor which needs to be taken into consideration is that Pranav obtained divorce on 19<sup>th</sup> June, 2020. The fact that the minor child will have better prospects upon return to his/her native country, may be a relevant aspect in substantive proceedings for grant of custody of the minor child but not decisive to examine the threshold issues in a *habeas corpus* petition.

22. Simply because a foreign Court has taken a particular view on any aspect concerning the welfare of a child, is not enough for the Courts in this country to shut out an independent consideration of the matter. The principle of comity of courts simply demands consideration of an order passed by a foreign Court and not necessarily its enforcement. The comity of nations does not require a Court to blindly follow an order made by a foreign Court. Ishaan was in USA since his birth on 27<sup>th</sup> January, 2016 till 15<sup>th</sup> October, 2018. He is, thus, residing in India more than three years. In the light of all these circumstances, repatriation of the minor to USA on the principle of '*comity of courts*' does not appear to us to be an acceptable option worthy of being exercised at this stage. Ishaan being a six years old child is not in a position to indicate his preference and his preference also cannot be a decisive factor. In the present case the child is staying in India along with his mother, his grandparents and other family members and relatives, unlike in USA where he lived in a nuclear family consisting of his parents with no extended family. The

period of schooling of the child in India is more than that of his schooling in USA. In our opinion the child would be more comfortable and feel secure to live with his mother who can provide her love, understanding, care and guidance for his complete development of character personality and intelligence. The interest of the minor shall be better served if he continues in the custody of his mother especially when Pranav resides alone at California and there would be no family member to look after Ishaan, whose school hours would certainly not tally with Pranav's working hours. Though it has been stated that Pranav's parents want to travel to USA and stay at California after Ishaan returns, we cannot issue any mandatory direction to that effect since they are aged persons and they might be facing insurmountable inconvenience to shift their residence from Kolkata to California. In the absence of any family member at California, Pranav may not have any other option but to place Ishaan in a crèche. In such circumstances, we are of the opinion that taking away the child from the custody of his mother and handing over such custody to the petitioner would cause insurmountable inconvenience to the child and as such we are unable to accede to the petitioner's prayer for production of the child to enable him to take the child with him to USA. However, we may not be understood to have expressed any opinion on the merits of the guardianship application and the competent Court shall decide the same on its own merits without being influenced by any observation made in this judgment.

23. Needless to observe that after Ishaan attains the age of majority he would be free to exercise his choice to go to USA and to stay with his father but

until he attains majority he should remain in the custody of Neha unless the Court of competent jurisdiction in this country trying the issue of custody of the child orders to the contrary.

24. The role of the father in his child's upbringing and grooming to face the realities of life cannot be undermined and he must be given visitation rights; that will enable the two of them to stay in touch and share moments of joy, learning and happiness with each other. Accordingly, we direct that Pranav shall be given visitation rights, whenever he visits India. He can do so by giving notice of atleast two weeks in advance intimating over phone/whatsapp/writing/e-mail to Neha and if such request is received, Neha must positively respond in writing/e- mail to grant visitation rights to Pranav for two hours per day twice a week at the mentioned venue in Rourkela or as may be agreed by the parties. Neha shall take all such steps to comply with the visitation rights in its letter and spirit. Besides, Neha shall also permit Pranav to interact with Ishaan over telephone/mobile/video conferencing on school holidays between 5 p.m. to 7:30 p.m. IST. In the event the visitation rights, as granted to Pranav by this order, are denied by Neha or her family members, the State respondents shall provide the necessary aid to Pranav.

25. Keeping in view the interest of the child, both the parties shall co-operate with each other in compliance with the directions of the Court.

26. The writ petition being WPA 6937 of 2020 and the applications being I.A. No. CAN 1 of 2020, I.A. No. CAN 2 of 2020 and I.A. No. CAN 4 of 2021 are, accordingly, disposed of.

27. There shall be no order as to costs.

28. Urgent Photostat certified copy of the order if applied for, be made over to the parties as expeditiously as possible.

**(Raja Basu Chowdhury, J.)**

**(Tapabrata Chakraborty, J.)**