



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 512 OF 2023

rrpillai



..... Petitioner

Versus

1. State of Maharashtra
Represented by the Commissioner of
Police, Thane, Near Kalawa Bridge,
Kharkar Alley, Thane West-400601
Maharashtra.

2.



Having permanent address at:

93 Grange Road, #04-08

Grange Residences, Singapore 249614

3. Mr. Krishnan Srinivasan

Indian Citizen and Residing at :

9/203, Siddachal Phase 2

Pokhran Road, Thane 400606

4. Mrs. Lakshmi Krishnan

Indian Citizen and Residing at :

9/203, Siddachal Phase 2

Pokhran Road, Thane 400606

5. The Foreigners Regional Registration

Office, Bureau of Immigration, Ministry of

Home Affairs, Government of India

Having Office at SP Office, Near Court

Naka, Kalwa Bridge, Thane West-400601

..... Respondents

Ms. Geeta Luthra, Senior Counsel (through Video Conferencing) a/w.

Mr. Kunal Vaishnav, Mr. Adarsh Kothari and Ms. Surbhi Soni i/b.

Manish G. Varma & Associates, for the Petitioner.

Ms. Lata Desai, Senior Counsel a/w. Dr. Pallavi Divekar, Ms. Manasi Hirve, Ms. Aishwarya Deshmukh and Ms. Pratiksha Mane i/b. M/s. Divekar & Co., for Respondent No. 2.

Ms. P. P. Shinde, APP for the Respondent no. 1 -State.

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**

RESERVED ON : 27th OCTOBER 2023

PRONOUNCED ON : 6th DECEMBER 2023

JUDGMENT (PER: GAURI GODSE, J.) :

1. Rule. Rule made returnable forthwith.
2. Ms. Desai learned senior counsel waives notice for respondent no. 2, and Ms. Shinde learned APP waives notice on behalf of respondent no. 1 – State. By consent, taken up for final disposal. Considering the prayers in the writ petition and the dispute being only between the petitioner and respondent no. 2, it is not necessary to hear respondent nos. 3, 4 and 5.

3. This petition is filed by the father of the minor girl child aged 3 years, seeking a writ of habeas corpus for directing respondent no.2 to produce the child before this court. Respondent no. 2 is the mother of the child and wife of the petitioner. Respondent nos. 3 and 4 are parents of respondent no. 2. The petitioner has also prayed for custody of the child together with the child's original passport, birth certificate and other immigration and health documents from respondent no. 2 and for permission to take the child to Singapore.

FACTUAL ASPECTS:

4. The petitioner and respondent no.2 ("the parties") got married on 26th December 2018 in New York in the United States of America ("USA"). The petitioner is a citizen of the United Kingdom ("UK"), and respondent no. 2 ("respondent") is an Indian citizen. On 27th March 2020, their daughter – [REDACTED] ("child"), was born in New Jersey, USA. In April 2022, the parties, along with the child, moved to Singapore. The parties started residing in Singapore, and the child was enrolled in a school in Singapore sometime in July 2022. In

September 2022, the parties surrendered their “Green Card” in the USA. Thereafter, the respondent, along with the child, came to India sometime in the first week of December 2022, and she did not return to Singapore. Hence, the present petition was filed on 3rd February 2023.

5. The parties made an attempt to explore the possibility of an amicable settlement. We interacted with the parties in chambers; the petitioner joined through video conferencing. Unfortunately, the parties were unable to arrive at any amicable settlement. We have heard the learned senior counsels for both parties at length.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

6. The learned senior counsel for the petitioner submitted that after their daughter was born, the respondent suffered from postpartum depression and anxiety, which contributed to the marital problems between the parties. Hence, the parties decided to stay separate for a period of six months. On 20th December 2021, the parties signed a Marriage Reconciliation Agreement and started

residing together in New Jersey along with the child. Sometime in January 2022, the parties attended marital counselling. Thereafter, they jointly agreed to relocate to Singapore. On 19th April 2022, the parties and the child, shifted to Singapore, and they both secured a job in Singapore. Thus, they jointly decided that Singapore was a better place for raising their daughter and decided to settle down in Singapore permanently.

7. On 7th May 2022, the parties entered into a two-year lease from June 2022 to June 2024 and secured a residence in Singapore. On 25th July 2022, the child was enrolled in an International preschool in Singapore, and she started attending her nursery for the first term. It was submitted that since the parties decided to reside in Singapore permanently, they surrendered their “Green Cards” in the USA.

8. It is the case of the petitioner that on 12th November 2022, he left for UK to meet his parents and his children from his previous marriage who are residing in UK. The petitioner was in UK from

12th November 2022 to 5th December 2022, and during the entire period, the respondent did not reply to any of his phone calls and messages. When the petitioner returned to Singapore on 6th December 2022, he could not trace the respondent and the child. Their domestic help informed him that the respondent had terminated her employment. The petitioner filed a police report and reported that he checked the Apple Air Tag of the respondent's baggage and found that the respondent was at Terminal 3 at Changi Airport on 14th November 2022 at 11.04 pm. Thus, the petitioner made a police report in Singapore about the disappearance of the respondent and the child.

9. By 11th December 2022, the petitioner discovered that the respondent and the child were no longer in Singapore. He was informed that the child's school had received a completed withdrawal form sent by the respondent. The Petitioner also learnt that movers and packers had been to the parties' residence to move items to Mandarin Self Storage on 14th November 2022. On 10th December 2022, the petitioner learnt that their house utilities were

scheduled to be disconnected on 10th December 2022. Thus, in view of the aforesaid events, the petitioner realised that the respondent had taken steps to move out of Singapore along with the child. It is the petitioner's allegation that the respondent had abducted their daughter and had also taken away all her belongings.

10. In view of the respondent's conduct, the petitioner had to make efforts to find out her whereabouts, and he learnt that the respondent had unlawfully moved the child to India. Hence, the petitioner filed a police report on 9th December 2022 that his marital and property items were missing and he suspected that his wife had removed them. Petitioner, on 14th December 2022, filed an application under Sections 3 and 5 of the Guardianship of Infants Act before the Family Justice Courts of the Republic of Singapore. On 16th December 2022, the petitioner filed an ex-parte Summons Application in order to obtain interim orders on an urgent basis seeking custody of the child. On 11th January 2023, the Family Justice Court of the Republic of Singapore granted an order in favour of the petitioner, directing the respondent to return their

daughter to the petitioner in Singapore on or before 3rd February 2023, along with all the original documents of the daughter. In such circumstances, the petitioner also filed the present Writ Petition on 3rd February 2023.

11. During the pendency of this petition, the respondent, through her Advocate, appeared in the Court in Singapore and contested the proceedings filed by the petitioner. In view of the application filed by the respondent, the earlier order dated 11th January 2023 was recalled, and on 6th June 2023, an interim order was passed by the Singapore Court granting interim joint custody of the daughter to the parties, and the respondent was directed to bring the child to Singapore. By the said order, certain directions were issued to the parties by way of an interim relief during the pendency of the final determination of the main matter. It was thus submitted that in view of the order dated 6th June 2023 passed by the Court in Singapore, the petitioner is entitled to joint custody of their daughter. Hence, by way of amendment, the petitioner placed on record the order dated 6th June 2023 passed by the Family Justice Court of the

Republic of Singapore US Court and also raised additional grounds in support of his prayers.

12. The learned senior counsel for the petitioner submitted that India is not a signatory to the Hague Convention, and hence, the present petition is filed in the nature of habeas corpus. However, the petitioner has not submitted to the jurisdiction of the courts in India and has filed the petition for a limited relief only to seek repatriation of his daughter in terms of the order passed by the Family Court in Singapore by which he is entitled to joint custody of their daughter.

13. Learned senior counsel for the petitioner submitted that the parties took a conscious decision to reside permanently in Singapore and accordingly took all required steps to settle down there. Thus, the parties and the child were habitually and ordinarily residing in Singapore. The learned senior counsel, by relying upon section 9 of the Guardianship and Wards Act 1890, submitted that the court where the child ordinarily resides will get jurisdiction to decide the custody issue of the child. Since the child was never ordinarily

residing in India, the courts in India will not get jurisdiction to decide the custody issue. She thus submitted that the child's citizenship would not be a relevant factor for consideration in the present case. She submitted that even the parties' citizenship is irrelevant in the present case, as the parties' intention to reside in Singapore permanently is the most important consideration. The parties not only positively acted to implement their decision to make their permanent residence in Singapore but also surrendered their Green Cards, which allowed them to take up employment in the USA. She further submitted that the parties and the child neither resided in India anytime nor intended to reside in India anytime. She, therefore, submitted that the respondent alone could not change the decision jointly taken by the parties to settle down permanently in Singapore as they found that it was a better country for their child's upbringing.

14. The learned senior counsel submitted that though the child was a US citizen by birth, it cannot be said that she is a habitual resident of the USA, as the parties intentionally took a conscious decision to

live in Singapore permanently and accordingly also started residing there. The learned senior counsel also raised serious objection to the conduct of the respondent of not disclosing the child's whereabouts and depriving the child of having the company of her father. She submitted that the respondent also deliberately did not disclose her residential address in India and the place of her employment until she was called upon to do so. She submitted that the respondent has submitted to the jurisdiction of Singapore Court; however, the interim order granting joint custody is not challenged; hence, the respondent cannot disobey the court orders and keep moving around in India or other countries with the child. The learned senior counsel submitted that though initially there were complaints filed by the respondent against the petitioner, later there was reconciliation between the parties in the USA, and they started residing together. Thereafter, the parties shifted together to Singapore. Thus, the previous complaints cannot be a justifiable ground for the respondent to unilaterally make a decision to come to India and not bring the child back to Singapore, which is her ordinary residence.

She thus submitted that the respondent has illegally detained the child in India; hence, it is in the interest of the child that she is repatriated to Singapore.

15. In support of her submissions, the learned senior counsel for the petitioner relied upon the following decisions:

- (a) *Aviral Mittal Vs. The State and Another* .¹
- (b) *Shilpa Aggarwal (Ms) Vs. Aviral Mittal and Another* ²
- (c) *V. Ravi Chandran (Dr.) Vs. Union of India and Others*.³
- (d) *Nithya Anand Raghavan Vs. State (NCT of Delhi) and Another*.⁴
- (e) *Lahari Sakhamuri Vs. Sobhan Kodali*.⁵
- (f) *Yashita Sahu Vs. State of Rajasthan and Others*.⁶
- (g) *Tejaswini Gaud and Others Vs. Shekhar Jagdish Prasad Tewari and Others*.⁷
- (h) *Nilanjan Bhattacharya Vs. State of Karnataka and Others*.⁸

1 2009 (112) DRJ 635
 2 (2010) 1 SCC 591
 3 (2010) 1 SCC 174
 4 (2017) 8 SCC 454
 5 (2019) 7 SCC 311
 6 (2020) 3 SCC 67
 7 (2019) 7 SCC 42
 8 2020 SCC Online SC 928

- (i) *Vasudha Sethi and Others Vs. Kiran V. Bhaskar and Another.*⁹
- (j) *Rohith Thammana Gowda Vs. State of Karnataka and Others.*¹⁰
- (k) *Mr. Abhinav Gyan S/o. Gangeshwar Prasad Vs. State of Maharashtra and Another.*¹¹
- (l) *Elizabeth Dinshaw Vs. Arvand M. Dinshaw.*¹²
- (m) *Rajeswari Chandrasekar Ganesh Vs. State of Tamil Nadu and Others.*¹³
- (n) *Abhay S/o. Sanjeev Mogal Vs. Neha Joshi and Another.*¹⁴

16. Learned senior counsel for the petitioner submitted that the child is a habitual resident of Singapore, and she had started pursuing her education in Singapore and thus is habituated to the environment in Singapore, where she has spent a significant amount of time. The child is accustomed to the home of the parties in Singapore, and she is also very fond of the petitioner. She further

9 2022 SCC Online SC 43

10 2022 SCC Online SC 937

11 2022 SCC Online Bom 2958

12 (1987) 1 SCC 42

13 2022 SCC OnLine SC 885

14 Criminal Writ Petition No. 97 of 2021

submitted that in view of the aforesaid facts, the best interest of the child, i.e. the minor daughter of the petitioner, lies in Singapore. She submitted that the paramount interest of the child could not remain only the love and care of the biological mother, and the basis for any decision regarding the child is to ensure the fulfillment of the basic rights, needs, social well-being and intellectual development of the child. She further submitted that while deciding the welfare of the child, only the view of one spouse cannot be taken into consideration, and the issue of custody should depend only on the best interest of the child. She submitted that it is thus in the best interest of the child that she is moved back to Singapore immediately so that her routine life there would be back on track. She submitted that in the event the respondent is not willing to go back to Singapore, it is in the interest of the child that the child should return to Singapore.

17. The learned senior counsel submitted that the principles of law with respect to repatriation of a minor child are now well settled and considering the principles of law laid down in the catena of

judgments of the Hon'ble Supreme Court, it is necessary in the present case to conduct a summary inquiry as the petitioner has acted with utmost alacrity. Learned senior counsel further submitted that the Family Court in Singapore has, after hearing the respondent, passed a reasoned order by taking into consideration the best interest of the child to have unfettered access of both parents and passed interim orders granting joint custody of the child to the parties.

18. Learned senior counsel thus submitted that in view of the law laid down by the Hon'ble Supreme Court in the case of *Yashita Sahu*, the petitioner has filed affidavit-cum-undertaking in this court and has agreed to make all requisite arrangements for the return of the child along with the respondent. She submitted that the petitioner is willing to provide the respondent with adequate accommodation along with amenities. She, therefore, submitted that considering the aforesaid facts, the respondent cannot deprive the child of having the company of the petitioner, who is the biological father of the minor daughter.

SUBMISSIONS ON BEHALF OF THE RESPONDENT:

19. Respondent has filed her affidavit-in-reply and additional affidavits and disputed the contentions raised by the petitioner. The learned senior counsel appearing for the respondent submitted that neither the parties nor the child are citizens of Singapore. The petitioner is a citizen of the United Kingdom, the respondent is an Indian citizen, and the child is a US citizen. She submitted that the respondent had to come to India for her and the child's safety. She submitted that the respondent has specifically pleaded in her affidavits about the petitioner's violent temper and the history of actions taken against him as the respondent and the child had suffered due to the abusive conduct of the petitioner. She submitted that the respondent never suffered from any post-partum depression. She submitted that the petitioner had assaulted the respondent in the presence of the child, and in view of the violent, unpredictable and abusive conduct of the petitioner, the respondent had suffered a panic attack on 22nd July 2021 and was required to be hospitalised.

Hence, the respondent lodged a complaint on 23rd July 2021 with the New Jersey Domestic Violence Cell and obtained a temporary restraining order against the petitioner. In view of the complaint filed by the respondent, the petitioner was arrested and put behind bars. However, with an intention to sort out the differences between the parties, the respondent had entered into a reconciliation agreement with the petitioner. The petitioner was required to attend anger management counselling sessions with the therapist. As per clause 13 of the said reconciliation agreement, it was agreed that the petitioner shall never have any unsupervised parenting time.

20. The learned senior counsel further submitted that the respondent had shifted to Singapore with the hope that the parties would be able to give a secure life to their daughter in Singapore. However, the petitioner continued with his violent and abusive conduct even in Singapore. Hence, the respondent approached the Singapore police, and they advised her to return to India rather than file any protection proceedings in Singapore.

21. It is submitted the parties lived in Singapore only for a short time, and thus, the child was never a habitual resident of Singapore. Within a short span of time after shifting to Singapore, the respondent returned to India along with the child for their safety. It was submitted that the respondent filed a Custody Petition in the Family Court at Thane in India on 17th June 2023, and an interim order was passed restraining the petitioner from taking away the child. Learned senior counsel submitted that though the respondent appeared in the Family Court in Singapore, she never submitted to the jurisdiction of the Singapore Court. She submitted that the respondent appeared in the Court in Singapore for the purpose of raising an objection of jurisdiction. She relied upon an affidavit filed by the respondent in the Singapore Court, which clearly states that she appeared before the court to raise grounds of jurisdiction.

22. The learned senior counsel submitted that the child is a citizen of the USA and that she has no social and/or emotional ties developed in Singapore. She submitted that in India, the child is living in a safe environment along with the parents of the

respondent. She submitted that considering the violent conduct of the petitioner and the history of actions taken against him in the US, the parties had entered into a reconciliation agreement pursuant to which the petitioner had agreed to the stringent conditions imposed against him. In view of the reconciliation agreement, the petitioner is not entitled to any unsupervised access to the child. Thus, she submitted that in view of the petitioner's conduct, the child will never be safe in the petitioner's custody. Hence, the interest of the minor child cannot be said to be in Singapore, where the respondent and the child will be left at the petitioner's mercy.

23. The learned senior counsel submitted that the petitioner arrived in India from Singapore on 15th November 2022, and since then, the child has been residing along with her and her parents. She further submitted that on 16th January 2023, the petitioner was informed about the whereabouts of the respondent and the child by WhatsApp messages. Thereafter, the respondent regularly updated the whereabouts and well-being of the child. She further submitted that on 16th January 2023, the child was enrolled in a preschool and

daycare at Thane. Thereafter, the respondent secured a job in Hyderabad; hence, presently, the respondent and the child are residing in Hyderabad, and they are accompanied by the respondent's mother. Now the child is enrolled in a pre-school in Hyderabad.

24. The learned senior counsel submitted that the petitioner is regularly given access to talk to the child through video calls. She, therefore, submitted that the whereabouts and well-being of the child are being regularly updated to the petitioner. She further submitted that by taking undue advantage of the access given to him through video calls, the petitioner is in the habit of poisoning the child's mind by asking her questions against the respondent. Learned senior counsel submitted that considering the present employment of respondent, where she is allowed to work from home, she is in a better position to take care of the child and that the respondent is earning enough to care for herself and the child. Learned senior counsel submitted that the respondent is able to give a secure and healthy life style to the child in India. The respondent is supported

by her parents, so the child is in safe custody with the respondent. She submitted it is in the child's interest to live in India as she will be surrounded by family members, and her upbringing would be in a native environment.

25. Learned senior counsel submitted that the parties' residence in Singapore was only a transit residence and that they never took any steps to reside in Singapore permanently. She submitted that in view of the aforesaid facts and circumstances, the welfare of the child is in India, and it is not in the interest of the child to live in Singapore, where she will be living in a foreign environment to which she was never accustomed. She further submitted that the present petition is filed for the limited purpose of enforcing orders passed by the Singapore Court, which is not maintainable in view of the catena of decisions of the Hon'ble Supreme Court. She submitted that the petitioner has appeared in the Family Court at Thane and has also filed an application under Order VII Rule 11 of CPC, which is still pending. She submitted that the courts in Singapore will not have jurisdiction to decide the custody issue of the child. In support of the

submissions learned senior counsel relied upon the decisions of the Hon'ble Supreme Court in the cases of *Nithya Raghavan, Kanika Goel Vs. State of Delhi*¹⁵, *Prateek Gupta Vs Shilpi Gupta*¹⁶ and *Dhanwanti Joshi Vs. Madhav Unde*.¹⁷

26. By relying upon the aforesaid decisions, the learned senior counsel submitted that the child was in Singapore only for a limited period of seven months and that she cannot be said to be a native of Singapore. By relying upon decisions of the Hon'ble Supreme Court in the case of *Nithya Anand Raghavan* and *Prateek Gupta*, learned senior counsel submitted that in view of the peculiar facts and circumstances of the present case, the issue of custody of the child cannot be decided by a summary inquiry and that it is necessary that the same is decided in the pending custody proceedings.

27. In support of her submissions regarding the jurisdiction of the Singapore Court, the learned senior counsel relied upon an affidavit filed by the respondent in the Singapore Court and submitted that

15 2018 (9) SCC 578

16 (2018) 2 SCC 309

17 (1998) 1 SCC 112

the respondent has never submitted to the jurisdiction of the Singapore Court. In view of the aforesaid, learned senior counsel submitted that the present petition filed for seeking a writ of habeas corpus is, in fact, seeking to enforce the court's orders in Singapore, and thus, the prayers in the present petition are not maintainable.

28. With respect to the affidavit filed on behalf of the petitioner in support of seeking repatriation of the child and making arrangements in Singapore for respondent and the child, the learned senior counsel submitted that in the facts of the present case the terms stated in the affidavit of the petitioner could not be termed as any workable arrangement in Singapore. She submitted that the petitioner is having anger issues. Hence, in the reconciliation agreement the parties have agreed that the petitioner shall not be given unsupervised access to the child. She further submitted that respondent is agreeable for giving supervised child access to the petitioner, in the event the petitioner visits India. Learned senior counsel thus submitted that considering the petitioner's conduct and the orders passed against him, including his arrest while residing in

the USA, the child's custody cannot be handed over to the petitioner. She, therefore, submitted that the petitioner has not made out any case for repatriating the child to Singapore.

SUBMISSIONS IN REJOINDER ON BEHALF OF THE PETITIONER:

29. Learned senior counsel for the petitioner, in response to the submissions made on behalf of the respondent, submitted that the petitioner had always kept track with respect to the whereabouts and well-being of the child. However, the respondent went to the extent of removing the petitioner from the WhatsApp group and also blocked him on Instagram. Hence, the petitioner was unaware of the whereabouts of the child. The petitioner, therefore, moved the Singapore court as well as this court and acted with alacrity.

30. With respect to the submissions made on the jurisdiction of the Singapore Court, learned senior counsel submitted that the respondent has appeared in the Singapore Court and contested the application filed by the petitioner on merits. Hence, it cannot be said that the respondent has not submitted to the jurisdiction of the

Singapore Court. She further submitted that by considering the child's welfare and the other relevant factors, the Family Court in Singapore has already granted joint custody to the petitioner on the ground that the child is a habitual resident of Singapore, and hence, the forum convenience is also at Singapore. She further submitted that the petitioner had not given any particulars with respect to her permanent whereabouts in India. She submitted that in view of the peculiar facts of this case, the native country of the child is not a relevant factor to be taken into consideration. However, the fact that the parties are habitual residents of Singapore and that the child was also enrolled in school at Singapore and had attended school in Singapore would be a relevant factor to be taken into consideration.

31. Learned senior counsel, therefore, submitted that the welfare and best interest of the child would be in Singapore. She further submitted that the parties never intended to reside in India. She submitted that by detaining the child in India, the respondent is depriving the child of the company of her father. She, therefore, submitted that considering the law laid down by the Hon'ble

Supreme Court in the case of *Yashita Sahu*, the affidavit filed by the petitioner be taken into consideration, and the writ of habeas corpus be issued for directing the respondent to produce the child before us and custody of the child be handed over to the petitioner and he be permitted to take the child to Singapore.

ANALYSIS OF THE CASE LAWS RELIED UPON BY THE PARTIES:

32. In the case of *Nithya Raghavan*, the Hon'ble Supreme Court has considered all the decisions right from the cases of *Surinder Kaur Sandhu Vs Harbax Singh Sandhu*¹⁸, *Elizabeth Dinshaw, Dhanwanti Joshi, Shilpa Aggarwal, V. Ravi Chandran, Arathi Bandi Vs. Bandi Jagadrakshaka Rao & Others*¹⁹ and *Surya Vadanam vs. State of Tamil Nadu & Others*²⁰. In all these cases, the minor children held citizenship of a foreign country, and the parents were permanent residents of that country. However, one of the spouses had removed the child to India, disregarding the orders passed by the foreign court. In all these cases, the child was repatriated to the country

18 (1984) 3 SCC 698

19 (2013) 15 SCC 790

20 (2015) 5 SCC 450

where the child was originally residing, except in the case of Dhanwanti Joshi.

33. In the case of *Nithya Raghavan*, the couple married in India and shifted to the United Kingdom, and their girl child was born in Delhi; thus, the child was a citizen of India. After the husband arrived in India, the couple returned to the UK, but following certain unsavoury events, the wife and the daughter returned to India. After an exchange of legal correspondence, the wife and daughter went back to London; however, the wife returned to India along with her daughter, and the child became ill and was diagnosed with a cardiac disorder and due to the alleged violent behaviour of her husband the wife filed a complaint against him at the CAW Cell, New Delhi. The husband filed a custody/wardship Petition in the UK to seek the return of the child. He also filed a habeas corpus petition in the Delhi High Court, which was allowed. The matter was brought before the Hon'ble Supreme Court by the wife. The Supreme Court relied upon its earlier judgment in *Dhanwanti Joshi*, which in turn

referred to the case of *McKee Vs McKee*²¹, where the Privy Council held that the order of the foreign court would yield to the welfare of the child and that the comity of courts demanded not its enforcement, but its grave consideration. The Supreme Court held that the minor was born in India and was a citizen of India by birth, and the child has not given up her Indian Citizenship and for more than one year, she, along with her mother, remained in India due to the marital discord of the parties. It was also observed that since the child has later acquired British Citizenship, the UK Court could exercise jurisdiction regarding her custody issues. Further, it was observed by the Supreme Court that the child was suffering from a cardiac disorder and needed periodical medical reviews and proper care and attention that could only be given by her mother. Since the father is employed, he may not be able to give complete care for his daughter. Considering the allegations against the father, the Supreme Court held that it would cause harm to her if she returned to the UK. Thus, the order passed by the High Court was set aside. The Supreme Court approved the view taken in *Dhanwanti Joshi* and

21 (1951) AC 352 (PC)

observed 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.”

Emphasis Applied

34. In the case of *Kanika Goel*, since the jurisdiction of the Family Court at New Delhi was invoked at a prior point in time, the Supreme Court directed that it may be appropriate that the said proceedings are decided with utmost promptitude in the first place before the wife is called upon to appear before the US Court including to produce the minor child before that Court. The Supreme Court observed that it is appropriate that the proceedings pending in the Family Court at New Delhi are decided in the first place, including the jurisdiction of that Court and depending on the outcome of the said proceedings, the parties will be free to pursue such other remedies as may be permissible in law before the competent jurisdiction. It was held that a fortiori, dependent on the outcome of the proceedings before the Family Court at New Delhi,

the wife must be legally obliged to participate in the proceedings in the US Court and must take all measures to defend herself in the said proceedings and the husband effectively shall bear the expenses for the travel of the wife and the minor child to the US as may be required. The Hon'ble Supreme Court held that the child's custody would remain with the mother until she attained the age of majority or the court of competent jurisdiction trying the issue of custody orders to the contrary.

35. In the case of *Lahari Sakhamuri*, the Hon'ble Supreme Court directed repatriation of the child to the USA, by holding 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.

36. In the case of *Yashita Sahu*, the Hon'ble Supreme Court held that while deciding matters of custody of a child, the primary and paramount consideration is the welfare of the child. The Supreme Court held that the courts should decide the issue of custody only based on what is in the best interest of the child. In the said case, the child was a citizen of the USA by birth. Her father was already working in the USA. Since the child was a citizen of the USA by birth and was holding a US passport, the same was considered to be an important factor in deciding the custody issue. In view of the facts of that case the Hon'ble Supreme Court was of the view that it would be in the best interest of the child to have parental care of both the parents, if not joint, then at least separate. Thus, the Supreme Court held that if the wife was willing to go back to the USA then all orders with regard to custody, maintenance, etc., must be looked into by the jurisdictional court in the USA and a writ court in India cannot, in such proceedings direct that an adult spouse should go to America. The Supreme Court thus issued directions in two parts: if the wife was willing to go to the USA, and if she was not willing to go to the

USA, how should the husband be granted custody of the child. Thus, even in the said case, the paramount consideration in deciding the custody issue was only the child's welfare.

37. In the case of *Prateek Gupta* the Hon'ble Supreme Court while dealing with the issue of pre-existing order of a foreign Court with respect of the custody of a child held as under:

“49. The gravamen of the judicial enunciation on the issue of repatriation of a child removed from its native country is clearly founded on the predominant imperative of its overall well-being, the principle of comity of courts, and the doctrines of “intimate contact and closest concern” notwithstanding. Though the principle of comity of courts and the aforementioned doctrines qua a foreign court from the territory of which a child is removed are factors which deserve notice in deciding the issue of custody and repatriation of the child, it is no longer res integra that the ever-overriding determinant would be the welfare and interest of the child. In other words, the invocation of these principles/doctrines has to be judged on the touchstone of myriad attendant facts and circumstances of each case, the ultimate live concern

being the welfare of the child, other factors being acknowledgeably subservient thereto. Though in the process of adjudication of the issue of repatriation, a court can elect to adopt a summary enquiry and order immediate restoration of the child to its native country, if the applicant/parent is prompt and alert in his/her initiative and the existing circumstances ex facie justify such course again in the overwhelming exigency of the welfare of the child, such a course could be approvable in law, if an effortless discernment of the relevant factors testify irreversible, adverse and prejudicial impact on its physical, mental, psychological, social, cultural existence, thus exposing it to visible, continuing and irreparable detrimental and nihilistic attenuations. On the other hand, if the applicant/parent is slack and there is a considerable time lag between the removal of the child from the native country and the steps taken for its repatriation thereto, the court would prefer an elaborate enquiry into all relevant aspects bearing on the child, as meanwhile with the passage of time, it expectedly had grown roots in the country and its characteristic milieu, thus casting its influence on the process of its grooming in its fold.

50. The doctrines of “intimate contact” and “closest concern” are of persuasive relevance, only when the child is uprooted from its native country and taken to a place to encounter alien environment, language, custom, etc. with the portent of mutilative bearing on the process of its overall growth and grooming.”

Emphasis Applied

38. In the case of *Nilanjan Bhattacharya*, the child was a citizen of the US by birth. The Supreme Court directed the repatriation of the child to the US by issuing certain directions if the mother desired to relocate to the US and also issued directions regarding visitation rights and interim overnight access in the event the mother was not willing to relocate. The Supreme Court held that the Court is required to conduct a summary inquiry to ascertain whether there is any harm if the child returns to the US, where he was born and has been brought up and the Court is required to engage in an elaborate inquiry on the merits of the case only if a considerable time has passed since the child has been removed and if the child has developed roots in India. However, In either event, the primary consideration of this Court is to ascertain the child's welfare.

39. In the case of *Vasudha Sethi* the parties were married in the USA, and the child was a citizen of the USA by birth. The Father had a status of permanent resident in the USA and secured a B-2 Non-Immigrant visa for the mother. The mother violated the international travel consent by not allowing the minor child to return to the USA and detained the minor in her illegal custody in India. The Supreme Court vide a detailed Judgment, upheld the Judgment of the High Court directing the wife to send the child to the US, and held that even if the child was less than 5 years old, the child could be repatriated back to the US. The Supreme Court considered the cases of both *Nithya Anand Raghavan* and *Kanika Goel* and even then allowed the repatriation of a child less than 5 years old on the ground that it was in the best interest of the child. Thus repatriation was allowed only by considering the welfare of the child as paramount consideration. Thus, repatriation was allowed by observing inter-alia as under;

“28. Each case has to be decided on its own facts and circumstances. Though no hard and fast rule can be laid down, in the cases of Kanika (supra)

and Nithya (supra), this Court has laid down the parameters for exercise of the power to issue a writ of habeas corpus under Article 226 of the Constitution of India dealing with cases of minors brought to India from the country of their native. This Court has reiterated that the paramount consideration is the welfare of the minor child and the rights of the parties litigating over the custody issue are irrelevant. After laying down the principles, in the case of Nithya (supra), this Court has clarified that the decision of the Court in each case must depend on the totality of facts and circumstances of the case brought before it. The factual aspects are required to be tested on the touchstone of the principle of welfare of the minor child. In the cases of Lahiri (supra) and Yashita (supra), the Benches of this Court consisting of two Judges have not made a departure from the law laid down in the decisions of larger Benches of this Court in the cases of Nithya (supra) and Kanika (supra). The Benches have applied the law laid down by the larger Bench to the facts of the cases before them. It is not necessary for us to discuss in detail the facts of the aforesaid 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 straight jacket 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. But the parameters for exercise of jurisdiction as laid down in the cases of Nithya (supra) and Kanika (supra) will have to be followed.”

Emphasis applied

40. In the case of *Rohith Gowda*, the father had been residing in the USA for the past two decades. The parties had made their matrimonial home in the USA. They both were given Green Cards, and the child was born in the USA and was an American Citizen. The child was studying at a school in Washington. The Supreme Court allowed the Habeas Corpus Petition of the father. The Supreme Court held that the child is a naturalised American citizen with an American passport and will have better avenues and prospects if he

returns to the USA. The Supreme Court relied upon its earlier decisions in the cases of *Nithya Raghavan* and *V. Ravi Chandran* and allowed the Writ Petition and directed the husband to arrange accommodation for the wife and her parents in the US.

41. In the case of *Rajeswari Chandrasekar Ganesh*, the father of the minor child, in breach of a consent order of joint parenting by a US Court, illegally took the children to India from the USA, removing them from the mother's custody. The Supreme Court directed repatriation of the child by holding that the doctrine of Parental Alienation Syndrome, i.e. the efforts made by one parent to get the child to give up his/her own positive perceptions of the other parent and get him/her to agree with their own viewpoint has psychological destructive effects of putting the child in the middle of a loyalty contest, and making the child to assess the reality, thereby requiring to blame either parent who is supposedly deprived of positive traits. Hence, the intent of the court should be to circumvent such ill effects. Thus, even this case the Supreme Court decided the

issue of custody of the child by keeping in mind the welfare of the child as the paramount consideration.

42. In the case of *Abhinav Gyan*, the wife joined the husband in the USA, and the parties started living together. The wife secured a permanent job in the US. The parties resided together in their matrimonial house in the USA and they bought a joint house together in the same place. Their son was born in the USA and thus was a citizen of the USA, holding a passport of that country. There was matrimonial discord between the parties, and the wife, along with the minor child, came to India. The husband initiated a proceeding for legal separation and custody of the minor child in the US court. The wife filed for divorce in India. The wife also appeared before the US Court. The US court designated the father as the child's primary residential parent and ordered the mother to return the child to the father. Since the mother did not return the child, the father filed a Writ Petition in the Bombay High Court to repatriate the minor child to the USA. The High Court ordered the wife to return the minor child to the jurisdiction of the US court. The High

Court held that the paramount factor of the best interests and welfare of the child gives its colour to the jurisdiction of this Court while considering a habeas corpus petition in such facts and circumstances. The High Court thus considered the aspect of the welfare of the child and held that the order of the USA Court would be a relevant factor.

43. In the decision of this Court in the case of *Abhay Mogal*, by relying upon all the decisions of the Supreme Court and this Court, it was held that to ensure the fulfillment of the child's basic rights and needs, identity, social well-being and physical, emotional and intellectual development, it was necessary for the child who was a US citizen to go back to the US. Thus, even in the said case, only the welfare of the child was considered as a paramount consideration and custody of a five year old child was directed to be given to the father for taking him back to the US. Considering the best interest of the child, necessary directions were also issued to enable the mother to travel to the US. Thus, even in the said case, only the best interest of the child was taken into consideration.

CONSIDERATION OF SUBMISSIONS:

44. We have considered the submissions made on behalf of both parties. It is a well-established principle of law that summary jurisdiction can be exercised if the party seeking repatriation of a minor child acts promptly and quickly; however, the overriding consideration must always be the interests and welfare of the child. It is also a well-settled principle of law that the doctrines of comity of courts, intimate connect, orders passed by foreign courts in the matter regarding custody of the minor child, forum convenience, citizenship of the parents and the child, etc., cannot override the consideration of the best interest and the welfare of the child. Thus, the direction to return the child to a foreign jurisdiction must not result in any physical, mental, psychological, or other harm to the child. It is a well-settled principle of law that the courts should decide the issue of custody only based on what is in the best interest of the child.

45. The facts of the present case are complex in nature. The petitioner-father of the child is a citizen of the UK, the respondent-mother of the child is an Indian citizen, and the child-their minor daughter is a citizen of the USA. Following are the few relevant dates and events required to be examined for appreciating the arguments made on behalf of the parties:

- **26th December 2018:** the parties got married in New York.
- **27th March 2020:** the girl child was born in New Jersey.
- **July 2021 to December 2021:** Parties decided to live separately for six months.
- **20th December 2021:** parties signed a reconciliation agreement and started residing together.
- **April 2022:** the parties, along with the child, moved to Singapore. Parties secured employment in Singapore.
- **25th July 2022:** the child was admitted to a preschool in Singapore.

- **September 2022:** the parties surrendered their “Green Cards”.
- **12th November 2022:** Petitioner left for the UK to meet his family and children from his first marriage.
- **15th November 2022:** The respondent, along with the child, came to India, and she did not return to Singapore.
- **6th December 2022:** Petitioner returned to Singapore and learnt that the respondent had left Singapore along with the child.
- **11th December 2022:** Petitioner learnt that the respondent and the child are in India.
- **14th December 2022:** Petitioner filed custody petition in Singapore Court.
- **11th January 2023:** Singapore Court passed orders directing respondent to bring the child to Singapore.
- **19th January 2023:** The present petition was affirmed by the Petitioner in New York in the USA.
- **3rd February 2023:** Present petition was filed.

- **6th February 2023:** Respondent filed petition in Family Court in Thane in India for permanent custody of the child.
- **6th June 2023:** Earlier order dated 11th January 2023 was recalled by the Singapore Court and the parties were granted joint custody and unfettered access to the child in Singapore.
- **19th June 2023:** Family Court in Thane passed an interim order restraining the petitioner from taking custody of the child.

46. This petition is filed seeking directions for custody of the child and permission to take the child to Singapore mainly on the ground that the habitual place of residence of the child is in Singapore. A perusal of the aforesaid dates and events would show that after birth, the child lived in the USA for two years. Thereafter, for the next seven months, the child lived in Singapore till she was brought to India in December 2022. Since then, the child has been residing in

India with the respondent. The child is around three and a half years of age today.

47. Considering the facts of the case, it cannot be said that the habitual place of residence of the child is in Singapore. Before the parties moved to Singapore, they resided separately in the USA for six months when the child was around one year and three months old. Thereafter, the parties entered into a reconciliation agreement dated 20th December 2021 and started residing together in the USA. However, within a span of hardly four months, they shifted to Singapore in April 2022. Again, within a span of around seven months, the child was brought to India. Thus, it appears that owing to the differences and disputes between the parties, the child never received any stability at any place. The child is neither a citizen of Singapore nor has she lived there for a considerable long time to make it a habitual place of residence.

48. We also find it difficult to accept the petitioner's contention that because the parties decided to reside in Singapore permanently,

the child should go to Singapore. It is not disputed that the parties secured employment in Singapore and surrendered their “Green Cards”, which permitted them to secure employment in the USA. Admittedly, the child was also enrolled in a preschool in Singapore. But none of the factors are sufficient enough to conclude that the parties had decided to live in Singapore permanently. However, the respondent has raised various contentions to justify her decision to come to India along with the child.

49. A perusal of all the affidavits dated 21st February 2023, 17th June 2023, 11th October 2023, 19th October 2023 and 27th October 2023 filed by the respondent reveals that serious allegations are made against the petitioner regarding his violent behaviour and anger issues. Respondent has relied upon the police complaints made by her on 1st December 2020 and 23rd July 2021 in the USA. She has contended that pursuant to the complaint dated 23rd July 2021, the petitioner was arrested. She has further contended that there were also other police complaints made for the abusive conduct of the petitioner during the incidents of 27th June

2021, 29th June 2021 and 3rd August 2021. She has further contended that in view of the complaints made by her, she was granted exclusive custody of the child, and there was a temporary restraining order against the petitioner from entering the house. The Petitioner has sought to explain in his affidavit that false complaints were made against him, and, ultimately, the same were dismissed and expunged. However, it is not disputed that such complaints were filed against the Petitioner, he was arrested on one occasion and there was also a temporary restraining order passed against him not to enter the house. Admittedly, within a few months of the child's birth, the parties lived separately for six months owing to their disputes and ultimately started residing together after signing a reconciliation agreement.

50. Perusal of the reconciliation agreement reveals that the petitioner agreed to reimburse all the legal fees incurred by the respondent in taking action against the petitioner regarding the domestic violence. The petitioner also agreed to attend anger management sessions. Both the parties had also agreed to attend

family/marital counselling and further agreed that the petitioner will not be entitled to unsupervised access to meet the child until the respondent consents. Even after signing the reconciliation agreement, there was a complaint made by the respondent on 17th March 2022 as the petitioner was wearing a body camera and moving around in the house, terrifying the respondent. Thereafter, the parties shifted to Singapore along with the child, i.e. within a short span of time of four months of signing the reconciliation agreement. Even during the short stay in Singapore, the respondent filed a police complaint on 13th November 2022, and ultimately, she came to India along with the child in November 2022. Even in India, the respondent filed a police complaint as the petitioner used abusive language during a telephonic conversation and threatened her. Though the petitioner has pleaded ignorance about the police complaints filed in Singapore and India, the filing of such complaints cannot be ignored in view of the past conduct of the petitioner.

51. Thus, in our view the aforesaid circumstances and the petitioner's conduct are justifiable reasons for the respondent to

come to India along with the child to reside with her parents. We find substance in the arguments made on behalf of the respondent that she was required to come to India along with the child for their safety. Considering the aforesaid circumstances, we do not find that the respondent has illegally removed the child from Singapore or that she has illegally detained the child in India. Thus, considering the petitioner's conduct, the respondent is justified in bringing the child to India to give her a secure life.

52. We have minutely examined all the contentions of both parties to decide what is in the best interest of the child. It is well settled by catena of judgments of the Hon'ble Supreme Court that the courts should decide the issue of custody only based on what is in the best interest of the child. Thus, keeping in mind the well-established principles of law, the question to be decided in the present case is whether it will be in the best interest of the child to send her to Singapore by handing over her custody to the petitioner.

53. We have already held that the respondent is justified in coming to India along with the child and it cannot be said that she has illegally detained the child in India. The sum and substance of the contentions raised by the respondent is the child's safety. The aforementioned facts and circumstances of the case will make it clear that in spite of making police complaints against the alleged violent and abusive conduct of the petitioner, the respondent did make an attempt to reconcile and started residing together after signing the reconciliation agreement. It is not disputed that the petitioner agreed to not getting unsupervised access to the child until the respondent consented to the same. Even after the reconciliation agreement, there was a police complaint made by the respondent in the USA and thereafter in Singapore, and finally, the respondent came to India along with the child and refused to return to Singapore. We have already discussed the police complaint made by the respondent in India complaining about the abusive conduct of the petitioner during their telephonic conversations. A perusal of the custody petition filed by the respondent reveals that serious allegations are made against

the petitioner, and all the allegations concern the violent and abusive conduct of the petitioner, which concerns the safety of the child and can adversely impact the healthy and safe upbringing of the child. We have held that the facts and circumstances of the case do not show that the parties and the child were habitual residents of Singapore. Admittedly, neither the child nor the parties are citizens of Singapore. It appears that the parties had secured employment in Singapore as Employment Pass Holders. We do not find any better facilities or any privileged benefits available for the child in Singapore.

54. Neither party has any native connection in Singapore. However, the respondent, being an Indian citizen, has roots in India, which will help in giving a better and safer environment for the upbringing of the child. The respondent has the support of her parents in the upbringing of the child in India. Respondent is highly qualified and has a secured job in India, and is in no way dependent on anyone for the financial requirement for the upbringing of the

child. Though the petitioner has disputed the contention of the Respondent that in Singapore, she was alone taking care of the financial requirements of the child, and she did not receive any support from the petitioner, he has not placed on record any material in support of his contentions. Thus, we are not satisfied with the reasons pleaded by the petitioner to contend that it will be in the child's interest to send her to Singapore.

55. The child is a US citizen, and Singapore and India are both foreign countries to her. However, the respondent, who is the biological mother of the child, is an Indian citizen having roots in India. Thus, it cannot be said that the child is living in a country which is completely foreign to her. Thus, Singapore being a foreign country and not a habitual place of the child or of either of the parties, it cannot be said that Singapore will be a better place to ensure the fulfilment of the child's basic rights and needs, identity, social well-being and physical, emotional and intellectual development. Thus, for the reasons stated above, we are of the view

that any direction to return the child to a foreign jurisdiction will expose the child to some or the other physical, mental, psychological, or other harm.

56. In view of the aforesaid facts and circumstances, it cannot be said that the child has developed roots in either of three countries i.e. the USA, Singapore or India. Though for the maximum period of time the child has lived in the USA, considering the age of the child it cannot be said she developed roots in the USA. So far as Singapore is concerned, the child lived there for around seven months, which is again a very short time for developing any roots there. Finally, so far as India is concerned, the child is brought to India in view of the differences and disputes between the parties and has been living here for last more than eleven months. However, only the welfare of the child is of paramount importance, and thus, in view of our observations and findings recorded above, presently, it will be in the best interest of the child to stay in India with her mother, i.e. the respondent.

57. In addition to the reasons recorded above, one more important factor to be considered is that the child is a girl of a tender age of three and half years and thus requires the care and affection of her mother. Considering the past conduct of the petitioner having anger issues, it will not be safe to hand over custody of the child to him. We have held that the respondent is justified in her decision to come to India and not return to Singapore. In the reconciliation agreement, the petitioner has already agreed not to have any unsupervised access to the child until the respondent consents. Thus, we do not see any substance in the petitioner's arguments.

58. We have also considered the aspect of the child's right to have the company of both parents. It is true that the conduct of either of the parties should not deprive the child of having the company of both parents. In the battle of the parents, the child should not suffer. The Petitioner has alleged that the respondent deliberately did not disclose the child's whereabouts. A perusal of the affidavit dated 11th October 2023 filed by the respondent shows that the parties had regularly exchanged messages on WhatsApp, which reveal that the

respondent had intimated the well-being of the child, including uploading pictures of the child. The respondent has also forwarded her address in India. The Petitioner, in his affidavit dated 20th October 2023, has attached a chart showing the particulars of the WhatsApp messages between the parties, which shows the parties were indeed in contact with each other and the petitioner was also in touch with the child through video calls. Thus, it cannot be said that the child is kept away from the petitioner. However, the parties have initiated proceedings regarding custody of the child, hence, it is interest of both the parties and the child that the issue regarding access/visitation rights etc. be considered by the court of competent jurisdiction.

59. The essence of the principles of law laid down in all the aforesaid decisions is that the doctrines of comity of courts, intimate connect, orders passed by courts 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. We have already held that keeping the welfare of the child in mind, we find that it is in the best interest of the child to live with her mother, i.e. the respondent in India. Considering the aforesaid facts and circumstances of the case, none of the decisions relied upon by the learned senior counsel for the petitioner are of any assistance to the petitioner.

60. In the present case, the petitioner has initiated custody proceedings in Singapore, and the respondent has initiated custody proceedings in India. The parties have appeared in the respective proceedings and raised objections, including objections on jurisdiction. In both proceedings, certain interim orders are passed. We are not examining the merits of the proceedings initiated by the parties. Hence, those proceedings will be decided on its own merits. Our observations in this judgment are for the limited purpose of undertaking a summary inquiry for consideration of the reliefs sought in this petition seeking a writ of habeas corpus and will not be of any assistance to either party in the custody proceedings

pending in the court in India or in Singapore, which will be decided on its own merits uninfluenced by our observations.

61. We do not find any merit in the writ petition. Hence, for the reasons recorded above, the writ petition is dismissed. Rule is discharged.

All concerned to act on the authenticated copy of this order.

GAURI GODSE, J.

REVATI MOHITE DERE, J.