



**IN THE HIGH COURT OF ANDHRA PRADESH
(Special Original Jurisdiction)**

**FRIDAY, THE TWELFTH DAY OF APRIL
TWO THOUSAND AND NINETEEN**

PRESENT

**THE HONOURABLE THE ACTING CHIEF JUSTICE C.PRAVEEN KUMAR
AND
THE HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY**

WRIT PETITION NO: 47795 OF 2018

Between:

N. Pavan Kumar, S/o N. Syamosundara Naidu, Aged about 40 years,
Hindu Residing at 19-14-1 I, Raghavendra Nagar, Kesavayanagunta,
Tirupati, Andhra Pradesh

...PETITIONER

AND

1. The Union of India, Rep. by Principal Home Secretary Ministry of Home Affairs, New Delhi
2. The State of Andhra Pradesh, Rep. by Principal Home Secretary, Home Department, Velagapudi, Andhra Pradesh
3. The Director General Of Police, AP DCP Head Quarters, Mangalagiri, Andhra Pradesh
4. The Additional Director General Of Police (CID), AP DGP Head Quarters, Mangalagiri, Andhra Pradesh
5. The Superintendent of Police, Tirupati Urban District, Tirupati, Andhra Pradesh
6. The Circle Inspector, Tiruchanur Police Station, Tiruchanur, Andhra Pradesh
7. The Assistant Director, (NCB (Interpol) New Delhi) Central Bureau of Investigation, New Delhi
8. The Under Secretary (Legal), IS-II Division, Ministry of Home Affairs, GOI, New Delhi
9. The Union of India, Rep. by Principal Foreign Secretary Ministry of External Affairs, New Delhi
10. The Under Secretary (Extradition) Consular, Passport and Visa (CPV) Division, GOI, New Delhi
11. Regional Passport Officer, State of Andhra Pradesh Visakhapatnam, Andhra Pradesh-530009
12. Maheswari Ramineni, D/o R. Muniswamy Naidu Hindu aged about 38 years Residing at 7500 Kirby Drive, Apt 121, Houston, Texas - 77030, U.S.A.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, Order or Direction more particularly one in the

nature of Writ of habeas corpus directing Respondent Nos. 1 to 12 to produce the ward of this Honble court N. Jainarayan Sai (DOB, October 2, 2014) before this Honble Court in a time bound manner and return the child to his habitual residence in Tirupati, A.P., India to the custody of Petitioner/Father to the like effect of maintaining the status quo ante situation as it was prevailing prior to kidnap on 15.11.2018, pursuant to the order Dt, 14.09.2018 of this Honble High Court in W.P. No. 30964 / 2018 and per the orders Dt, 21.01.2016 and Dt, 01.10.2018 of the Hon'ble 3rd Circuit Court of Wayne County, Michigan, U.S.A. in Cause No.15-102440-DM and per proceedings Dt, 30.08.2018 of the Honble Family Court, Tirupati, pending adjudication of the child's best interests and custody either by the parens patriae jurisdiction of this court or the Hon'ble Family Court, Tirupati and in the event that the minor child is not produced before this Hon'ble Court within a fixed period, then the child may be produced by due process of court and that Respondent Authorities be directed to expedite legal, administrative and diplomatic measures to secure and produce the child before this Hon'ble Court and as necessary and just against the Respondent No, 12 / Mother.

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to re-open W.P.No. 30964 of 2018 and cojoin its proceedings with this writ proceedings. pending disposal of the above Writ Petition and pass

IA NO: 2 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to temporarily appoint the petitioner/father as sole guardian or in the alternative to appoint Guardian Ad Litem, with sole custody and to order respondent No.12 to return the child to the court appointed guardian to produce the child before this Honble Court and direct all local and central/federal law enforcement to assist in transferring the minor child to court appointed guardian.

IA NO: 3 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to permit personal service to respondent No.12/Mother by Email in above Writ Petition and I.As.,

IA NO: 1 OF 2019

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to exercise its inherent powers to direct respondent nos.1 to 11 to take immediate measures to issue a red immediate measures to issue a red corner notice (RCN) against Respondent No.12 within a week.

Counsel for the Petitioner: SRI. K. SRINIVASA REDDY

**Counsel for the Respondent Nos. 1, 7 to 11: SRI. B. KRISHNA MOHAN
ASST. SOLICITOR GENERAL**

Counsel for the Respondent Nos. 2 to 6: ADVOCATE GENERAL

Counsel for the Respondent No. 12: SRI. T. NAGARJUNA REDDY

The Court made the following: ORDER

**THE HON'BLE ACTING CHIEF JUSTICE C. PRAVEEN KUMAR
AND**

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

W.P. NO.47795 OF 2018

ORDER : *(Per Hon'ble Acting Chief Justice C.Praveen Kumar)*

One, N.Pavan Kumar, filed the present writ petition seeking issuance of writ of *Habeas Corpus* directing respondents 1 to 12 herein to produce the ward N.Jainarayan Sai, born on 2-10-2014, before the Court and return the child to his habitual residence at Tirupati and for other consequential reliefs.

2. The petitioner herein, who is the ex-husband of the 12th respondent, sought for production of his minor child by name, N.Jainarayan Sai, who was kidnapped on 15.11.2018 by the 12th respondent, after trespassing and assaulting mother of the petitioner with the help of two other hired criminals from his house at Tirupati, while the petitioner was in Hyderabad to attend the hearing in W.P.No.30964 of 2018. It is pleaded that the child was in his lawful custody pursuant to the orders passed by the Hon'ble High Court on 14.9.2018 in W.P.No.30964 of 2018 as well as the custody order said to have been passed by the Court of Michigan, USA on 21.1.2016. In respect of the said incident, a case in crime No.250 of 2018 was registered for the offences punishable under Sections 452, 324, 363 read with Section 34 I.P.C. in Tiruchanur Police Station, Chittoor District and it is pending investigation.

3. The 12th respondent, who is alleged to have kidnapped the ward, (her own son) is working as Assistant Professor, pathology and

she is said to be residing at 7500, Kirby Drive, Apt 121, Houston, Texas-77030, USA.

4. From the events narrated in the material on record, it appears that the father has been the primary care provider for the boy from October, 2014 to November, 2018 (since mother did not dispute this fact in W.P.No.30964 of 2018). Pursuant to the orders of the Court passed in W.P.No.30964 of 2018, the child was in lawful custody of the father. The boy came to India along with his father and was living with his father since June, 2017, with the consent of the mother. While things stood thus, the mother approached the Hon'ble 3rd Circuit Court of Wayne County, Michigan on 16.8.2018 and also filed W.P.No.30964 of 2018 for return of the child, who is in custody of the father. Pursuant thereto, father was forced to file FCOP/GWOP No.110 of 2018 before the Family Court-cum-V Additional District, Tirupati, complaining threat of kidnap from mother and to declare him as the lawful guardian and for restraining the mother from interfering with peaceful custody of the child. It is further stated that on 12.9.2018 and 14.9.2018 the child was produced by the petitioner before the Hon'ble High Court, wherein temporary custody of the child was ordered for two days from 14.9.2018 to 16.9.2018 with a condition that mother shall deposit her passport and also file an affidavit not to take the child out of the jurisdiction of the Court and accordingly the child was given to the mother for two days. The child was returned to the custody of the father on 16.9.2018 in compliance with the order of the Court. It is stated that on 1.10.2018 the 3rd Circuit Court, Michigan passed final orders declining jurisdiction and dismissed mother's case when she tried to change her mind about the child living in India with his father. However, on

15.11.2018, it is alleged that the 12th respondent along with henchmen abducted the child from the house at Tirupati and they took the boy to USA violating the orders of the Court. A criminal case also came to be registered for the offence of criminal trespass, assault and kidnapping on 16.11.2018. C.B.I. opened Look Out Circular upon request of Superintendent of Police, Tirupati. It is stated that between 16.11.2018 and 19.11.2018, the mother took the child out of India.

5. Counter came to be filed disputing the averments in the writ petition. It is stated that the 12th respondent was employed with Henry Ford Hospital, Detroit from the year 2007 to 2011 and further employed with MD Anderson Cancer Center from 2011 to 2013. She took a career break to join the petitioner-husband in Michigan from 2013 to 2015. After returning to her profession, the petitioner took full time faculty job at Baylor college. The marriage between the petitioner and the respondent No.12 took place in 12th November, 2010 in Tirupati and thereafter, the petitioner acquired American citizenship in the year 2013. It is stated that her husband filed a divorce case on 5.3.2015 in Circuit Court for the County of Wayne Family Division, State of Michigan. At the sessions of the said Court, held in Detroit on 21.1.2016, judgment of divorce was granted to parties and joint custody of the child was given until the child attains the age of 18 years or until further orders of the Court. It was further held that parenting time shall be alternate on a three months basis. On 18th May, 2017, the petitioner informed the 12th respondent that the paternal grandfather of the minor child was ill in India and requested that he be able to spend 8 to 10 weeks with the child in India and indicated that he would return the minor child to the

12th respondent before the commencement of her parental time. Hence, both parties agreed for travel of minor child to India from 11-6-2017 to August 15, 2017.

6. It is stated that after reaching India, the petitioner sought permission from the 12th respondent, for extension of period of time by another three months. The 12th respondent agreed for the same and permitted the petitioner to stay in India along with the child till December, 2017. It is stated that thereafter, the petitioner refused to bring back the child to USA and give custody to this respondent. This made her to contact FBI and file a missing child complaint with the local agency. It is stated that the petitioner has been issued notice by Interpol, finding him guilty of parental kidnapping. It is further stated that Circuit Court vide order dated 22.8.2018 directed the petitioner to appear along with minor child on 18.9.2018 to show as to why action for the criminal contempt shall not be taken against the petitioner. The order granting divorce by USA on 21.1.2016 clearly required both parties' parental time in USA, which, according to the 12th respondent, is violated by the petitioner. The gist of the counter further indicates that in spite of orders passed by a Court in USA, the petitioner herein has not complied with the same. Insofar as taking away of the minor child from the custody of the petitioner, it is stated that she came down to India and gave instructions to her counsel to withdraw W.P. No.30964 of 2018, which was dismissed as withdrawn on 15.11.2018. It is stated that the child was taken away from the custody of the petitioner from the house of the petitioner at Tirupati, as there is no order operating against her. In fact, it is stated that she was never served with any summons regarding any pending custody suit within India. It is stated by her that she has not violated any

law, either Indian or foreign, in taking minor child to USA. After reaching USA, she filed temporary application before Judicial District Harris County, Texas, wherein the Court vide order dated 28.11.2018 issued temporary *ex parte* order, by which the petitioner was excluded from possession of or access to the minor child. The petitioner was directed to appear before Texas Court on 12.12.2018 and that on 27.12.2018 the petitioner filed special appearance before the Texas Court.

7. In view of the judgment of the Apex Court in **V.Ravichandran (Dr.)(2) v. Union of India**¹ and taking into consideration the proposition laid down therein, it is pleaded that the Courts in U.S. alone gets jurisdiction to decide the custody of the child and that any order passed by the Court in India will not be binding on the 12th respondent. A reply to the counter came to be filed by the writ petitioner bringing to the notice of the Court, the orders passed by the Courts in U.S., the allegation of suppression of facts, acts of international forum hunting, the fact of case being dismissed in the Court of Michigan on 1.10.2018, apart from the orders being passed by the Courts in U.S. from time to time.

8. A rejoinder to the reply came to be filed by the 12th respondent stating that Texas Court continues to have jurisdiction and the word subsisting was mentioned by oversight. The 12th respondent further submits that she never committed any default and the order passed by the Texas court is matter of record and that she never tried to mislead the court. Another reply-affidavit came to be filed on 19.2.2019, enclosing the subsequent developments to the cases in U.S., more particularly, the order dated 18.2.2019 passed by the

¹ [(2010) 1 SCC 174]

247th Judicial District Court of Harris County, Texas and also placing on record the motion moved by the petitioner herein before the said Court.

9. From the averments and the counter averments the issue that boils down is, whether the child was taken out of the country illegally and as to whether the custody of the child be handed over to the petitioner after ordering the respondent to bring back the child to India. It is also to be noted here that not only the courts in U.S. are seized of the matter, but the matter is also *sub judice* before a competent civil court in India at Tirupati.

10. In **Kanika Goel v. State (NCT of Delhi)**² the Apex Court, while dealing with issuance of *habeas corpus* relating to the custody of the minor female child, observed as under :

"After these decisions, it is not open to contend that the custody of the female minor child with her biological mother would be unlawful, for there is presumption to the contrary. In such a case, the High Court whilst exercising jurisdiction under Article 226 for issuance of a writ of *habeas corpus* need not make any further enquiry but if it is called upon to consider the prayer for return of the minor female child to the native country, it has the option to resort to a summary inquiry or an elaborate inquiry, as may be necessary in the fact situation of the given case. In the present case, the High Court noted that it was not inclined to undertake a detailed inquiry. The question is having said that whether the High Court took into account irrelevant matters for recording its conclusion that the minor female child, who was in custody of her biological mother, should be returned to her native country. As observed in *Nithya Anand Raghavan case* (2017) 8 SCC 454] the Court must take into account the totality of the facts and circumstances whilst ensuring the best interest of the minor child. In *Prateek Gupta case* [(2018) 2 SCC 309] the Court noted that the adjudicative mission is the obligation to secure the unreserved welfare of the child as the paramount consideration. Further, the doctrine of "intimate 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

² [(2018) 9 SCC 578]

of mutilative bearing on the process of its overall growth and grooming."

11. In **Elizabeth Dinshaw v. Arvand M.Dinshaw**³ the Apex Court, while dealing with the question as to the custody of the minor child, held that the matter has to be decided not on consideration of the legal rights of parties, but on the sole and predominant criterion of what would best serve the interest and welfare of the minor. In the said case, the Apex Court examined minor boy Dustan in the chambers and found him to be tender in age and totally immature to be able to form any independent opinion of his own as to which parent he should stay with. It was also a case where the child was brought back to India by the process of illegal abduction by the father. The minor child spent most of his life in the United States of America and he was doing well in school there. The Apex Court held that in their opinion, in the best interest and welfare of the minor child, he should go back to USA and continue his education there in the custody and guardianship of the mother to whom such custody and guardianship has been entrusted by the competent court in that country. However, visiting rights were given to the father.

12. In **V.Ravi Chandran's case** (1 supra) the Three Judge Bench of the Apex Court, while dealing with the custody of a boy of 7 years, born in USA and a foreign national, in an application filed by the father seeking issuance of *habeas corpus* for production of minor child and for his custody, observed as under :

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

³ (1987) 1 SCC 42

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

13. From the judgments referred to above it is clear that the paramount consideration for ordering custody of a minor child is welfare of the child. In **V.Ravi Chandran's case** (1 supra) the Apex Court held that in the country to which the child has been removed must first consider the question whether the court could conduct an elaborate enquiry on the question of custody or by dealing with the matter summarily order a parent to return custody of the child to the country from which the child was removed and all aspects relating to the child's welfare be investigated in a court in his own country. In **V.Ravi Chandran's case** all the orders relating to the custody of the minor child were passed by the American courts by consent of the parties. The Apex Court, while recording appreciation for the work done by the officers/officials of CBI in tracing the minor child Adithya and producing him in less than two months of the order passed by the court, laid down certain guidelines, while ordering custody of the child to the mother.

14. In **Nithya Anand Raghavan v. State (NCT of Delhi)**⁴ the Court was also dealing with a *habeas corpus* petition filed for the custody of the minor child. It was held that the guardianship of

⁴ [(2017) 8 SCC 454]

mother is utmost significance for development of the personality of the girl, especially when she is around 7 years of age, unless circumstances indicating that it is harmful to her. The facts in the said case are somewhat identical to the case on hand. It was a case where child was removed from the custody of the father, who is residing in a foreign country and brought to India by mother. *Habeas Corpus* petition was filed by the father before the Court of India. It was also a case where there was order of a foreign court directing the mother to produce the child before it. It would be appropriate to narrate the facts in detail which are as under :

*For considering the factum of interests of the child, the court must take into account all the attending circumstances and totality of the situation. That will have to be decided on case to case basis. In the present case, we find that the father as well as mother of the child are of Indian origin. They were married in Chennai in India according to Hindu rites and customs. The father, an Indian citizen, had gone to the UK as a student in 2003 and was working there since 2005. After the marriage, the couple shifted to the UK in early 2007 and stayed in Watford. The mother did get an employment in London in 2008, but had to come to her parents' house in Delhi in June 2009, where she gave birth to Nethra. Thus, Nethra is an Indian citizen by birth. She has not given up her Indian citizenship. Indeed, the mother, along with Nethra, returned to the UK in March 2010. But from August 2010 till December 2011, because of matrimonial issues between the appellant and Respondent 2, the appellant and her daughter remained in India. It is only after the intervention of and mediation by the family members, the appellant and her daughter Nethra went back to England in December 2011, more than a year after they had come to India. After returning to the UK, Nethra was admitted to a nursery school in January 2012.

An application for grant of UK citizenship was made on behalf of Nethra in September 2012 which was subsequently granted in December, 2012. The father (Respondent 2) then acquired the citizenship of the UK in January 2013. After grant of citizenship of the UK, Nethra was admitted to a primary school in the UK in September 2013 and studied there only till July 2015. Since Nethra had acquired British citizenship, the UK Court could exercise jurisdiction in respect of her custody issues.

Significantly, till Nethra returned to India along with her mother on 2-7-2015, no proceeding of any nature came to be filed in the UK Court, either in relation to the matrimonial dispute between the appellant and Respondent 2 or for the custody of Nethra. Further, Nethra is staying in India along with the appellant, her grandparents and other family members and relatives, unlike in the UK where she lived in a nuclear family of the three with no extended family. She has been schooling here for the past over one year and has spent equal time in both the countries out of the first six years. She would be more comfortable and feel secured to live with her mother here, who can provide her love, understanding, care and guidance for her complete development of character, personality and talents. Being a girl child, the guardianship of the mother is of utmost significance. Ordinarily, the custody of a "girl" child who is around seven years of age, must ideally be with her mother unless there are circumstances to indicate that it would be harmful to the girl child to remain in custody of her mother [See *Sarita Sharma*, [(2000)3 SCC 14, para 6]]. No such material or evidence is forthcoming in the present case except the fact that the appellant (mother) has violated the order of the UK Court directing her to return the child to the UK before the stipulated date.

Admittedly, when Nethra was in the UK, no restraint order was issued by any court or authority in the UK in that behalf. She had traveled along with her mother from the UK to India on official documents. It is a different matter that Respondent 2 alleges that he was not informed before Nethra was removed from the UK and brought to India by his wife (appellant herein).

It is common ground that Nethra is suffering from cardiac disorder and needs periodical medical reviews and proper care and attention. That can be given only by her mother. Respondent 2 (father) is employed and may not be in a position to give complete attention to his daughter. There is force in the stand taken by the appellant that if Nethra returns to the UK, she may not be able to get meaningful access to provide proper care and attention. Further, she has no intention to visit the UK."

15. Under those circumstances, taking into consideration the health condition of the child and attendant circumstances, the custody of the child was given to the mother, but, however, in the very same case in para 67, the Court held as under :

"The facts in all the four cases primarily relied upon by Respondent 2, in our opinion, necessitated the Court to issue direction to return the child to the native state. That does not mean that in

deserving cases the courts in India are denuded from declining the relief to return the child to the native state merely because of a pre-existing order of the foreign court of competent jurisdiction. That, however, will have to be considered on case to case basis – be it in a summary inquiry or an elaborate inquiry. We do not wish to dilate on other reported judgments, as it would result in repetition of similar position and only burden this judgment.”

16. Therefore, from the judgment referred to above, it is clear that in deserving cases the courts in India are not denuded from declining the relief to return the child to the native state merely because of a pre-existing order of the foreign court of competent jurisdiction, but the Apex Court categorically held that the issue has to be decided on case to case basis.

17. Similarly, in **Surya Vadanam v. State of T.N.**⁵ the Apex Court, while dealing with the custody of a minor girl who was British citizen by birth, held as under :

“We have gone through the orders and directions passed by the foreign court and find that there is no final determination on the issue of custody and what the foreign court has required is for Mayura to present herself before it along with the two children who are wards of the foreign court and to make her submissions. The foreign court has not taken any final decision on the custody of the children. It is quite possible that the foreign court may come to a conclusion, after hearing both parties that the custody of the children should be with Mayura and that they should be with her in India. The foreign court may also come to the conclusion that the best interests and welfare of the children requires that they may remain in the UK either under the custody of Surya or Mayura or their joint custody or as wards of the court during their minority. In other words, there are several options before the foreign court and we cannot jump the gun and conclude that the foreign court will not come to a just and equitable decision which would be in the best interests and welfare of the two children of the couple.”

18. At this stage it is to be noted that India is not a signatory to the Hague Convention of 1980 on civil aspects of International Child Abduction. In non-convention countries, law is that the court in the

⁵ (2015) 5 SCC 450

country to which the child is removed will consider the question on merits bearing the welfare of the child as of paramount importance and reckon the order of the foreign court as only a factor to be taken into consideration, unless the Court thinks it fit to exercise summary jurisdiction in the interests of the child and its prompt return is for its welfare. In exercise of summary jurisdiction, the Court must be satisfied and of the opinion that the proceeding instituted before it was in close proximity and filed promptly after the child was removed from his/her native state and brought within its territorial jurisdiction, the child has not gained roots here and further that it will be in the child's welfare to return to his native state because of the difference in language spoken or social customs and contacts etc. In such a case, the Court need not resort to an elaborate inquiry into the merits of the paramount welfare of the child but leave that inquiry to the foreign Court by directing return of the child. However, in exceptional cases, the Court can still refuse to issue direction to return the child to the native state and more particularly in spite of a pre-existing order of the foreign Court in that behalf, if it is satisfied that the child's return may expose him to a grave risk. This means that the Courts in India, within whose jurisdiction the minor has been brought must "ordinarily" consider the question on merits, bearing in mind the welfare of the child as of paramount importance whilst reckoning the pre-existing order of the foreign Court if any as only one of the factors and not get fixated therewith. (Vide *Nithya Anand Raghavan v. State (NCT of Delhi)*).

19. In ***Alekhyia Yalamanchili v. State of Andhra Pradesh and others***⁶ a Division Bench of High Court, while dealing with unlawful

⁶ 2012 (4) ALD 748 (DB)

removal of child from jurisdiction of the High Court, when a dispute regarding custody of child under Guardians Act pending before the Civil Court within supervisory or superintendence jurisdictional area of High Court, observed as under :

"The law is thus well settled that the dispute before the civil Court under Guardians Act is concerned with the final child custody rights of the parents whereas habeas corpus proceeding deals with protection of the person who is held in unlawful custody. A child is not a property or a commodity. When the parents complain unlawful removal from its jurisdiction the court is bound to issue habeas corpus exercising *parens patriae* jurisdiction. Both the proceedings are summary but the proceedings under Guardians Act are substantive whereas habeas corpus proceedings are procedural. Even if the child is not within the territorial jurisdiction of the Court, if the parties had already approached a competent civil Court which is within the supervisory or superintendence jurisdictional area of the High Court, it is entitled to assume jurisdiction. The factum of relocation of a child is no ground to oust habeas corpus jurisdiction of the High Court. We, therefore, hold on the issue against the third respondent and in favour of the petitioner."

20. At this stage it will also be proper to refer to the judgment in ***Prateek Gupta v. Shilpi Gupta***⁷. It was also a case where the petitioner filed a writ of *habeas corpus* for custody of the child. Dealing with the issue as to the manner in which the jurisdiction under *habeas corpus* is to be exercised i.e., when question is one of immediate restoration of custody/repatriation of child, the Apex Court after referring to various judgments including *Arathi Bandi v. Bandi Jagadrakshaka rao* [(2013) 15 SCC 790]; *Shilpa Aggarwal v. Aviral Mittal* [(2010) 1 SCC 591]; *Nithya Anand Raghavan v. State (NCT of Delhi)* [(2017) 8 SCC 454]; *Anand Raghavan v. State (NCT of Delhi)* [(2016) 231 DLT 596]; *Elizabeth Dinshaw v. Arvand M. Dinshaw* [(1987) 1 SCC 42]; and *V. Ravi Chandran (2) v. Union of India* [(2010) 1 SCC 174] came to the following conclusion :

⁷ [(2018) 2 SCC 309]

"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."

21. From the judgment of the Courts referred to above and the ratio laid down, it is very clear that welfare of the child is paramount consideration. The principles/doctrines which have been laid down 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.

22. Therefore, it is now to be seen as to whether in the instant case custody of child can be awarded to the father. Admitted facts, as

narrated earlier, would indicate that for a major period of the time, the boy, who was born on 2.10.2014, was with father. It is also brought on record that pursuant to the order passed by the 3rd Circuit Court of Wayne County, Michigan, the child came to India with his father and was living with the father since June 2017, with the consent of the mother. Long thereafter, when the father refused to take back the child to U.S., mother came down to India and took steps for taking back the child to U.S. Writ Petitions came to be filed by both of them. W.P.No.30964 of 2018 was filed by the mother for issuance of writ of *habeas corpus*. In the said case a Division Bench of the High Court of judicature at Hyderabad for the State of Telangana and for the State of Andhra Pradesh by its order dated 14.9.2018 gave a direction stating that if temporary custody of minor son is given to the petitioner therein i.e., mother, she will deposit her passport in the court and she will not leave the jurisdiction of the court. Accordingly, counsel for the respondent fairly agreed for temporary custody of the child by the petitioner therein and handing over the child to respondent at 5 PM on Sunday i.e., 16.9.2018. Pursuant there to on 14.9.2018, the passport of the petitioner was deposited and temporary custody of the child was given to mother. She returned the child to the respondent by 5 PM on 16.9.2018, as directed by this Court. Accordingly, the passport was directed to be returned to the petitioner therein i.e., mother.

23. However, on 15.11.2018 the mother is said to have forcibly abducted the child from the house of her husband at Tirupati with the help of her henchmen and then took the boy to USA. In the said process, the persons, who trespassed, caused injuries to the mother of the petitioner, leading to registration of criminal cases which is

pending investigation. At that stage, W.P.No.47795 of 2018 came to be filed by the father to issue *habeas corpus*, to produce the ward i.e., N.Jainarayan Sai before the Hon'ble High Court in time bound manner and return the child to his habitual residence at Tirupati. Record also discloses filing of FCOP/GWOP No.110 of 2018 by the petitioner herein before the Family Court-cum-V Additional District Judge, Tirupati, complaining threat of kidnap from mother and to declare him as the lawful guardian and for restraining the mother from interfering with peaceful custody of the child. From the narration of events, it clearly indicates that while order of the High Court was in force, the child was forcibly taken away to USA by the mother. Though it is pleaded that no order is in force for the reason that the writ petition was withdrawn on 15.11.2018, but this withdrawal is subject matter of dispute, for the reason that the same is being done only with an intention to get away with the order passed by the High Court in ordering custody of the boy to the father.

24. However, the record clearly shows that on the day when the writ petition was withdrawn, the boy was abducted from the lawful guardianship of his grand mother. It is no doubt true that orders are passed by the Courts in U.S., but, at the same time, the Courts in India, while recognizing the custody of the boy with the father, granted interim custody to the father, meaning thereby, the boy is in lawful custody of the father in India. Forcible taking away of the boy from the custody of his grand mother, is not permitted by any law or by any order passed by the Courts in U.S. In fact, there is no answer from the counsel when the Court posed a query as to how the mother came into custody of the boy on 15.11.2018. Since November 2018, the boy is in the custody of the mother and father has been visiting

USA fighting out the litigation in the said courts. At the same time, the appropriate civil Court in India is also seized of the matter with regard to the custody of the child vide FCOP/GWOP No.110 of 2018 before the Family Court at Tirupati.

25. Since the boy has been forcibly taken away without any lawful authority or with the aid of any order passed by the Indian Court and since the welfare of the child is a paramount consideration, it will be just and proper for us to direct the mother to subject herself to the jurisdiction of the civil court in FCOP/GWOP No.110 of 2018 before the Family Court-cum-V Additional District Judge, Tirupati, and produce the child before the said court. In which event, the said Court shall examine the boy, father, mother and all concerned and then pass appropriate orders. In our view, deciding of the issue by the appropriate civil court is very much essential, more so, in view of the judgment of the division bench of this court in **Alekhyia Yalamanchili's case**, where the court held that even if the child is not within the territorial jurisdiction of the court, if parties have approached the civil court, which is within the supervisory or superintendence jurisdictional area of High Court, it is entitled to assume jurisdiction.

26. In the result, the writ petition is allowed, directing the 12th respondent to produce N.Jainarayan Sai, a minor child aged about 5 years, son of the petitioner and the 12th respondent, before the Family Court at Tirupati within 8 to 12 weeks from the date of receipt of a copy of this order. On which, the concerned civil court shall decide the issue relating to interim custody of the child pending O.P. as well the O.P. in accordance with law at the earliest.

27. The Writ petition, with the above directions, is allowed. No order as to costs.

Consequently, miscellaneous applications pending if any, shall also stand closed.


Sd/- K. TATA RAO
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Principal Home Secretary Ministry of Home Affairs, Union of India, New Delhi
2. The Principal Home Secretary, Home Department, State of Andhra Pradesh, Velagapudi, Andhra Pradesh
3. The Director General Of Police, AP DCP Head Quarters, Mangalagiri, Andhra Pradesh
4. The Additional Director General Of Police (CID), AP DGP Head Quarters, Mangalagiri, Andhra Pradesh
5. The Superintendent of Police, Tirupati Urban District, Tirupati, Andhra Pradesh
6. The Circle Inspector, Tiruchanur Police Station, Tiruchanur, Andhra Pradesh
7. The Assistant Director, (NCB (Interpol) New Delhi) Central Bureau of Investigation, New Delhi
8. The Under Secretary (Legal), IS-II Division, Ministry of Home Affairs, GOI, New Delhi
9. The Principal Foreign Secretary Ministry of External Affairs, Union of India, New Delhi
10. The Under Secretary (Extradition) Consular, Passport and Visa (CPV) Division, GOI, New Delhi
11. Regional Passport Officer, State of Andhra Pradesh Visakhapatnam, Andhra Pradesh-530009
12. One CC to Sri. K. Srinivasa Reddy, Advocate (OPUC)
13. One CC to Sri. B. Krishna Mohan, Asst. Solicitor General (OPUC)
14. One CC to Sri. T. Nagarjuna Reddy, Advocate (OPUC)
15. Two CCs to the Advocate General, High Court of Andhra Pradesh. (OUT)
16. Two CD Copies.

PM 

HIGH COURT

DATED:12/04/2019

ORDER

WP.No.47795 of 2018

Allowing the WP

Without costs.

18
SG
~~17/18/19/20/21~~
17/18