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RAJESH K. GUPTA

v.

RAM GOPAL AGARWALA AND ORS.

APRIL 28, 2005

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[R.C. LAHOTI, C.J. AND G.P. MATHUR, J.]

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*Constitution of India, 1950—Article 226—Writ of habeas corpus sought by father for custody of minor child—Child staying with mother and maternal grand-parents—High Court finding the child to be in good condition allowed the mother to retain custody, until and subject to the order, if any, passed by the competent civil court—On appeal, held: Paramount consideration is welfare of the child and not legal right of either parties—Medical reports do not show the mother to be suffering from any serious medical ailment, as alleged—Maternal grandfather being well-educated and financially sound can look after the needs of the child and the mother—Maternal grandmother also there to look after the child, if required—Father being lawyer is too busy—No reason to disturb present custody of the child—Guardians and Wards Act, 1890—Sections 7 and 17.*

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In a writ of habeas corpus, Appellant, a practicing Advocate in Supreme Court, sought custody of his daughter, who was staying with his wife and parents-in-law (Respondents 1 and 2) on grounds that his daughter was abducted by Respondents 1 and 2 and that his wife was suffering from a mental ailment. High Court, upon seeing and observing the child found her to be in a good condition, and accordingly held that appellant's wife could continue to retain custody of the child, until and subject to the order, if any, passed by the competent Civil Court. Appellant was permitted to seek remedy for establishing his right of guardianship in Civil Court.

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In appeal to this Court, the appellant contended that his wife was suffering from serious mental disorder of paranoid schizophrenia for almost two decades, and the life and health of the child would not be safe, if she is allowed to remain in her custody. He further submitted that his mother will be living with him and she will be able to look after the child.

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Dismissing the appeal, the Court,

**HELD : 1.** It is well settled that in an application seeking a writ of habeas corpus for custody of minor child, the principal consideration for the court is to ascertain whether the custody of the child can be said to be lawful or illegal and whether the welfare of the child requires that the present custody should be changed and the child should be left in the care and custody of someone else. It is equally well settled that in case of dispute between the mother and father regarding the custody of their child, the paramount consideration is welfare of the child and not the legal right of either of the parties. [950-A-B]

*Dr. (Mrs.) Veena Kapoor v. Shri Varinder Kumar Kapoor*, [1981] 3 SCC 92 and *Syed Saleemuddin v. Dr. Rukhsana and Ors.*, [2001] 5 SCC 247, relied on.

**2.** The medical reports do not show that appellant's wife has been suffering from any such mental ailment, which may be termed as serious. In fact, according to the appellant himself his wife is a case of paranoid schizophrenia and not any kind of serious mental ailment. [950-E-F]

**3.** Appellant is in the profession of law being an Advocate-on-Record in the Supreme Court. A lawyer's profession is very exacting and busy profession and requires lot of time. His father-in-law did his Doctorate in Econometrics from Manchester University, U.K. in the year 1966 and joined the World Bank in 1971 where he held very senior positions. He is, therefore, a well-educated and financially sound person who can look after the needs of his daughter and also the granddaughter. Appellant's mother-in-law, aged about 60 years, is also there to look after the child if an occasion arises. The Judges of the High Court before whom appellant's wife appeared along with the child and had also talked to her, have recorded that the child was in good and perfect condition and appellant's wife could be allowed to retain her custody. There is no ground to take a contrary view and disturb the present custody of the child and give her in the custody of the appellant. [950-G-H; 951-A-B]

**CRIMINAL APPELLATE JURISDICTION :** Criminal Appeal No. 633 of 2005.

From the Judgment and Order dated 10.3.2005 of the Delhi High Court in W.P.(Crl) No. 302 of 2005.

Gopal Subramaniam, Ms. Meera Mathur, Rajesh K. Gupta and J.P.N.

A Gupta with him for the Appellant.

R.K. Jain, Yunus Malik, Reetesh Singh and Surya Kant with him for the Respondents.

The Judgment of the Court was delivered by

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**G.P. MATHUR, J.** Leave granted.

2. This appeal by special leave has been preferred against the judgment and order dated 10.3.2005 of Delhi High Court by which the habeas corpus petition filed by the appellant was disposed of with certain directions.

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3. The appellant Rajesh Kumar Gupta is an Advocate-on-Record and is practicing in the Supreme Court of India since 1996. His marriage with Smt. Aruna Gupta daughter of Shri Ram Gopal Agarwala (respondent No. 1 herein) took place on 24.8.1997 and a daughter Rose Mala was born out of the wedlock on 5.6.2003. It appears that some differences have arisen between the appellant and his wife Smt. Aruna Gupta and currently she is living along with her parents, who have also been arrayed as respondent Nos. 1 and 2 in the special leave petition. The dispute here is about the custody of the child Rose Mala, who is with her mother. The appellant filed a habeas corpus petition in the Delhi High Court seeking the custody of his daughter Rose Mala mainly on the ground that she had been abducted by respondent Nos. 1 and 2 on 6.3.2005 and that on account of mental ailment with which his wife was suffering, the custody of the child should be given to him.

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4. After hearing learned counsel for both the parties the High Court disposed of the petition on 10.3.2005 and the relevant portion of the order reads as under :-

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“Mr. R.K. Jain, Sr. Advocate, appearing for the parents and the wife submits that Mrs. Aruna Gupta is ready and willing to give an undertaking to this Court that she would not leave the jurisdiction of this Court until an appropriate order in that regard is passed by the competent Court. We accept the said undertaking which is given to us. On query to Mrs. Aruna Gupta, she has categorically stated that she would like to stay with her parents and would like to retain the custody of the child and that she is not in a position to leave the child.

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Considering the facts and circumstances of the case and also

upon hearing the counsel for the parties and also on talking to Mrs. Aruna Gupta and upon seeing and observing the child who is found to be in good and perfect condition, we are satisfied that the mother of the child, Mrs. Aruna Gupta, could continue to retain the custody of the child for the present. Ordered accordingly. It shall, however, be open to the petitioner to seek remedy for establishing his right of guardianship in accordance with law which is available to him in the Civil Court. If and when such a remedy is resorted to by the petitioner by filing a petition, the same shall be considered by the appropriate Court in accordance with law. The order passed today giving custody of the child to the mother shall be subject to the order, if any, passed by the civil court. Till then, the custody of the child shall remain with the mother, namely, Mrs. Aruna Gupta.

In terms of the aforesaid order this petition stands disposed off."

5. Shri Gopal Subramaniam, learned senior counsel for the appellant, has submitted that the marriage of the appellant with Smt. Aruna Gupta was an arranged marriage, which took place on the basis of an advertisement in the newspaper. After marriage it was revealed that Smt. Aruna Gupta was suffering from serious mental disorder of paranoid schizophrenia for almost two decades. She had been treated in U.S.A. for her illness as at the relevant time her father Shri Ram Gopal Agarwala was working there. After the marriage when the appellant discovered that she was suffering from mental ailment, she was treated in the All India Institute of Medical Sciences. In this connection learned counsel has drawn the attention of the court to the medical reports prepared in several hospitals where Smt. Aruna Gupta had been admitted and had been given treatment for the disease paranoid schizophrenia with which she has been suffering. Learned counsel has further submitted that life and health of baby girl Rose Mala would not be safe, if she is allowed to remain in the custody of the mother. He further submitted that the mother of the appellant will be living with him and she will be able to look after the child.

6. Shri R.K. Jain, learned senior counsel appearing for the respondent Nos. 1 to 3, controverted the submissions made by the learned counsel for the appellant and has submitted that Smt. Aruna Gupta is in perfect health and is not suffering from any mental ailment. He has further submitted that the baby girl Rose Mala is being well looked after. She is in fine condition and the apprehension of the appellant that she would not get proper care from her mother has no basis.

- A 7. It is well settled that in an application seeking a writ of habeas corpus for custody of minor child, the principal consideration for the court is to ascertain whether the custody of the child can be said to be lawful or illegal and whether the welfare of the child requires that the present custody should be changed and the child should be left in the care and custody of someone else. It is equally well settled that in case of dispute between the mother and father regarding the custody of their child, the paramount consideration is welfare of the child and not the legal right of either of the parties [see *Dr. (Mrs.) Veena Kapoor v. Shri Varinder Kumar Kapoor*, [1981] 3 SCC 92 and *Syed Saleemuddin v. Dr. Rukhsana and Ors.*, [2001] 5 SCC 247]. It is, therefore, to be examined what is in the best interest of the child
- C Rose Mala and whether her welfare would be better looked after if she is given in the custody of the appellant, who is her father.

8. The medical reports of Smt. Aruna Gupta regarding her treatment in some hospitals in U.S.A. are mostly of the year 1984 and the doctor of Holy Cross Hospital, U.S.A. recorded his assessment as under : -

"Borderline personality disorder with no obvious medical problems on examination or in the laboratory.

PLAN :

No further medical intervention is necessary."

The medical reports of All India Institute of Medical Sciences, which are of the year 2000, do not show that she has been suffering from any such mental ailment, which may be termed as serious. In fact, according to the appellant himself Smt. Aruna Gupta is a case of paranoid schizophrenia and not any kind of serious mental ailment.

9. It is important to note that the appellant is in the profession of law being an Advocate-on-Record in the Supreme Court. A lawyer's profession is very exacting and busy profession and requires lot of time. The appellant has submitted that his mother will come and stay with him, who will look after the child. It is admitted that currently Smt. Aruna Gupta is living with her parents. Her father Shri Ram Gopal Agarwala did his Doctorate in Econometrics from Manchester University, U.K. in the year 1966 and joined the World Bank in 1971 where he held very senior positions. He is, therefore, a well-educated and financially sound person who can look after the needs of his daughter and also the granddaughter. The mother of Smt. Aruna Gupta, namely, Smt. Bimala Agarwala, aged about 60 years, is also there to look

after the child if an occasion arises. The learned judges of the High Court before whom Smt. Aruna Gupta appeared along with Rose Mala and had also talked to her, have recorded that the child was in good and perfect condition and Smt. Aruna Gupta could be allowed to retain her custody. Having given our careful consideration to the submissions made by the learned counsel for the parties and to the material placed before us, we do not find any ground to take a contrary view and disturb the present custody of Rose Mala and give her in the custody of the appellant.

10. The appeal, therefore, lacks merit and is dismissed.

B.B.B.

Appeal dismissed.