[2024] 6 S.C.R. 259 : 2024 INSC 397

Col. Ramneesh Pal Singh
v.
Sugandhi Aggarwal

(Civil Appeal No. 6137 of 2024)

08 May 2024

[Vikram Nath and Satish Chandra Sharma,* JJ.]

Issue for Consideration

Matter pertains to the guardianship of two minor children till they attain the age of majority.

Headnotes

Guardian and Wards Act, 1890 – ss. 7, 9 and 25 – Custody of two minor children – Family Court granted permanent custody of minor children to the father-serving Army Officer and provided visitation rights to the mother – However, the High Court set aside the order and granted the parties shared custody of the minor children – Challenge to:

Held: Principal consideration whilst deciding an application for guardianship under the Act in exercise of its parens patriae jurisdiction would be the 'welfare' of the minor children – Dispute must be decided on the basis of a holistic and all encompassing approach including inter alia the socio economic and educational opportunities made available to the minor children; healthcare and overall well being of the children; the ability to provide physical surroundings conducive to growing adolescents; the preference of the minor children as also stability of surroundings of the minor children – On facts, unwavering and strong desire of the children to continue to reside with the father – Said desire/preference although in itself cannot be determinative of custody of the children, but must be given due consideration – As regards, upbringing and welfare of the minor children, the Indian Armed Forces provides a robust support system to the kin of its officers which undoubtedly, aids in the mental stimulation, growth and overall development of personality of a child – Nothing on record to suggest that the interests and welfare of the minor children were in any manner affected during their stay with the father – Furthermore, the father could not have been said to have engaged or propagated 'alienating behaviour' as alleged by the mother – High Court failed to appreciate the said

* Author

nuance and proceeded on an unsubstantiated assumption that allegations of parental alienation could not be ruled out, despite the stark absence of any instances of 'alienating behaviour' having been identified by any Court – High Court neither correct nor justified in interfering with the order passed by the Family Court – In view thereof, it is just and appropriate that the custody of the minor children is retained by the father, subject to the visitation rights of the mother as granted by the Family Court. [Paras 8, 12, 13, 14, 16, 24-27]

Child and family welfare – Child custody dispute – 'Parental alienation syndrome'-PAS – Concept of:

Held: 'Parental alienation syndrome'-PAS is a thoroughly convoluted and intricate phenomenon requiring serious consideration and deliberation – Recognising and appreciating the repercussions of PAS certainly shed light on the realities of longdrawn and bitter custody and divorce litigations on a certain identified sect of families – However, there can be no straitjacket formula to invoke the principle of PAS laid down by this Court in *Vivek Singh's case – Courts ought not to prematurely and without identification of individual instances of 'alienating behaviour', label any parent as propagator and/or potential promoter of such behaviour – Said label has far-reaching implications which must not be imputed or attributed to an individual parent routinely – Courts must endeavour to identify individual instances of 'alienating behaviour'in order to invoke the principle of parental alienation so as to overcome the preference indicated by the minor children. [Paras 18-20, 22, 23]

Child and family welfare – Child custody dispute – Upbringing and welfare of the minor children – Effect of the nature of employment of father serving in Indian Armed forces:

Held: Indian Armed Forces provides a robust support system to the kin of its officers so as to ensure minimal disruption in the lives of the civilian members of an officer's family – This support system includes residential accommodation, a network of army schools, hospitals and healthcare facilities – Moreover, various extra-curricular activities, recreational clubs; and other social and cultural functions are made available for the benefit of the kin of officers of the Indian Armed Forces – Said support system undoubtedly, aids in the mental stimulation, growth and overall development of personality of a child. [Para 16]

Case Law Cited

Vivek Singh v. Romani Singh* [2017] 2 SCR 312 : **(2017) 3 SCC 231 – held inapplicable.

Jitender Arora v. Sukriti Arora [2017] 1 SCR 707 **: (2017) 3 SCC 726;** *Nil Ratan Kundu v. Abhijit Kundu* [2008] 11 SCR 1111 **: (2008) 9 SCC 413;** *Mausami Moitra Ganguli v. Jayant Ganguli* [2008] 8 SCR 260 **: (2008) 7 SCC 673;** *Vishnu v. Jaya* **(2010) 6 SCC 733;** *Lahari Sakhamuri v. Sobhan Kodali* [2019] 5 SCR 240 **: (2019) 7 SCC 311;** *Gaurav Nagpal v. Sumedha Nagpal* [2008] 16 SCR 396 **: (2009) 1 SCC 42;** *Rosy Jacob v. Jacob A. Chakramakkal* [1973] 3 SCR 918 **: (1973) 1 SCC 840;** *V. Ravi Chandran (Dr.) (2) v. Union of India* [2009] 15 SCR 960 **: (2010) 1 SCC 174;** *Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari* [2019] 7 SCR 335 **: (2019) 7 SCC 42;** *Shazia Aman Khan and Ors. v. The State of Orissa and Ors.* [2024] 3 SCR 10 **: 2024 INSC 163 – referred to.**

Re C ('parental alienation'; instruction of expert) **[2023] EWHC 345 (Fam) – referred to.**

List of Acts

Guardian and Wards Act, 1890; Protection of Women from Domestic Violence Act, 2005.

List of Keywords

Guardianship; Custody of minor children; Visitation rights; Shared custody; Parens patriae jurisdiction; Upbringing and welfare' of the minor children; Socio economic and educational opportunities; Healthcare and overall wellbeing of the children; Physical surroundings conducive to growing adolescents; Preference of minor children; Stability of surroundings of minor children; Desire/ preference of minor child; Indian Armed Forces, robust support system to kin of its officers; Mental stimulation, growth and overall development of personality of child; Alienating behaviour'; 'Parental alienation syndrome'-PAS; Principle of parental alienation.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6137 of 2024

From the Judgment and Order dated 11.10.2023 of the High Court of Delhi at New Delhi in MATAPP (FC) No. 132 of 2020

Appearances for Parties

Vivek Chib, Sr. Adv., Prabhas Bajaj, Priyanshu Tyagi, Rishav Rai, Ms. Unnatu Jhunjhunwala, Ms. Mansi Gupta, Rithvik Mathur, Ms. Manmeet Kaur Sareen, Advs. for the Appellant.

Ms. Vandana Sehgal, Mohit Yadav, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Satish Chandra Sharma, J.

Introduction

1. Leave granted.

2. The present appeal preferred by the Appellant seeks to assail the correctness of an order dated 11.10.2023 passed by a Division Bench of the High Court of Delhi at New Delhi (the "**High Court**") in M.A.T. APP (F.C.) 132 of 2020 (the "**Impugned Order**"). *Vide* the Impugned Order the High Court partly allowed the appeal preferred by the Respondent against an order dated 22.08.2020 passed by the Learned Family Court, West, Tis Hazari Court (the "**Family Court**") in GP No. 45/17 (Old GP No. 75 of 2015) whereby the Family Court granted permanent custody of minor children to the Appellant and provided visitation rights to the Respondent (the "**Underlying Order**"). Pertinently, *vide* the Impugned Order, the High Court set aside the Underlying Order; and accordingly granted the parties shared custody of the Minor Children (*defined below).*

Factual Background

3. The facts and proceedings germane to the contextual understanding of the present *lis*, are as follows:

   3.1. The marriage between (i) the Appellant i.e., now serving as a Colonel in the Indian Armed Forces presently posted at Jalandhar, Punjab; and (ii) the Respondent i.e., now employed as a teacher in Delhi Public School, Gurugram - was solemnized on 22.12.2002 at Delhi, in accordance with *Hindu/Sikh* rites and rituals. Two minor children were born out of the wedlock i.e., (i) a 15 (fifteen) year old daughter (hereinafter "**SSU**"); and (ii) a 12 (twelve) year old son (hereinafter "**SSH**") (hereinafter, SSU and SSH shall collectively be referred to as the "**Minor Children**").

3.2. In December 2013, the Appellant having been promoted to the rank of Colonel in the Indian Armed Forces, was posted to serve in the Jammu and Kashmir. Accordingly, it was decided that the Respondent together with the Minor Children would reside in New Delhi. The relationship between the Parties deteriorated significantly; and thereafter took a turn for the worst on 08.08.2015, forcing the Respondent to leave the matrimonial home for 1 (one) night. Upon returning the next day i.e., 09.08.2015, the Respondent found the residence locked, and the Appellant along with the Minor Children unavailable at aforesaid residence.

3.3. The Respondent was constrained to file (i) a missing children's report on 19.08.2015; and thereafter (ii) an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (the "**DV Act**") on 17.08.2015. Subsequently, the Respondent learnt that the Minor Children along with the Appellant were residing in Gulmarg, Jammu and Kashmir and were scheduled to move to Bikaner, Rajasthan in furtherance of the nature of the Appellant's service. Aggrieved, the Respondent filed a petition under Section 7, 9 and 25 of the Guardian and Wards Act, 1890 (the "**Act**") before the Family Court seeking custody of the Minor Children on 21.11.2015. On the other hand, the Appellant filed a similar petition seeking custody of the Minor Children before the Learned Principal Jude, Family Court, Bikaner, Rajasthan.

3.4. This Court *vide* an order dated 29.03.2017, transferred the custody petition filed by the Appellant before the Learned Principal Jude, Family Court, Bikaner, Rajasthan to the Family Court in Delhi. Thereafter, *vide* an order dated 16.10.2017, the Family Court granted interim custody of the Minor Children to the Respondent (the "**Interim Custody Order**"). Aggrieved, the Respondent preferred an Appeal before the High Court. *Vide* an order dated 06.12.2017, the High Court initially stayed the operation of the Interim Custody Order; thereafter *vide* an order dated 19.04.2018 granted the Respondent custody of the Minor Children on alternative weekends; and finally *vide* an order dated 01.10.2019, dismissed the appeal and vacated the *interim* order(s) observing *inter alia* that the appeal was not maintainable.

3.5. Aggrieved, the Appellant preferred a writ petition under Article 227 of the Constitution of India before the High Court challenging the correctness of the Interim Custody Order (the "**Writ Petition**"). *Vide* an order dated 29.04.2020, the High Court formulated an *interim* custody arrangement between the parties after interacting with the Minor Children. Pertinently, although an SLP was preferred against the aforesaid order, this Court did not interfere with the order passed by the High Court; and only directed the Family Court to decide the custody petition within a period of 1 (one) month.

3.6. In the aforesaid context, the custody petition came to be disposed of by the Family Court *vide* the Underlying Order as under:

> *"16.1 In view of the aforesaid discussion, it is directed that the permanent custody of minor children SSU and SSH shall remain with the respondent. However, the petitioner shall be entitled to have interaction with the minor children daily through audio-video call for half an hour, between 7:00 PM to 8:00 PM. The respondent shall facilitate the said call. She shall also be entitled to visit the minor children and take them out with her from 10:00 AM to 5:00 PM, on every second and fourth Sunday, at the station, where the minor children are staying, subject to their school/educational commitments. She can pick up the children from their residence at 10:00 AM and drop them back at 5:00 PM. If it is not possible to have visitation on any such day, it shall be compensated on the next Sunday i.e. third or fifth/first Sunday. Further, during the summer vacations and the winter vacations in the school(s) of the minor children, the petitioner shall be entitled to have the custody of the minor children for ten days and five days respectively. Such days can be mutually decided by the parties. Accordingly, the petition filed by the petitioner for seeking custody of the minor children SSU and SSH is dismissed, subject to contact/visitation/custody rights of the petitioner as aforesaid."*

3.7. Aggrieved by the Underlying Order, the Respondent preferred an appeal under Section 19 of Family Courts Act, 1984 before the High Court. During the pendency of the appeal, certain *interim* order(s) came to be passed from time to time, subsequently, *vide* the Impugned Order, the High Court granted the parties shared custody of the Minor Children as under:

> *"34. In view of the aforesaid discussion, the impugned order dated 22.08.2020 is set aside. We, accordingly, partly allow the appeal and direct that the appellant and the respondent will share custody of the minor children 'SSU' and 'SSH' in the following manner:*
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> *(i) Till the start of the next academic session the appellant would be entitled to have overnight custody of the minor children on the second and fourth weekend of every month. For the said purpose, the appellant shall travel to the respondent's station of posting, on her own expenses on the second Friday of every month. She shall either make her own arrangements for accommodation or request the respondent to arrange for her accommodation at a guest house in the Cantonment Area. The respondent will hand over the custody of the children to the appellant on the evening of Friday, after she has arrived. The children shall remain with the appellant till Sunday evening and thereafter, the respondent shall pick them up before the appellant leaves for Delhi. On the fourth Friday of every month, the respondent shall either bring the children to Delhi or send them by flight, while placing them in the care of the airline staff. In such a situation, the appellant will pick the children up from the airport. The children shall be returned by flight available on Sunday evening. The expenses for the to and fro journey of the children on such fourth weekend of each month shall be borne by the respondent.*

(ii) Prior to the beginning of the next academic session, the appellant shall ensure that admission of the minor children is secured at the school where she is currently teaching, i.e., Delhi Public School, Gurugram, Haryana. The respondent shall fully cooperate in the admission process. Thereafter, the respondent shall hand over the custody of the minor children to the appellant. The children will stay with the appellant at her residence in Delhi. In such a situation, the respondent would be entitled to have overnight custody of the minor children on the second and fourth weekend of every month. For the said purpose, the respondent shall travel to Delhi, on his own expenses on every second Friday. He shall make his own arrangements for accommodation. The appellant will hand over the custody of the children to the respondent on the evening of Friday, after he has arrived. The children shall remain with the respondent till Sunday evening and thereafter, the appellant shall pick them up before the respondent leaves. On the fourth Friday of every month, the appellant shall either bring the children to the respondent's station of posting or send them by flight, while placing them in the care of the airline staff. In such a situation, the respondent will pick the children up from the airport. The children shall be returned by flight available on Sunday evening. The expenses for the to and fro journey of the children on such fourth weekend of each month shall be borne by the appellant.

(iii) In case the respondent is posted to a station in the NCT of Delhi, the appellant and the respondent will have custody of the minor children for two weeks each including the weekends, every month. The children shall stay with the appellant for the first two weeks

of every month and with the respondent for the next two weeks of every month. At the end of the second week of every month, i.e., on Sunday evening, the appellant shall drop the children at the respondent's accommodation. At the end of every fourth week, i.e., on Sunday evening, the respondent shall drop the children back at the appellant's residence.

(iv) During summer vacations and winter vacations, the appellant and the respondent shall have custody of the minor children for an equal number of days. Such days can be mutually agreed upon by the parties. It is clarified that in case the children are required to travel as a result of the said arrangement during vacations, the expenses for their travel shall be borne by the parent who they are visiting. Therefore, if the children are travelling from the respondent's station of posting to Delhi, the expenses shall be borne by the appellant. If the children are travelling from Delhi to the respondent's station of posting, the expenses shall be borne by the respondent."

3.8. Aggrieved by the Impugned Order, the Appellant preferred SLP (C) No. 28466 of 2023 (the "**SLP**") before this Court i.e., now converted to this instant appeal. *Vide* an order dated 05.01.2024, this Court stayed the operation of the Impugned Order.

3.9. It would also be relevant to clarify that, up until this stage, the custody of the Minor Children has essentially remained with the Appellant despite (i) various interim order(s) passed by (a) the High Court; and (b) the Family Court in favour of the Respondent; and (ii) the initiation of contempt proceedings before the High Court.

Contentions of the Parties

4. Shri Vivek Chib, Learned Senior Counsel appearing on behalf of the Appellant, urged the following:

4.1. That the Minor Children have been residing with him happily since '15 i.e., for period extending to almost to 9 (nine) years and it is the desire of the Minor Children to continue to reside with the Appellant. In this regard, it was submitted that the aforesaid preference has been communicated by the Minor Children to various court(s) from time -to-time including *inter alia* the High Court.

4.2. That the High Court proceeded on an erroneous assumption that the prolonged period of separation between the Respondent and the Minor Children has sub-consciously influenced the Minor Children against the Respondent.

4.3. That the Underlying Order passed by the Family Court was a detailed and well-reasoned order which has been passed after a thorough analysis of the copious evidence and material(s) on record in favour of the Appellant.

4.4. Lastly, Mr. Chib relied on the following decision(s) of this Court to buttress the aforesaid submission(s):

(a) ***Jitender Arora v. Sukriti Arora****, (2017) 3 SCC 726*;

(b) ***Nil Ratan Kundu v. Abhijit Kundu****, (2008) 9 SCC 413*;

(c) ***Mausami Moitra Ganguli v. Jayant Ganguli****, (2008) 7 SCC 673*;

(d) ***Vishnu v. Jaya****, (2010) 6 SCC 733*; and

(e) ***Lahari Sakhamuri v. Sobhan Kodali****, (2019) 7 SCC 311*.

5. Ms. Vandana Sehgal, AOR appearing on behalf of the Respondent brought forth the following key contentions:

5.1. That the Appellant has forcefully retained the custody of the Minor Children for a prolonged period of 8 (eight) years in blatant disregard of various order(s) passed by the High Court and / or the Family Court directing *interim* shared custody of the Minor Children at different points of time.

5.2. That the Underlying Order granted the Appellant custody of the Minor Children proceeding on an erroneous and irrelevant consideration i.e., the alleged act of adultery.

5.3. That the Appellant has deliberately disenfranchised the Minor Children from their mother i.e., the Respondent herein, and accordingly it was vehemently contended that the present *lis* is a classic case of '*parental alienation syndrome*' ("**PAS**").

5.4. That the Minor Children are at an impressionable age and require the presence of their mother i.e., the Respondent.

5.5. That the Court whilst exercising its *parens patriae* jurisdiction must not limit itself to the wish and / or desire of the Minor Children but must ensure the welfare of the Minor Children.

5.6. That the Respondent is employed as a teacher in a reputed school in Gurugram; and would be able to provide the Minor Children with a stable and conducive environment as opposed to Appellant i.e., a serving officer in the Indian Armed Forces, who is due to be transferred to a field station as opposed to a family station.

5.7. In regard to the aforesaid, Ms. Sehgal relied on the following:

(a) ***Vivek Singh v. Romani Singh****, (2017) 3 SCC 231*;

(b) ***Gaurav Nagpal v. Sumedha Nagpal*** *(2009) 1 SCC 42*;

(c) ***Nil Ratan Kundu*** ***(Supra)***; and

(d) ***Rosy Jacob v. Jacob A. Chakramakkal****, (1973) 1 SCC 840*.

Analysis and Findings

6. We have heard the learned counsels appearing on behalf of the respective parties at length and we have carefully considered and deliberated upon the submission(s) made on behalf of the parties.

7. In the instant appeal we have been called upon to decide the guardianship of 2 (two) minor children i.e., (i) SSU; and (ii) SSH, till they attain the age of majority.

8. It is well settled that the principal consideration of the Court whilst deciding an application for guardianship under the Act in exercise of its *parens patriae* jurisdiction would be the 'welfare' of the minor children.[1]

1 ***V. Ravi Chandran (Dr.) (2) v. Union of India*** (2010) 1 SCC 174

9. The aforesaid principle is also enshrined in Section 17 of the Act, the same is reproduced as under:

> *"**17. Matters to be considered by the Court in appointing guardian.** – (1) In appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.*
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> *(2) In considering what will be for the welfare of the minor, the Court shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.*
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> *(3) If the minor is old enough to form an intelligent preference, the Court may consider that preference.*
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> *[2]* * * * **
>
> *(5) The Court shall not appoint or declare any person to be a guardian against his will."*

10. In this context, it would be appropriate to refer to a decision of this Court in ***Nil Ratan Kundu* (Supra)** wherein parameters of 'welfare' and principles to be considered by courts whilst deciding questions involving the custody of minor children came to be enunciated. The relevant paragraph(s) are reproduced as under:

> *"52. In our judgment, the law relating to custody of a child is fairly well settled and it is this: in deciding a difficult and complex question as to the custody of a minor, a court of law should keep in mind the relevant statutes and the rights flowing therefrom. But such cases cannot be decided solely by interpreting legal provisions. It is a human problem and is required to be solved with human touch. A court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor*

2 Sub-section (4) omitted by Act 3 of 1951, s. 3 and the Schedule.

by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and wellbeing of the child. In selecting a guardian, the court is exercising parens patriae jurisdiction and is expected, nay bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot beignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the court must consider such preference as well, though the final decision should rest with the court as to what is conducive to the welfare of the minor.

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55. We are unable to appreciate the approach of the courts below. This Court in a catena of decisions has held that the controlling consideration governing the custody of children is the welfare of children and not the right of their parents.

56. In Rosy Jacob [(1973) 1 SCC 840] this Court stated:

(SCC p. 854, para 15)

> *"15. … The contention that if the husband [father] is not unfit to be the guardian of his minor children, then, the question of their welfare does not at all arise is to state the proposition a bit too broadly and may at times be somewhat misleading."*

It was also observed that the father's fitness has to be considered, determined and weighed predominantly in terms of the welfare of his minor children in the context of all the elevant circumstances. The father's fitness cannot override considerations of the welfare of the minor children.

57. In our opinion, in such cases, it is not the "negative test" that the father is not "unfit" or disqualified to have custody of his son/daughter that is relevant, but the "positive test" that such custody would be in the welfare of the minor which is material and it is on that basis that the court should

exercise the power to grant or refuse custody of a minor in favour of the father, the mother or any other guardian."

11. Furthermore, this Court in ***Gaurav Nagpal*** ***(Supra)*** undertook a comprehensive and comparative analysis of laws relating to custody in the American, English, and Indian jurisdiction(s) and observed that the Court must construe the term 'welfare' in its widest sense i.e., the consideration by the Court would not only extend to moral and ethical welfare but also include the physical well-being of the minor children.

12. Accordingly, in view of the aforesaid, not only must we proceed to decide the present *lis* on the basis of a holistic and all-encompassing approach including *inter alia* (i) the socio-economic and educational opportunities which may be made available to the Minor Children; (ii) healthcare and overall-wellbeing of the children; (iii) the ability to provide physical surroundings conducive to growing adolescents but also take into consideration the preference of the Minor Children as mandated under Section 17(3) of the Act.[3] Furthermore, we are equally conscious that the stability of surrounding(s) of the Minor Children is also a consideration to be weighed appropriately.[4]

13. In the present factual matrix, the minor children i.e., SSU; and SSH have interacted with the Court(s) to express their preference of guardian on a plethora of occasions. Accordingly, we consider it appropriate to briefly delve into the observations of the Court(s) *vis-à-vis* the preference expressed by the Minor Children:

    13.1. The Learned Single Judge of the High Court engaged with the Minor Children on 24.02.2020 i.e., SSU was approximately 11.5 (eleven and a half) years old; and SHH was approximately 8 (eight) years old. The Learned Single Judge in his order dated 29.04.2020 recorded that he found the Minor Children to be confident and well-groomed. Furthermore, it has been categorically stated no overt preference was indicated by the Minor Children in respect to one parent over the other.

    13.2. Thereafter, the Family Court engaged in a personal interaction with the Minor Children on 11.08.2020 i.e., when SSU

3 ***Lahari Sakhamuri*** ***(Supra)***; and ***Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari*** (2019) 7 SCC 42

4 ***Shazia Aman Khan and Ors. vs. The State of Orissa and Ors.*** 2024 INSC 163

was approximately 12 (twelve) years old; and SSH was approximately 8.5 (eight and a half) years old. Pertinently, in Underlying Order, the Family Court observed that the Minor Children expressed their preference to reside with the Appellant. Additionally, it was observed that the Minor Children were doing well in the pursuit of their education and co-curricular activities whilst residing with the Appellant; and that the Minor Children were well-settled and progressing fine.

13.3. Subsequently, the Division Bench of the High Court interacted with the Minor Children on two occasions i.e., (i) 23.08.2021; and (ii) 17.08.2022. Pertinently, the Division Bench in an order dated 23.08.2021 observed that the children were intelligent and reasonably grown up. On the other hand, the Division Bench in the Impugned Order observed that the Minor Children expressed their clear desire to reside with the Appellant.

13.4. In the Supreme Court, we considered it necessary to interact with the Minor Children ourselves. Accordingly, *vide* an order dated 19.03.2024, we directed the Appellant to produce the Minor Children in Court so as to enable us to interact with them. On 05.04.2024, we interacted with both SSU; and SSH in chambers. We found the Minor Children to be intelligent, confident, cognisant of the *pros* and *cons* of their decisions and most importantly content / happy. During our interactions with the Minor Children, despite probing the issue of guardianship on more than one occasion, the Minor Children categorically stated that they were happy and wished to reside with their father only i.e., the Appellant.

14. The natural and consequential deduction from the aforesaid interaction(s) between the Minor Children and various Court over a period spanning over 4 (four) years, is the unwavering and strong desire of the children to continue to reside with the Appellant. The aforesaid desire / preference although in itself cannot be determinative of custody of the children, but it must be given due consideration on account of it being a factor of utmost importance.

15. Having settled the preference of the Minor Children, we turn towards, the next leg of the analysis to be undertaken by this Court in questions involving custody of children i.e., considerations of welfare of the children.

16. In the instant appeal, certain contentions were raised by Ms. Sehgal in relation to the nature of employment of the Appellant posing a challenge in the upbringing and welfare of the Minor Children. We find ourselves unable to subscribe to the aforesaid view, as we find that the Indian Armed Forces provides a robust support system to the *kin* of its officer(s) so as to ensure minimal disruption in the lives of the civilian member(s) of an officer's family. This support system includes residential accommodation, a network of army schools, hospitals and healthcare facilities. Moreover, various extra-curricular activities i.e., sport(s) facilities and recreational clubs; and other social and cultural functions are made available for the benefit of the *kin* of officers of the Indian Armed Forces – the aforesaid support system undoubtedly, aids in the mental stimulation, growth and overall development of personality of a child.

17. At this juncture it would also be relevant to deal with the main thrust of the argument put forth by Ms. Sehgal in relation to the preference indicated by the Minor Children i.e., it was contended that the present case is a classic case of PAS wherein the Minor Children have been influenced against the Respondent; and accordingly the preference indicated by the Minor Children ought not to be considered representative of the true emotions of the Minor Children. In view of the aforesaid, the decision of this Court in ***Vivek Singh*** ***(Supra)*** was heavily relied upon to substantiate her submission. The relevant paragraph is reproduced as under:

> *"18. The aforesaid observations, contained in para 31 of the order of the High Court extracted above, apply with greater force today, when Saesha is 8 years' old child. She is at a crucial phase when there is a major shift in thinking ability which may help her to understand cause and effect better and think about the future. She would need regular and frequent contact with each parent as well as shielding from parental hostility. Involvement of both parents in her life and regular school attendance are absolutely essential at this age for her personality development. She would soon be able to establish her individual interests and preferences, shaped by her own individual personality as well as experience. Towards this*

end, it also becomes necessary for parents to exhibit model good behaviour and set healthy and positive examples as much and as often as possible. It is the age when her emotional development may be evolving at a deeper level than ever before. In order to ensure that she achieves stability and maturity in her thinking and is able to deal with complex emotions, it is necessary that she is in the company of her mother as well, for some time. This Court cannot turn a blind eye to the fact that there have been strong feelings of bitterness, betrayal, anger and distress between the appellant and the respondent, where each party feels that they are "right" in many of their views on issues which led to separation. The intensity of negative feeling of the appellant towards the respondent would have obvious effect on the psyche of Saesha, who has remained in the company of her father, to the exclusion of her mother. The possibility of appellant's effort to get the child to give up her own positive perceptions of the other parent i.e. the mother and change her to agree with the appellant's viewpoint cannot be ruled out thereby diminishing the affection of Saesha towards her mother. Obviously, the appellant, during all this period, would not have said anything about the positive traits of the respondent. Even the matrimonial discord between the two parties would have been understood by Saesha, as perceived by the appellant. Psychologists term it as "The Parental Alienation Syndrome" [The Parental Alienation Syndrome was originally described by Dr Richard Gardner in "Recent Developments in Child Custody Litigation", The Academy Forum, Vol. 29, No. 2: The American Academy of Psychoanalysis, 1985]. It has at least two psychological destructive effects:

(i) First, it puts the child squarely in the middle of a contest of loyalty, a contest which cannot possibly be won. The child is asked to choose who is the preferred parent. No matter whatever is the choice, the child is very likely to end up feeling painfully guilty and confused. This is because in

the overwhelming majority of cases, what the child wants and needs is to continue a relationship with each parent, as independent as possible from their own conflicts.

(ii) Second, the child is required to make a shift in assessing reality. One parent is presented as being totally to blame for all problems, and as someone who is devoid of any positive characteristics. Both of these assertions represent one parent's distortions of reality."

18. The aforesaid submission found favour with the High Court. Pertinently, the High Court in the Impugned Order observed that the possibility of the Minor Children having been influenced against the Respondent, could not be ruled out.

19. We find ourselves unable to agree with the High Court - in our considered opinion, the High Court has failed to appreciate the intricacies and complexities of the relationship between the parties and accordingly, proceeded to entertain allegations of PAS on an unsubstantiated basis.

20. PAS is a thoroughly convoluted and intricate phenomenon that requires serious consideration and deliberation. In our considered opinion, recognising and appreciating the repercussions of PAS certainly shed light on the realities of long-drawn and bitter custody and divorce litigation(s) on a certain identified sect of families, however, it is equally important for us to remember that there can no straitjacket formula to invoke the principle laid down by this Court in ***Vivek Singh*** ***(Supra)***.

21. The role of a Court *vis-à-vis* allegation(s) of PAS came to be considered recently by an English Court i.e., the High Court of Justice Family Division in ***Re C ('parental alienation'; instruction of expert)***, *[2023] EWHC 345 (Fam)*. Pertinently, the Court reflected on the changing narrative in relation to PAS - placed before the Court therein, by an expert body i.e., the Association of Clinical Psychologists - UK ("**ACP**") and thereafter observed as under:

"103. Before leaving this part of the appeal, one particular paragraph in the ACP skeleton argument deserves to be widely understood and, I would strongly urge, accepted:

> *'Much like an allegation of domestic abuse; the decision about whether or not a parent has alienated a child is a question of fact for the Court to resolve and not a diagnosis that can or should be offered by a psychologist. For these purposes, the ACP-UK wishes to emphasise that "parental alienation" is not a syndrome capable of being diagnosed, but a process of manipulation of children perpetrated by one parent against the other through, what are termed as, "alienating behaviours". It is, fundamentally, a question of fact.'*
>
> *It is not the purpose of this judgment to go further into the topic of alienation. Most Family judges have, for some time, regarded the label of 'parental alienation', and the suggestion that there may be a diagnosable syndrome of that name, as being unhelpful.* ***What is important, as with domestic abuse, is the particular behaviour that is found to have taken place within the individual family before the court, and the impact that that behaviour may have had on the relationship of a child with either or both of his/her parents. In this regard, the identification of 'alienating behaviour' should be the court's focus, rather than any quest to determine whether the label 'parental alienation' can be applied.****"*

22. We find ourselves in agreement with the aforesaid position. Courts ought not to prematurely and without identification of individual instances of 'alienating behaviour', label any parent as propagator and / or potential promoter of such behaviour. The aforesaid label has far-reaching implications which must not be imputed or attributed to an individual parent routinely.

23. Accordingly, it is our considered opinion that Courts must endeavour to identify individual instances of 'alienating behaviour' in order to invoke the principle of *parental alienation* so as to overcome the preference indicated by the minor children.[5]

5 Recognised by this Court in ***Vivek Singh*** ***(Supra)***.

24. In the instant appeal, the Family Court has categorically recorded that there was nothing on record to suggest that the interests and welfare of the Minor Children were in any manner affected during their stay with the Appellant. Additionally, the Learned Single Judge of the High Court interacted with the Minor Children on 24.02.2020 i.e., a period of close to 4.5 (four and a half) years after the alleged incident on 08.08.2015, and categorically recorded that the Minor Children expressed no overt preference amongst their parents – the aforesaid observation by the Learned Single Judge, is crucial as it underscores that while the relationship between the parties may have been strained; the Minor Children could not be said to have exhibited any indication of *'parental alienation'* i.e., there was no overt preference expressed by the Minor Children between the parents and thus, the foundation for any claim of parental alienation was clearly absent. The aforesaid position is also supported by materials on record to suggest that (i) the Minor Children are cognisant and aware of the blame game being played *inter se* the parties; and (ii) that the Minor Children did not foster unbridled and prejudiced emotions towards the Respondent. Accordingly, we find that the Appellant could not have been said to have engaged or propagated *'alienating behaviour'* as alleged by the Respondent.

25. Therefore, in our considered opinion, the High Court failed to appreciate the aforesaid nuance and proceeded on an unsubstantiated assumption i.e., that allegations of parental alienation could not be ruled out, despite the stark absence of any instances of *'alienating behaviour'* having been identified by any Court. In view of the aforesaid discussion, we find that the reliance placed on ***Vivek Singh* (Supra)** by the Respondent is misdirected and the High Court erred in law and in fact whilst relying on the said decision.

26. Accordingly, on an overall consideration, we are convinced that the High Court was neither correct nor justified in interfering with the well-considered and reasoned order passed by the Family Court granting custody of the Minor Children to the Appellant for the reasons recorded above.

Directions & Conclusions

27. In view of the aforesaid discussion, we consider it just and appropriate that the custody of the Minor Children is retained by the Appellant,

subject to the visitation rights of the Respondent as granted by the Family Court *vide* the Underlying Order i.e., the final order dated 22.08.2020.

28. The appeal is allowed in the aforesaid terms; the Impugned Order is set aside. Pending applications, if any, stand disposed of. No order as to cost(s).

Headnotes prepared by: Nidhi Jain

Result of the case: Appeal allowed.