

IN RE: PERRY KANSAGRA

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Suo-Motu Contempt Petition (Civil) No. 3 of 2021

JULY 11, 2022

**[UDAY UMESH LALIT AND
PAMIDIGHANTAM SRI NARASIMHA, JJ.]**

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Contempt of Courts Act, 1971: Contempt of Court – Tendering of affidavits and undertaking containing false statement, if amounts to criminal contempt – On facts, custody of child given to the father, Kenyan citizen with Indian origin, with visitations rights given to the mother – Father submitted to the jurisdiction of Indian courts in his affidavits and undertook to honour and comply with the orders of the Court – However, did not comply and inspite of several summons and orders, did not appear before Court nor brought the son to India; and also obtained orders of this Court by practising fraud upon the Court – Therefore, the Court recalled its earlier judgment passed in favour of the father and in suo moto exercise of power, initiated proceedings in contempt jurisdiction against the father – Held: A person who makes a false statement before the Court and makes an attempt to deceive the Court, interferes with the administration of justice and is guilty of contempt of Court – Court not only has the inherent power but it would be failing in its duty if the alleged contemnor is not dealt with in contempt jurisdiction for abusing the process of the Court – Prima facie observation that the father was guilty of having committed criminal contempt of court apart from the contempt for violating express undertakings given to the courts, including this Court – Thus, held guilty under the Contempt of Courts Act.

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While further listing the matter, the Court

HELD: 1.1 While considering whether the conduct of the contemnor-father was fraudulent or not, this Court observed that it would be the duty of this Court to nullify the effect and impact of the orders which were obtained after practising fraud upon the Court. This Court, therefore, recalled the Judgment dated 28.10.2020 and the Order dated 08.12.2020. At the same time, non-disclosure of material facts by the contemnor at the relevant junctures were also prima facie found to be contumacious.

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- A Therefore, the instant proceedings in the contempt jurisdiction were initiated *suo moto* by this Court. [Para 12][222-C-D]
 - 1.2. A person who makes a false statement before the Court and makes an attempt to deceive the Court, interferes with the administration of justice and is guilty of contempt of Court. In
- B such circumstances, the Court not only has the inherent power but it would be failing in its duty if the alleged contemnor is not dealt with in contempt jurisdiction for abusing the process of the Court. [Para 15][224-G; 225-A]
 - 1.3. The essential features of the matter as culled out in
- C paragraph 34 of the Order dated 07.10.2021 were relied upon to arrive at a *prima facie* observation that the father was guilty of contempt of Court. Though notice was issued to the father, no response has been tendered. The material on record clearly shows violation on part of the father. The observations made in the order dated 7.10.2021 were on the basis of record. Having considered the entirety of the matter, the father is guilty of having committed criminal contempt of court apart from the contempt for violating express undertakings given to the Courts, including this Court. The father is held guilty under the Contempt of Courts Act, 1971. [Para 16][225-B-C]
- E 1.4 Though the instant proceedings can be taken to logical conclusion and order of sentence can be awarded even in the absence of the contemnor, final opportunity is given to the father to present himself before this Court on 22.07.2022 at 3.00 pm along with his son. He would then have an opportunity to advance appropriate submissions on the issue of punishment to be awarded to him. It would also be open to the contemnor to purge himself of contempt in which case a sympathetic view may be taken in the matter. For securing the presence of the contemnor and his son before this Court and for effective implementation of the Orders issued by this Court, the Union agencies including the
- F Central Bureau of Investigation shall have and shall exercise all the powers, not necessarily restricted to the directions issued in the Order dated 07.10.2021. [Para 17, 18][225-D-F]
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In the matter of Anil Panjwani (2003) 7 SCC 375 : [2003] 3 SCR 1179; Dhananjay Sharma v. State of Haryana (1995) 3 SCC 757 : [1995] 3 SCR 964; Chandra Shashi v. Anil Kumar Sharma (1995) 1 SCC 421 : [1994] 5 Suppl. SCR 465; ABCD v. Union of India (2020) 2 SCC 52 : [2019] 15 SCR 1 - referred to.

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Hadkinson v. Hadkinson [1952] 2 All ER 567; Regina v. Jones (Robert) 1972 1 WLR 887 – referred to.

Case Law Reference

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|-------------------------|-------------|---------|---|
| [2003] 3 SCR 1179 | referred to | Para 11 | C |
| [1995] 3 SCR 964 | referred to | Para 11 | |
| [1994] 5 Suppl. SCR 465 | referred to | Para 11 | |
| [2019] 15 SCR 1 | referred to | Para 11 | |

INHERENT JURISDICTION: Suo-Moto Contempt Petition (Civil) No. 03 of 2021.

Petition filed for willful disobedience of Court's Order dated 07.10.2021 and 08.12.2020 in M.A. No. 2140 of 2020 in C.A. No. 3559 of 2020 passed by the Supreme Court of India.

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Tushar Mehta, SG, Ms. Sonia Mathur, Sr. Adv., P. K. Mahonar, Prosenjeet Banerjee, Ms. Nidhi Mohan Parashar, Ms. Mansi Sharma, Ms. Shreya Singhal, Vikrant Kumar, Ms. Prerna Dhall, Ms. Khushboo Aggarwal, Simarjeet Singh Saluja, Ms. Smriti Madan Kansagra, Rajat Nair, Kanu Agrawal, Navanjay Mahapatra, Ms. Deepabali Dutta, Arvind Kumar Sharma, Advs. for the appearing parties.

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The Judgment of the Court was delivered by

UDAY UMESH LALIT, J.

1. The facts and circumstances leading to the recall of the Judgment dated 28.10.2020 and the Order dated 08.12.2020 and issuance of notice for initiation of contempt proceedings against the alleged contemnor Perry Kansagra (hereinafter referred to as Perry) were dealt with in sufficient detail in paragraphs 1 to 33 of the Order dated 7.10.2021 passed by a bench of three judges of this Court in Miscellaneous Application No.1167 of 2021 in Civil Appeal No.3559 of 2020. For

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- A avoiding repetition of the basic facts, paragraphs 1 to 33 of said Order dated 7.10.2021 be read as part of this Order.
2. After discussing the relevant facts and circumstances in aforesaid paragraphs 1 to 33, paragraphs 34 to 36 of the Order dated 7.10.2021 set out the essential features of the matter as under:-
- B “34. The documents and the developments referred to hereinabove show:-
- (i) Perry had given an unequivocal undertaking to the High Court that he would submit to the jurisdiction of the Indian Courts. He had also given a solemn undertaking to this Court that he would comply with the Order dated 28.10.2020 in addition to the Judgment dated 28.10.2020.
- (ii) In response to a specific submission raised in Miscellaneous Application No.2140 of 2020 (quoted in paragraph 16 hereinabove), it was submitted by Perry that he had subjected himself to the jurisdiction of this Court. While dealing with the rival submissions in the Order dated 8.12.2020, this Court made it clear that the undertaking given by Perry to the High Court would continue to be operative, in addition to the undertaking given to this Court.
- (iii) The Judgment dated 28.10.2020 had called upon Perry to obtain a Mirror Order’ from the concerned Court in Nairobi to reflect the directions contained in the Judgment dated 28.10.2020. Thereafter, the Order dated 9.11.2020 passed by the High Court of Kenya at Nairobi along with the relevant application moved by Perry seeking registration of the Judgment dated 28.10.2020, was filed in this Court.
- (iv) There was a dispute whether the registration granted vide order dated 9.11.2020 by the High Court of Kenya at Nairobi amounted to fulfilling the requirement of a “Mirror Order”. The submissions on the point were dealt with in paragraphs 8 and 9 of the Order dated 8. 12.2020. The learned counsel appearing for Perry had relied upon the opinion given by M/s. GMC Advocates which in turn had relied upon the decision of the High Court of Kenya at Nairobi in *Re: Matter of I W P (Infant)* [2013] eKLR to submit that the registration itself was a “Mirror Order” in compliance of the requirements of the Judgment dated 28.10.2020.
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Relying on the submissions so advanced on behalf of Perry and in deference to the Order dated 9.11.2020 passed by the High Court of Kenya at Nairobi, in paragraph 10 of the Order dated 8.12.2020, this Court observed that the registration of the Judgment of this Court by the High Court of Kenya at Nairobi was sufficient compliance of the directions to obtain a “Mirror Order” issued from a Competent Court in Kenya.

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(v) The Judgment dated 28.10.2020 and the Order dated 8.12.2020 passed by this Court were thus premised on the submission that the Order dated 9.11.2020 passed by the High Court of Kenya at Nairobi while registering the Judgment dated 28.10.2020 passed by this Court was in fact the “Mirror Order”.

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(vi) It now transpires that by a subsequent Order dated 21.5.2021, the High Court of Kenya at Nairobi in Paragraph 13 of its order observed that the judgment of this Court was not registrable and dismissed the Originating Summons dated 30.10.2020 filed by Perry.

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(vii) At no stage Perry brought this development to the notice of this Court that the Originating Summons moved by him seeking registration of the Judgment dated 28.10.2020 passed by this Court was dismissed by the High Court of Kenya at Nairobi on 21.5.2021. Having submitted to the jurisdiction of the Indian Courts it was the bounden duty of Perry to keep this Court apprised of all the developments particularly when the “Mirror Order” was the fulcrum on the basis of which this Court handed over to him the custody of Aditya.

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(viii) This infraction gets more pronounced in the light of the stand taken in his Affidavit dated 5.8.2021 filed in this Court and referred to in Paragraph 22 hereinabove. In that affidavit Perry unequivocally stated that he had not even the remotest intention to disobey the Order passed by this Court including the Judgment dated 28.10.2020. Yet, something as basic and fundamental like the Order dated 21.05.2021 was not brought to the notice of this Court. Logically, Perry should have brought back Aditya to this country so that status quo ante could be restored and appropriate orders could thereafter be passed by this Court.

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- A (ix) Miscellaneous Application No.1167 of 2021 filed by Smriti had annexed e-mails exchanged between her and Perry and prayed that Perry be directed to comply with directions regarding vacation access. In response, apart from stating that he had no intentions to disobey the orders passed by this Court, Perry voiced concern about sending Aditya to India. Being well aware of the conditions in this Country, a solution was devised by this Court in its Order dated 11.08.2021 and certain directions to facilitate the entry of Aditya into and his exit from India in a safe manner were issued. Pertinently on 11.08.2021, the attention of this Court was not invited to the fact that the Situational Report dated 09.08.2021 as referred to hereinabove was made or that the matter was being looked into by the concerned authorities in Kenya.
- (X) Despite clear directions issued in the Order dated 11.08.2021 Perry had not taken any steps to comply with the Order. As a matter of fact, by the time the matter was taken up for further hearing on 16.08.2021, Perry sought to withdraw the authorization in favour of the learned counsel who were all the while representing him before this Court.
- (XI) As disclosed in I.A. 100550 of 2021 week-end Skype meetings between Smriti and Aditya were not facilitated from the week-end of 14.08.2021 and 15.08.2021. Perry also blocked all means of communications with Smriti. Though in law the learned advocates who had entered appearance on behalf of Perry would continue to represent him, notice was additionally directed to be served on Perry through Indian embassy of Nairobi.
- (XII) In the light of the defiant attitude exhibited by Perry and his refusal to abide by the Orders passed by this court, ad-interim relief in terms of prayers (d) (e) and (f) made by Smriti in her I.A. No.100550 of 2021 was granted by this Court vide its order dated 17.08.2021.
- (XIII) Finally, Petition No.E301 of 2021 and -Notice of Motion were moved on behalf of Perry, filed in the High Court of Kenya at Nairobi on 26.08.2021. The stand taken by Perry in said Petition and Notice of Motion is that it would be humiliating to compel Aditya to take OCI Card; that wishes of Aditya were not ascertained by this Court; that there was no valid Mirror Order
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and that the orders passed by this Court were without jurisdiction. He has prayed for declaration that there existed no valid “Mirror Order” and in the circumstances the orders passed by this Court are incapable of compliance and/or enforcement.

35. These developments not only show the defiant and contumacious posture now adopted by Perry but *prima facie* support the submissions of Smriti made in Interim Applications referred to in paragraphs 25, 27, and 28 herein above. There appears to be concrete material and reason to believe that it was a well-planned conspiracy on part of Perry to persuade this Court to pass orders in his favour and allow him the custody of Aditya and then turn around and defy the Orders of this Court.

36. It is fundamental that a party approaching the Court must come with clean hands, more so in child custody matters. Any fraudulent conduct based on which the custody of a minor is obtained under the orders of the Court, would negate and nullify the element of trust reposed by the Court in the concerned person. Wherever the custody of a minor is a matter of dispute between the parents or the concerned parties, the primary custody of the minor, in *parens patriae* jurisdiction, is with the Court which may then hand over the custody to the person who in the eyes of the Court, would be the most suitable person. Any action initiated to obtain such custody from the Court with fraudulent conduct and design would be a fraud on the process of the Court.”

3. Thereafter, the relevant decisions on the point as well as the submissions of the learned Solicitor General, Mr. Amarjit Singh Chandhiok and Ms. Sonia Mathur, learned Senior Advocates appearing for Smriti Madan Kansagra (hereinafter referred to as Smriti) and Mr. Anunaya Mehta, learned Advocate were recorded in the Order dated 7.10.2021 and it was concluded: -

“39. Though, at every juncture solemn undertakings were given by Perry to the High Court and this Court, such undertakings were not only flagrantly violated but a stand is now taken challenging the very jurisdiction of the Indian Courts, despite having submitted himself to the jurisdiction of the Indian Courts. Such conduct, *prima facie*, can certainly be said to be contumacious calling for an action in contempt jurisdiction. Moreover, the non-

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- A disclosure of material facts by Perry at the relevant junctures also shows that he approached the Indian Courts with unclean hands.
- B 40. It was only on the basis of the solemn undertakings given by Perry and the order dated 09.11.2020 passed by the High Court of Kenya at Nairobi which was projected to be a “Mirror Order” in compliance of the directions issued by this Court, that the custody of Aditya was directed to be handed over to Perry. Since the false and fraudulent representations made by Perry were the foundation, on the basis of which this Court was persuaded to handover custody of Aditya to him, it shall be the duty of this Court to nullify, in every way, the effect and impact of the orders which were obtained by playing fraud upon the Court. All the decisions referred to hereinabove point in that direction. This Court would therefore be well within its power and justified to recall all the orders and continue to assume jurisdiction to ensure that the situation as it prevailed prior to the passing of the orders by the Trial Court, the High Court and this Court, gets restored, whereafter appropriate decision can be taken in *parens patriae* jurisdiction.
- C 41. It is true that Aditya is now in Kenya. But he was taken to Kenya only on the basis of fraudulently obtained orders from this Court. In our considered view, the Indian Courts which were the Courts of first contact and had complete jurisdiction over Aditya, must continue to exercise such power and jurisdiction to correct the wrongs which occurred as a result of fraudulent conduct on part of Perry. It may be stated here that at every juncture, welfare of Aditya was and will always continue to be the primary consideration for the Indian Courts. He was interviewed by very competent and qualified Counsellors whose reports and assessments have been part of the record. Aditya was also interviewed by the Trial Court, the High Court and this Court. At no stage any mistreatment by Smriti was even remotely suggested or adverted to by Aditya. After Aditya is brought back to this country, this Court will certainly have appropriate interactions with Aditya to understand his Wishes while considering his welfare.”
- D 4. In light of the facts and circumstances, following directions were thereafter issued by this Court in said Order dated 7.10.2021: -
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“42. In the premises, we pass following directions:

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(A) The Judgment dated 28.10.2020 and the Order dated 08.12.2020 Passed by this Court are recalled.

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(B) The Guardianship Petition No.53 of 2012 filed by Perry in the District Court, Saket, New Delhi seeking permanent custody of Aditya and the resultant proceedings arising therefrom including MAT APP (F.C) No.3Q of 2018 filed in the High Court, are dismissed.

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(C) the Orders granting custody having been recalled, the custody of Aditya with Perry is declared to be illegal and ab initio void.

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(D) Issue notice to Perry as to why proceedings in contempt jurisdiction be not initiated against him for having violated the solemn undertaking given to this Court, returnable on 16th November, 2021. The Registry is directed to register Suo Motu Contempt Case and proceed accordingly.

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(E) The notice shall additionally be served through e-mail directed at the e-mail id used by Perry in communicating with Smriti. The details in that behalf shall be furnished to the Registry by Smriti within two days.

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(F) The Central Bureau of Investigation, New Delhi through its Director is directed to initiate appropriate proceedings by registering criminal proceedings against Perry and to secure and entrust the custody of Aditya to Smriti.

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(G) The Secretary, Ministry of External Affairs, Government of India, New Delhi and the Indian Embassy in Kenya are directed to ensure that all possible assistance and logistical support is extended to Smriti in securing the custody of Aditya.

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(H) From and out of the amount of Rs.1 crore deposited by Perry in this Court, at this stage, an amount of Rs.25 lakhs be handed over to Smriti towards legal expense incurred or required to be incurred hereafter. Rest of the money shall continue to be kept in deposit with the Registry till further orders.”

5. Pursuant to direction (D) as stated above, the instant Suo-moto Contempt Petition stands registered against Perry.

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A 6. In its Order dated 25.1.2022, while dealing with the instant petition, this Court observed:

“Accordingly, the matter is listed before us today to consider whether charges need to be framed or not. It must be stated here that Mr. Perry Kansagra has chosen not to file any response in the matter.

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Having considered the entirety of the matter, in our view, case is definitely made out to proceed against Mr. Perry Kansagra in contempt jurisdiction: -

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i) For having willfully violated the directions issued by this Court, and;

ii) for having acted in breach of solemn undertakings given to the courts including this Court, and;

iii) for having obstructed the course of justice and committed criminal contempt of Court.

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The Registry is, therefore, directed to issue notice to Mr. Perry Kansagra in terms of Rules to Regulate Proceeding for Contempt of the Supreme Court, 1975 in Form I appended to said Rules. The Registry is further directed to quote the relevant portions of Paragraphs 38 to 40 of the order dated 7th October, 2021 as well as the *prima facie* observations as stated above, warranting initiation of proceedings in Contempt.

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Let notice be made returnable on 8 March, 2022. Mr. Perry Kansagra is directed to remain personally present on the next date of hearing.

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In addition to the regular mode of service, the notice shall be served in the same manner as was done on the earlier occasion and the office of the learned Solicitor General is requested to take appropriate steps in the matter.

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Mr. Perry Kansagra is at liberty to file response to the proceedings on or before 22TM February, 2022, with advance copy to the other side.”

7. Since despite being served, Perry had not appeared, following order was passed by this Court on 8.3.2022:

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“While directing initiation of contempt proceedings and issuance of notice in Form-I appended to the Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975, vide order dated 25.01.2022, notice was directed to be issued to Mr. Perry Kansagra.

According to the office report, notice has been issued through Ministry of Law & Justice by Speed Post on 03.02.2022 as well as “through e-mail as was done on the earlier occasion”. However, the office report states that status of delivery has not been received from the Ministry of Law & Justice so far.

Though the office report indicates that notice was issued through e-mail “as was done on earlier occasion”, for removal of doubts, the Registry is directed to send notice to be served upon Mr. Perry Kansagra through e-mail ID from which communications were received on behalf of Mr. Perry Kansagra.

Ms. Sonia Mathur, learned Senior Advocate appearing for the applicant Ms. Smriti Madan Kansagra, submits that it has been four months but Ms. Smriti Madan Kansagra is unaware about the status of proceedings initiated by the Central Bureau of Investigation.

We, therefore, call upon the Central Bureau of Investigation to file the Status Report before the next date of hearing. Let an appropriate intimation be sent by the Registry to the Central Bureau of Investigation.”

8. Accordingly, status report was filed by the Central Bureau of Investigation and the matter was taken up on 11.4.2022 when the following order was passed by this Court:

“Status report has been submitted by the CBI which indicates that Look Out Circular has already been issued by the CBI. A copy of the report be given to Ms. Smriti Madan Kansagra.

IA No.53272 of 2022 has been filed by her seeking permission to place on record certain additional documents. Having considered the application, in our view, said documents must be made a part of the record.

Reliance is placed by her on the order dated 9.3.2022 passed in SLP (Crl.) No.2018 of 2020, in terms of which in similar

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A circumstances, direction was issued commanding CBI to issue Red Corner Notice to secure the presence of the first respondent who was a foreign national.

Ms. Sonia Mathur, learned Senior Advocate prays for similar direction in the instant matter.

B Paragraph 5 of said order dated 09.03.2022 discloses that there was failure on part of the first respondent-husband to abide by the terms and conditions imposed by the High Court. The observations were made by this Court that such conduct may invite action in contempt jurisdiction. In so far as the instant matter i, concerned, this Court has already issued notice while exercising contempt jurisdiction.

C The CBI is therefore, directed to issue Red Corner Notice to secure the Presence of Perry Kansagra. Since the minor child was secreted away as a part of design referred to and dealt with in the earlier orders, we also direct the CBI to issue Yellow Corner Notice to secure the presence of the child.

D As the earlier orders indicate, we have initiated proceedings in contempt petition and have already given sufficient time to Mr. Perry Kansagra to respond to those notices and yet no response has been filed.

E We, therefore, direct the contempt petition to be listed on 21.04.2022 at 03:00 pm for final disposal.”

F 9. We heard Ms. Sonia Mathur, learned Senior Advocate for Smriti and Mr. Rajat Nair for Central Bureau of Investigation. Mr. P. K. Manohar, learned Advocate for Perry, however declined to advance any submissions.

G 10. Ms. Mathur, learned Senior Advocate highlighted the acts of contempt by Perry under two segments namely those prior to July, 2021 and some which were after July, 2021. The acts of contempt as described in the Notes of Arguments submitted on behalf of Smriti were:-

H “3. In the respectful submission of Smriti, the following are the acts of contempt by Perry prior to July 2021:

i. The following are the affidavits/undertakings given by Perry, which have been wilfully breached by him:

- a. Undertaking/affidavit dated 02.08.2020 given to the Delhi High Court wherein he undertook to “honour and comply with the visitation rights given to Smriti” as well as undertook to “submit to the jurisdiction of the Indian Courts”. A
- b. Undertaking/affidavit dated 30.10.2020 filed by Perry before this Hon’ble Court pursuant to the judgment dated 28.10.2020 that he would comply with the majority decision dated 28.10.2020 without any demur and in letter and spirit. B
- c. Affidavit dated 20.11.2020 filed by Perry which accompanied the “mirror order” wherein Perry stated that the purported order dated 09.11.2020 passed by the Kenyan High Court was a “mirror order”. C
- d. Perry Kansagra filed and continued to rely on the purported mirror order dated 09.11.2020 in his reply to M.A. No. 2140/2020, Copy of affidavit of compliance dated 20.11.2020 filed by Perry and Copy of Affidavit dated 26.11.2020 in support of the documents filed by him. D
- e. Affidavit dated 09.12.2020 filed by Perry in compliance of the order dated 08.12.2020 passed by this Hon’ble Court wherein he state that he “shall truly and faithfully abide by the order dated 08.12.2020”. E
- f. The order dated 08.12.2020 accepted the undertaking of Perry Kansagra submitting to the jurisdiction of this Hon’ble Court.
- ii. Removing Aditya from the Indian jurisdiction on 10.12.2020 based on the aforementioned false undertakings/affidavits and legally untenable purported “mirror order”. F
- iii. Perry’s deliberate failure to comply with the directions to another “mirror order” as directed in paragraph 21 (D) of order dated 08.12.2020.
- iv. As is evident from the aforementioned deliberate and wilful conduct Petty, it is most respectfully submitted that Perry kidnapped the child from Indian jurisdiction and removed the child from *parens patriae* of the Court. Perry has abused the process of this Hon’ble Court. G

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- A 4. The following are the acts of contempt committed by Perry post July, 2021.
- i. Refusal to bring Aditya to India for Smriti to avail her visitations in terms of the judgment dated 28.10.2020 and order dated 08.12.2020.
 - B ii. Having the purported “mirror order” dated 09.11.2020 set aside by Kenyan High Court by order dated 21.05.2021.
 - iii. Suppressing the order dated 21.05.2021 passed by the Kenyan High Court – Not filing the said order before this Hon’ble Court either voluntarily when the said order was passed or with his reply dated 05.08.2021 to MA No.1167/2021 or with his reply dated 05.08.2021 to MA No.1167/2021 or with application dated 09.08.2021 to place additional documents or with documents filed on 11.08.2021.
 - C iv. Refusal by Perry Kansagra to get the child to India to be interviewed by this Hon’ble Court in terms of the order dated 08.12.2020.
 - D v. In Perry’s reply and affidavit dated 05.08.2021 to MA No. 1167/2020, Perry stated that he is complying with the directions of this Hon’ble Court passed on 28.10.2020 and 08.12.2020.
 - E vi. Deliberate breach of the order dated 11.08.2021, i.e. not sending Aditya to India on 13.08.2021 and not applying for Aditya’s OCI card at the Indian High Commission at Nairobi, Kenya.
 - F vii. Discharging his counsels at a crucial stage on 15.08.2021 i.e. when this Hon’ble Court had listed the matter for compliance the orders dated 11.08.2021, 08.12.2020 and 28.10.2020, and sought the assistance of Perry’s counsels in this regard.
 - G viii. Deliberately snapping off all ties between Aditya and Smriti, not only by not sending Aditya to India on 13.08.2021, but also stopping all Skype access from 15.08.2021, thereby deliberately and wilfully breaching the orders dated 28.10.2020 and 08.12.2020.
 - H ix. Initiating proceedings before the Kenyan High Court in violation of his aforementioned undertakings/affidavits and

the order dated 17.08.2021 where a world-wide *ad interim ex-parte* anti suit injunction order was passed by against Perry from proceeding qua the custody/guardianship of Aditya. The tone and tenor of the Perry's petition, affidavit and notice of motion are contumacious, scandalous and made in an overt attempt to lower the majesty of this Hon'ble Court.

- x. Obtaining an order dated 30.08.2021 from the Kenyan High Court restraining Smriti from taking Aditya out of Kenya or his custody, in violation of the orders dated 11.08.2021 and 17.08.2021. Perry has deliberately sought to remove this Hon'ble Court as the *parens patriae* of Aditya.
- xi. Perry continued and deliberate refusal to appear before this Hon'ble Court from 15.08.2020 (after he discharged his advocates) and blocked Smriti on all usual forms of communication (email and WhatsApp).
- xii. Perry's refusing to accept the repeated attempts of the service of the process of this Hon'ble Court in the contempt proceedings. [elaborated in point no.6]
- xiii. Perry's continued refusal to appear before this Hon'ble Court in person despite the order dated 18.10.2021, 01.02.2022 and 16.03.2022 passed in SMC No.3 of 2021."

11. Our attention was also invited to the decisions in a) *Hadkinson vs. Hadkinson*¹, where the court held that the removal of a child by a custodial parent in violation of the orders passed by the court, was contempt of the grossest kind; and that the contemnor would not have any right to be heard until the child was brought back to the jurisdiction of the court; b) *Regina vs. Jones (Robert)*², where the Court of Appeal held that the applicant had waived his right to be present at the trial by his conduct in absconding and in such circumstances, the judge had a discretion to allow the trial to proceed in the absence of the applicant; and c) of this Court in the matter of *Anil Panjwani*³. It was thus submitted that unless and until Aditya was brought back to the jurisdiction of this Court, Perry would not be entitled to be heard in the matter and

¹ [1952] 2 All ER 567

² 1972 1 WLR 887

³ (2003) 7 SCC 375

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- A that the instant contempt proceedings could as well be taken to logical conclusion in his absence.

It was further submitted that the conduct of Perry in tendering affidavits and undertakings containing false statements was not only fraudulent but also amounted to perjury and criminal contempt. The

- B decisions of this Court in *Dhananjay Sharma v. State of Haryana*⁴, *Chandra Shashi v. Anil Kumar Sharma*⁵ and in *ABCD v. Union of India*⁶ were relied upon in support of the contention.

12. While considering whether the conduct of Perry was fraudulent or not, this Court had considered various decisions in paragraph 37 of its

- C Order dated 7.10.2021 whereafter it was observed that it would be the duty of this Court to nullify the effect and impact of the orders which were obtained after practising fraud upon the Court. This Court, therefore, recalled the Judgment dated 28.10.2020 and the Order dated 08.12.2020. At the same time, non-disclosure of material facts by Perry at the relevant junctures were also *prima facie* found to be contumacious. Therefore, D the instant proceedings in the contempt jurisdiction were initiated *suo moto* by this Court.

13. The first set of decisions relied upon by Ms. Mathur deal with the rights of a contemnor or a violator to be heard until such contemnor or violator purges the contempt. Though Ms. Mathur was quite right in

- E her submission, we had adjourned the matter suitably on few occasions so that adequate opportunity could be availed of by Perry and submissions on his behalf could be advanced. Even at the final hearing stage, we had invited Mr. P. K. Manohar, learned Advocate for Perry to advance his submissions which offer, however, was not availed of.

- F 14. The second set of decisions relied upon by Ms. Mathur are on the point whether tendering of affidavits and undertakings containing false statement would amount to criminal contempt or not. At this stage, we may extract following paragraphs from the decision of this Court in *ABCD v. Union of India*⁶ which had considered some of the previous G decisions of this Court on the point:

15. Making a false statement on oath is an offence punishable under Section 181 of the IPC while furnishing false

⁴(1995) 3 SCC 757

⁵(1995) 1 SCC 421

H ⁶(2020) 2 SCC 52

information with intent to cause public servant to use his lawful power to the injury of another person is punishable under Section 182 IPC. These offences by virtue of Section 195(1)(a)(i) of the Code can be taken cognizance of by any court only upon a proper complaint in writing as stated in said section. In respect of matters coming under Section 195(1)(b)(i) of the Code, in *Pushpadevi M. Jatia v. M.L. Wadhawan* [*Pushpadevi M. Jatia v. M.L. Wadhawan*, (1987) 3 SCC 367 : 1987 SCC (Cri) 526] prosecution was directed to be launched after prima facie satisfaction was recorded by this Court.

16. It has also been laid down by this Court in *Chandra Shashi v. Anil Kumar Verma* [*Chandra Shashi v. Anil Kumar Verma*, (1995) 1 SCC 421 : 1995 SCC (Cri) 239] that a person who makes an attempt to deceive the court, interferes with the administration of justice and can be held guilty of contempt of court. In that case a husband who had filed a fabricated document to oppose the prayer of his wife seeking transfer of matrimonial proceedings was found guilty of contempt of court and sentenced to two weeks' imprisonment. It was observed as under: (SCC pp. 423-24 & 427, paras 1-2 & 14)

“*I. The stream of administration of justice has to remain unpolluted so that purity of court’s atmosphere may give vitality to all the organs of the State. Polluters of judicial firmament are, therefore, required to be well taken care of to maintain the sublimity of court’s environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned.*

2. Anyone who takes recourse to fraud, deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice.

14. The legal position thus is that if the publication be with intent to deceive the court or one made with an intention to defraud, the same would be contempt, as it would interfere with

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- A administration of justice. It would, in any case, tend to interfere with the same. This would definitely be so if a fabricated document is filed with the aforesaid mens rea. In the case at hand the fabricated document was apparently to deceive the court; the intention to defraud is writ large. Anil Kumar is, therefore, guilty of contempt.”
- B **17.** In *K.D. Sharma v. SAIL* [*K.D. Sharma v. SAIL*, (2008) 12 SCC 481] it was observed: (SCC p. 493, para 39)
- “39. If the primary object as highlighted in *Kensington Income Tax Commrs. [R. v. General Commissioners for Purposes of Income Tax Acts For District of Kensington, ex p Princess Edmond De Polignac*, (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)] is kept in mind, an applicant who does not come with candid facts and “clean breast” cannot hold a writ of the court with “soiled hands”. Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court.”
- C **18.** In *Dhananjay Sharma v. State of Haryana* [*Dhananjay Sharma v. State of Haryana*, (1995) 3 SCC 757 : 1995 SCC (Cri) 608] filing of a false affidavit was the basis for initiation of action in contempt jurisdiction and the persons concerned were punished.”
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- E Thereafter, in *suo moto* exercise of power, proceedings in contempt jurisdiction were initiated against said petitioner.
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- H 15. It is thus well settled that a person who makes a false statement before the Court and makes an attempt to deceive the Court, interferes with the administration of justice and is guilty of contempt of Court. The extracted portion above clearly shows that in such circumstances, the

Court not only has the inherent power but it would be failing in its duty if the alleged contemnor is not dealt with in contempt jurisdiction for abusing the process of the Court.

16. The essential features of the matter as culled out in paragraph 34 of the Order dated 07.10.2021 were relied upon to arrive at a prima facie observation that Perry was guilty of contempt of Court. Though notice was issued to Perry, no response has been tendered. We find that the material on record clearly shows violation on part of Perry. The observations made in paragraph 34 of the order dated 7.10.2021 were on the basis of record. Having considered the entirety of the matter, in our view, Perry is guilty of having committed criminal contempt of Court apart from the contempt for violating express undertakings given to the Courts, including this Court. We accordingly hold Perry guilty under the Contempt of Courts Act, 1971.

17. Though the instant proceedings can be taken to logical conclusion and order of sentence can be awarded even in the absence of Perry, we give final opportunity to Perry to present himself before this Court on 22.07.2022 at 3.00 pm along with Aditya. He shall then have an opportunity to advance appropriate submissions on the issue of punishment to be awarded to him. It shall also be open to Perry to purge himself of contempt in which case a sympathetic view may be taken in the matter.

Let copy of this Order be served upon Perry through email ID used by him in serving process upon Smriti. Additionally, a copy shall be given to Mr. P.K. Manohar, learned Advocate.

18. For securing the presence of Perry and Aditya before this Court and for effective implementation of the Orders issued by this Court, the Union agencies including the Central Bureau of Investigation shall have and shall exercise all the powers, not necessarily restricted to the following directions issued in the Order dated 07.10.2021:

“The Central Bureau of Investigation, New Delhi through its Director is directed to initiate appropriate proceedings by registering criminal proceedings against Perry and to secure and entrust the custody of Aditya to Smriti.

The Secretary, Ministry of External Affairs, Government of India, New Delhi and the Indian Embassy in Kenya are directed

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- A to ensure that all possible assistance and logistical support is extended to Smriti in securing the custody of Aditya.”

It must be stated here that the learned Solicitor General had assured this Court during the hearings at the interim stages that every possible help and assistance shall be extended by the Union agencies

- B and the Indian Embassy in Kenya in securing the presence of Perry and Aditya before this Court.

19. List the matter on 22.07.2022 at 3.00 pm.

Nidhi Jain
(Assisted by : Tamana, LCRA)

Matter further listed.