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v.

AKG

(Special Leave Petition (Civil) No. 25098 of 2019)

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DECEMBER 16, 2019

**[UDAY UMESH LALIT, INDU MALHOTRA  
AND KRISHNA MURARI, JJ.]**

C *Child Welfare: Custody of minor daughter – Respondent-father filed a Guardianship Petition before the Family Court seeking custody of minor daughter on the ground that the petitioner mother was suffering from Paranoid Schizophrenia and required treatment and that on account of mental illness, she had been treating the child with cruelty – Petitioner-mother contested the Petition alleging that the minor daughter was being sexually abused by the father*

D *and that it was unsafe for the child to be in his custody – Three counsellors were appointed on various dates as directed by Family Court – The consistent view of all the three Counsellors was that the mother showed symptoms of “Paranoid Schizophrenia “ which required immediate assessment and proper treatment keeping in view the welfare of the child – Family Court after referring to the reports*

E *of three Counsellors held that the child expressed her unequivocal desire to live only with the father and denied the allegations of sexual abuse by father and, therefore, there would not be any change in interim custody of minor with the father – Petitioner challenged the order of Family Court before the High Court –*

F *During pendency of appeal before High Court, the petitioner filed application before Family Court seeking custody of minor daughter during vacations for 15 days, which was allowed – However, on the day of return of custody, the petitioner sent text to respondent that she was in Goa with daughter and would return after 5 days –*

G *Respondent filed contempt petitions against petitioner since she had not returned the custody of the child as per the order of Family Court – Directions were issued to the SHO to locate whereabouts of the child whereafter she was found at the residence of petitioner and when produced before the Family Court her custody was handed over to the respondent – The visiting rights of the petitioner were*

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*restricted and she was allowed to meet the daughter in the Children Room of court premises only – High Court dismissed the appeal of petitioner and upheld interim custody of daughter with respondent – Hence instant Special Leave Petition by mother – This Court individually interviewed both the parents and interacted with the child and found that she was certainly capable of forming an intelligent preference regarding her custody – The minor daughter being over 12 years of age and studying in class VII was unequivocal about her definite desire to reside with her father – She stated that she received love and affection from her father, who was taking care of her food, education and assist her in her school projects and activities – Thus, the order of Family Court granting custody of the minor daughter to father and visitation rights to the mother is affirmed – Special Leave Petition disposed of – Parens Patriae jurisdiction.*

*Nil Ratan Kundu & Anr. v. Abhijit Kundu (2008) 9 SCC 413 : 2008(11) SCALE 437 – relied on*

**Case Law Reference**

**(2008) 9 SCC 413                      relied on                      Para 24**

EXTRAORDINARY APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 25098 of 2019.

From the Judgment and Order dated 26.03.2019 of the High Court of Delhi at New Delhi in MAT (FC) No. 312 of 2018.

Mr. Nirnimesh Dube, Adv. for the Respondent.

Petitioner-in-Person.

The Order of the Court was passed by

**INDU MALHOTRA, J.**

1. The present Special Leave Petition has been filed by the Petitioner – mother to challenge the Order dated 26.03.2019 passed by the Delhi High Court in Matrimonial Appeal (FC) 312/2018 with respect to the custody arrangement of the minor daughter.

2. The minor daughter was born on 21.08.2007, and is now over 12 years old. The child is currently residing with the Respondent – father, and is studying in Class VII in Holy Child Senior Secondary School, New Delhi.

A           3. On account of the marital discord between the parties, the Respondent – father filed a Guardianship Petition bearing No. G.P. 2266/2018 before the Family Court, Tis Hazari, New Delhi seeking custody of the minor daughter on the ground that the Petitioner – wife was suffering from Paranoid Schizophrenia and required treatment. On account of the mental illness, the Petitioner – wife treated the child with cruelty, and would prevent the father from meeting the child.

B           4. The Petitioner – mother resisted the Guardianship Petition, and made serious allegations against the father that the minor daughter was being molested by the father, who was guilty of sexual abuse, which made it unsafe for the child to be in his custody.

C           5. In the Guardianship Petition, the Family Court appointed Mr. Sunil Sachdeva, Counsellor to interact with the child, and submit a Report on her condition. The Counsellor submitted his Report dated 18.07.2018, wherein he has recorded that the child complained of ill-treatment by the mother. The child categorically stated that her father bestowed a lot of affection on her, and that he had not committed any wrongful act upon her. She stated that she would like to stay with her father, and wanted to be removed from the custody of her mother at the earliest.

D           6. The child was kept for one night on 18.07.2018 at *Nirmal Chhay* keeping her best interest in mind. She was produced before the Family Court on 19.07.2018.

E           7. On 19.07.2018, the child was referred by the Family Court to another Counsellor viz. Ms. Himali Anand. This Counsellor vide her Report dated 19.07.2018 recorded that the child made complaints about her mother and stated that she was not taking proper care of her, and would not provide her with proper food, etc. The child stated that her father was taking good care of her, and that she wanted to live with her father only.

F           8. On 21.07.2018, the Family Court gave custody of the child to the mother till 24.07.2018, after which the custody would be handed over to the father.

G           9. On 27.07.2018, the mother requested for the appointment of an independent Child Counselor to assess the mental and psychological state of the child, and suggested the name of Dr. Uzma Perveen to be appointed as a Counsellor.

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10. The Family Court *vide* Order dated 28.07.2018 directed Dr. Uzma Perveento to conduct counselling sessions with the child, and submit her Report to the Court. A

The Family Court further directed that the child would remain in the custody of the mother from Saturday (after school hours) till Monday 7 p.m., and with the father from Monday 7 p.m. till Saturday morning. B

11. Pursuant to the Order dated 28.07.2018, Dr. Uzma Perveen held four counselling sessions with the child on 31.07.2018, 07.08.2018, 14.08.2018 and 05.09.2018, and submitted her Report dated 14.09.2018 before the Family Court. The Counsellor after observing the behavior and conduct of the mother, opined that the mother showed symptoms of “Paranoid Schizophrenia”, which required immediate assessment and proper treatment, keeping in mind the welfare of the child. If the mother’s condition remained untreated, it would make the child vulnerable, and would have a lasting psychological impact on the child. C

12. The Petitioner – mother filed a Review Petition before the Family Court, Tis Hazari seeking Review of Order dated 28.07.2018. D

The Family Court *vide* Order dated 16.11.2018 dismissed the Review Petition. The Court referred to the reports of the three Counsellors, and held that the child has expressed her unequivocal desire to live only with the father. She denied the allegations of sexual abuse by the father. The Court held that the child seemed to be very happy in the presence of the father, and that there shall be no change in the interim custody of the minor. E

13. The Petitioner – mother challenged the Order dated 16.11.2018 passed by the Family Court before the High Court in MAT. APP (F.C.) 312/2018. F

14. During the pendency of the Appeal before the High Court, the Petitioner – mother filed an Application u/S. 151 CPC before the Family Court seeking custody of the minor daughter during the vacations for 15 days. G

15. The Family Court *vide* Order dated 27.02.2019 granted custody of the daughter to the Petitioner – mother from 28.02.2019 to 10.03.2019 for vacations. The Petitioner – mother was directed to make a video call to the father every evening during this period. The custody of the child was to be handed over to the Respondent – father on 11.03.2019. H

A            16. On 10.03.2019, the Petitioner – wife sent a text message to the Respondent – husband that she was in Goa with the minor daughter, and would return only on 15.03.2019.

B            17. On 14.03.2019, the Respondent – father filed an Application u/S. 12 and 14 of the Contempt of Courts Act r.w. S.151 CPC for contempt of the Orders dated 16.11.2018 and 27.02.2019 against the Petitioner – mother before the Family Court, since the mother had refused to return the custody of the child.

C            The Family Court took cognizance of non-compliance of Orders by the Petitioner – mother, and *vide* Order dated 18.04.2019 directed the SHO, PS Rajouri Garden to locate the whereabouts of the minor daughter, and produce her before the Court.

D            18. The minor daughter was found at the residence of the Petitioner – mother, and was produced before the Family Court on 23.04.2019, when custody was handed over to the Respondent – father.

E            19. The Family Court *vide* Order dated 23.04.2019 suspended the visitation rights granted to the Petitioner – mother till the next date of hearing.

F            20. By a subsequent Order dated 03.05.2019, the Family Court held that further visitation to the Petitioner – mother can be allowed only in the Childrens' Room, Tiz Hazari Complex, Delhi, where the mother could meet the child on every working 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Saturday from 3 p.m. to 5 p.m., and on 2<sup>nd</sup> Friday from 3:30 p.m. to 5 p.m. The father agreed that as per the convenience of the child, he would allow the mother to see the child at the school gate in the morning before school hours.

G            This arrangement of visitation by the mother is continuing ever since.

H            21. The High Court *vide* the impugned Order dated 26.03.2019 dismissed the Appeal filed by the Petitioner – mother, and confirmed the Orders dated 28.07.2018 and 16.11.2018 passed by the Family Court.

H            The High Court held that the three Counsellors Reports indicated that the child was comfortable in the company of the father, and wanted to live with him. The Court observed that the video clippings submitted by the Petitioner – mother do not *prima facie* support her allegation of sexual abuse by the father.

The Order dated 26.03.2019 passed by the High Court is impugned by the Petitioner – mother in the present Special Leave Petition. A

22. This Court took up the present SLP for hearing on 25.10.2019 when Notice was issued. The Petitioner – mother submitted a DVD containing some video clippings of the child. She placed on record some additional documents in support of her contention that the child was being allegedly molested by the Respondent – father. B

23. On 05.12.2019, the Respondent – husband appeared before this Court in person along with his Counsel.

We directed the Respondent - father to produce the child before this Court on 10.12.2019. C

24. On 10.12.2019, both the parties and the minor daughter appeared before us. We individually interviewed both the parents and the child.

Having interacted with the child, we are of the view that the minor girl is certainly capable of forming an intelligent preference regarding her custody. D

We found the girl who is over 12 years of age, and is studying in Class VII to be articulate, and unequivocal about her definite desire to reside with her father. She stated that she received love and affection from her father, who was taking care of her food, education, and would assist her in her school projects and activities. E

Reliance is placed on the judgment of this Court in *Nil Ratan Kundu & Anr. v. Abhijit Kundu*<sup>1</sup> that while exercising *parens patriae* jurisdiction, the Court is required to give due weight to the ordinary comfort of the child, contentment, intellectual, moral and physical development, health, education and general maintenance, and the favorable surroundings. The Court is not bound either by statutes, nor by strict rules of evidence, nor procedure or precedent. In deciding the issue of custody, the paramount consideration should be the welfare and well-being of the child. F G

We hereby affirm the Order dated 03.05.2019 passed by the Family Court granting custody of the minor daughter to the father, and visitation rights to the Petitioner – mother as specified in the Order.

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<sup>1</sup> (2008) 9 SCC 413 : 2008 (11) SCALE 437.

A        The present Order is passed at an intermediate stage of the proceedings, hence the findings recorded hereinabove are *prima facie* in nature.

          The Special Leave Petition is disposed of accordingly.

B        Ordered accordingly.

          Pending applications, if any, shall stand disposed of.

Devika Gujral

SLP disposed of.