

JITENDER ARORA & ORS.

v.

SUKRITI ARORA & ORS.

(Criminal Appeal No. 717 of 2013)

FEBRUARY 17, 2017

[A.K. SIKRI AND R.K. AGRAWAL, JJ.]

Custody – Child custody – Matrimonial dispute – Wife obtained ex parte divorce from U.K. court whereas husband obtained from Indian court – Husband shifted to India along with the daughter – Habeas Corpus petition by wife seeking directions that the husband to handover the custody of the daughter to her – Petition allowed by the High Court – Appeal before this Court – Stay of the High Court judgment – Held: Paramount consideration is the welfare of the child – Daughter is a mature girl of 15 years of age who can decide what is best for her – In spite of giving ample chances to the mother by giving temporary custody of the daughter to her, mother was not able to win over the confidence of the daughter – Daughter unequivocally expressed her desire to be with her father and stated that she did not want to go to U.K. – Court cannot take the risk of sending her to U.K. against her wishes, which may prove to be a turbulent and tormenting experience for her and would not be in her interest – Thus, the welfare of the daughter lies in the continued company of her father which appears to be in her best interest – Thus, the judgment of the High Court is set aside.

Allowing the appeal, the Court

HELD: 1.1 In cases of custody disputes, where a child feels tormented because of the strained relations between her parents and ideally needs the company of both of them, it becomes at times, a difficult choice for the court to decide as to whom the custody should be given. No doubt, paramount consideration is the welfare of the child. 'V' is a mature girl of 15 years of age. At this age, she can fully understand what is in her best interest. She is competent to take a decision for herself. There has been interaction with her by different Benches of this Court from time to time, outcome whereof is reflected in the orders passed after

A such meetings. She has unequivocally and without any reservations expressed her desire to be with her father. More importantly, she has very categorically said that she does not want to go to U.K. [Paras 10, 12] [715-E-F; 721-G-H]

B 1.2 During the course of arguments, when the respondent was also present, the respondent was asked as to whether she could shift to India, even temporarily for a year or so, as in that eventuality, the Court could consider giving custody of 'V' to her for that period. However, she expressed her inability to do so. She wanted custody of 'V' on her own terms. She wanted 'V' to come to U.K. and live with her. 'V' does not want to go to U.K. at all. This Court cannot take the risk of sending 'V' to a foreign country, against the wishes of a mature girl like 'V', as it may prove to be a turbulent and tormenting experience for her. That would not be in her interest. [Para 14] [722-E-F]

D 1.3 There was interaction with 'V' in the Chambers earlier. On the date of hearing also, 'V' was present in the Court and in front of her parents, she unequivocally expressed that she was happy with her father and wanted to continue in his company and did not want to go with her mother, much less to U.K. From the interaction, it is clearly discernible that she is a mature girl who is in a position to weigh the pros and cons of two alternatives and to decide as to which course of action is more suited to her. She has developed her personality and formed her opinion after considering all the attendant circumstances. Her intellectual characteristics are adequately developed. She is able to solve problems, think about her future and understands the long term effects of the decision which she has taken. She has been brought up in a conducive atmosphere. She has achieved sufficient level of maturity. Further, in spite of giving ample chances to the respondent by giving temporary custody of 'V' to her, respondent could not win over the confidence of 'V'. Therefore, it is felt that her welfare lies in the continued company of her father which appears to be in her best interest. [Para 15] [722-G-H; 723-A-B]

H 1.4 The High Court in the impugned judgment had stated that since 'V' was a minor girl, she needed company of her mother more to understand girly things. The High Court mentioned about the bond between girl child and mother in abstract and from there

only the High Court came to the conclusion that it would be better to give the custody to the mother. The High Court did not go into the specific situation and circumstances of this case and did not make any objective assessment about the welfare of 'V'. Many circumstances which are narrated were not taken note of. [Para 16] [723-C-D] A

1.5 On the facts of the case, the Court is convinced that custody of the child needs to be with father. She is already 15 years of age and within 3 years, she would be major and all this custody battle between her parents would come to an end. She would have complete freedom to decide the course of action she would like to adopt in her life. The judgment of the High Court is set aside. [Para 17] [723-E] B

Vivek Singh v. Romani Singh 2017 (3) SCC 231 – relied on. C

Gaurav Nagpal v. Sumedha Nagpal (2009) 1 SCC 42: 2008 (16) SCR 396; *Bandhua Mukti Morcha v. Union of India & Ors.* (1997) 10 SCC 549 : 1997 (2) SCR 379; *Rosy Jacob v. Jacob A. Chakramakkal* (1973) 1 SCC 840 : 1973 (3) SCR 918 – referred to. D

Case Law Reference

2017 (3) SCC 231	relied on	Para 10	
2008 (16) SCR 396	referred to	Para 10	
1997 (2) SCR 379	referred to	Para 10	
1973 (3) SCR 918	referred to	Para 10	F

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 717 of 2013. E

From the Judgment and Order dated 25.05.2010 of the High Court of Punjab and Haryana at Chandigarh in Criminal Writ Petition No. 712 of 2010. G

Prabhjit Jauhar, Ms. Ankita, S. S. Jauhar, Advs. for the Appellants.

Rajat Bhalla, Viresh B. Saharya, Akshay Agarwal, Sanjay Kumar Visen, Advs. for the Respondents.

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A The Judgment of the Court was delivered by

A. K. SIKRI, J.: 1. Marriage between appellant No. 1 (hereinafter referred to as the 'appellant') and respondent No. 1 (hereinafter referred to as the 'respondent') was solemnized sometime in the year 1999, which was got registered with the Registrar of Marriages, Faridabad on 14.12.1999. The parties lived thereafter till March 2000 in Faridabad. However, carrying this notion that great future lies for them out of India, the couple shifted to U.K. on 23.03.2000. Ms. Vaishali Arora was born out of this wedlock on 14.01.2002. Career-wise or financially, whether the couple was better off in U.K., is not known. However, the soil of U.K. certainly did not prove conducive to their matrimonial relationship which, with the passage of time, turned bad to worst and from sweet to savoury to bitter. So much so, legal battles started between them. Eschewing the details in this behalf which are not needed and can be avoided for the sake of brevity, suffice is to mention that respondent has taken decree of divorce from the Court in U.K. Likewise, appellant who had shifted to India along with Vaishali in 2010, filed the petition for divorce and has obtained decree of divorce against the respondent. Both the divorce decrees are ex-parte against each other. Fact remains, which is to be emphasised, that the appellant and respondent have put an end to their matrimonial alliance and the aforesaid move on their part clearly depicts that both of them wanted divorce from each other. That is the reason that the aforesaid ex-parte divorce decrees are not questioned by any of them.

2. As it happens in such cases, an acrimonious and charged up battle between the appellant and the respondent has got concentrated upon the custody of Vaishali Arora. Though the couple had moved to U.K. on 23.03.2000, Vaishali was born on 14.01.2002 in Holy Family Hospital, Delhi. The respondent had come to India when she was pregnant and shortly after her birth, she went back along with the appellant and the new born child. Vaishali came to India in July, 2002 to stay with her paternal grandparents in Faridabad and went back to U.K. in January, 2003. Matrimonial discord started erupting between the parties thereafter. Since both of them were having their permanent jobs, the services of Katie Bradbury, a Child Minder were obtained by them when Vaishali was merely 13 months old. In July, 2004, both husband and wife and their child were granted permanent resident status of U.K. Thereafter, the parties had been coming to India off and on quite regularly.

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Vaishali was admitted in a school in Camberley, U.K. In July, 2007, Vaishali came to India and joined Manav Rachna International School where she studied upto March, 2008. Thereafter, she again went back to U.K. where she was admitted in a school. On 07.02.2007, Pushti, second daughter, was born to the parties. Thereafter, the matrimonial relationship between the appellant and the respondent became more bitter and abusive. Respondent alleged the acts of domestic violence perpetrated upon her by the appellant. Surrey Social Services Department investigated into the issues of domestic violence. During this period, the impact of adverse relations between the spouses upon their child Vaishali was also studied from psychological point of view by the officer of the said Department and reports given from time to time.

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3. In June, 2007, Vaishali was issued Indian Passport by Indian High Commission in London. On 04.08.2007, the appellant came to India. As pointed out above, Vaishali had already come to India and was admitted in a school in July, 2007. The appellant and Vaishali remained in India till April, 2008. Even the respondent decided to move back to India with her parents. However, on 13.04.2008, the appellant went back to U.K. The respondent remained in India and went back to U.K. in May, 2009. On reaching U.K., she lodged a complaint with the police on 13.05.2009 to trace the whereabouts of Vaishali. Thereafter, she filed a case in the U.K. Court in which, on 04.06.2009, an ex-parte order was passed prohibiting the appellant from removing two minor children from England and Wales. Further, restraint order was passed against the appellant from removing Vaishali from attendance at Alwyn Infants School where she was studying at that time. The appellant filed cross application and it led to further legal tussle between the parties wherein the Court passed orders from time to time. It is in November, 2009 that the respondent filed divorce proceedings against the appellant in a Court in U.K. wherein she has been granted decree of divorce. On 24.11.2009, as aforesaid, the appellant shifted to India along with Vaishali. In their absence, the respondent obtained British Citizenship of Vaishali on 13.07.2010.

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4. Since the appellant had come to India with Vaishali, the respondent filed Habeas Corpus Petition bearing Criminal Writ Petition No. 712 of 2010 in the High Court of Punjab & Haryana wherein she impleaded, apart from the appellant, his parents as well as Vaishali, as respondents. Other parties who were made respondents were State of

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A Haryana, Senior Superintendent of Police, Haryana and Station House
Officer, Police Station City Faridabad, Haryana. This petition has been
allowed by the High Court vide judgment dated 25.05.2010 directing the
appellant to handover the custody of Vaishali to her mother i.e. the
respondent. It is this judgment which is impugned in the present
proceedings.

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5. It would be noticed that in May, 2010, when the petition was
allowed, Vaishali was almost 8½ years of age. Today, she is 15 years
old.

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6. The Special Leave Petition (which is converted into the instant
appeal after the grant of special leave) was filed immediately after the
passing of the impugned judgment by the High Court, which came up for
hearing on 02.06.2010 before the Vacation Bench of this Court. While
issuing notice in the petition, this Court stayed the operation of the
aforesaid judgment of the High Court. That stay order has remained in
operation, as a consequence whereof custody of the child continues to
be with the father. The respondent, of course, has been granted visitation
rights from time to time as and when she came to India and moved an
application in this behalf. Such visitation rights have normally been for
the entire period of her stay in India on these visits, which range from
seven days to even two months. This fact is highlighted to show that the
respondent is given access to child for long periods as well, the details
whereof are mentioned hereafter.

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7. When the case came up before this Court on 31.01.2013 (at
that time, Vaishali was 11 years of age), the Bench (comprising of Aftab
Alam and Ranjana Prakash Desai, JJ.) decided to meet Vaishali in order
to interact with her to ascertain her view point. Thereafter, the matter
came up for hearing on 02.04.2013 when the following order was passed:

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“In the proceedings held on January 31, 2013, it was agreed
between the parties and was also noted in the order passed on
that date that the child Vaishali should stay with respondent
No.1 (Sukriti Arora), the mother of the child at her residence in
Delhi for one month under monitoring by this Court.

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In continuation of that order, therefore, we direct that Vaishali
should stay with her mother, tentatively for one month from
today, subject to any further direction that may be passed by this
Court in the meanwhile. The address of respondent No.1 where

[A. K. SIKRI, J.]

she will stay with her daughter Vaishali is 6578, Sector-C, Pocket-6&7, Vasant Kunj, Delhi and her contact number (mobile)is:9968661822.

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Ms. Madhavi Divan, one of the counsel representing the petitioner shall hand over the child to her mother-respondent No.1 outside the court room after we complete the passing of this order.

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Respondent No.1 shall deposit her passport with the Registrar (J-III) of this Court which shall be returned back to her after Vaishali goes back to her father on completion of the term of her stay with respondent No.1.

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We are informed that Vaishali's school is reopening from April 4, 2013. On behalf of Respondent No.1, it is stated that she will ensure that the child reaches the school in time and is brought back to her residence after school hours. The child's stay with her mother will, in no way, affect her attendance at the school or her studies.

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During her stay with the mother, the child will be free to speak to her father on telephone (Mobile No. 9968661822). On behalf of respondent No.1, it was stated that she would not create any obstruction in the way of the child speaking to her father.

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During the child's stay with her mother, we would like some responsible and competent person to monitor the arrangement. We, accordingly, request Mrs. Sadhana Ramachandran, who works for the Delhi High Court Mediation and Conciliation Centre, to monitor the arrangement on behalf of this Court. Mrs. Ramachandran shall visit the mother and the child at the address noted above on a date and time of her convenience. She would inform respondent No.1 on her mobile phone about the proposed date and time of her visit to the respondent's place. She would see how the relationship between the child and the mother is developing and if need be, she would counsel both the child and the mother.

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If the father wants to visit the child while she is staying with her mother, he may do so at a time when Mrs. Sadhana Ramachandran is also present there. For the purpose of the visit

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A he will have to take the necessary permission from Mrs. Ramachandran.

B It is submitted on behalf of Respondent No.1 that she would like to take the child to some resort or some hill station for a brief holiday. We would like the mother and the child to stay in Delhi itself but, in case, both the child and the mother together wish to go outside, they may do so subject to the permission in writing taken from Mrs. Ramachandran.

Mrs. Ramachandran would submit a report to this Court within ten days from today.

C Let this matter be listed for further direction along with the report from Mrs. Ramachandran on April 12, 2013.”

D 8. Mrs. Sadhana Ramachandran, who monitored the arrangement as per the directions contained in the aforesaid order submitted her report. On going through that report, further order dated 15.04.2013 was passed in the matter and we reproduce that order as well in its entirety:

“Seen the report submitted by Mrs. Sadhana Ramachandran.

E This Court is thankful to Mrs. Ramachandran for giving her valuable time and attention and for acting as the counselor and the Court’s agent in this arrangement.

We note that under the exigencies of the situation, the mother and the child have shifted from the address noted in the previous order and are now living at the following address:

F Ms. Sukriti Arora,
C/o. K.D. Prasher
C-2633, Sushant Lok Phase – I,
Gurgaon (Haryana).

The shift has been made with the permission of Mrs. Ramachandran and with the consent of the father of the child.

G The arrangement made by order dated April 02, 2013 may continue for a period of one month from that date as indicated in that order.

H It is, however, made clear that while staying with her mother, the child Vaishali can speak to her father and to Mrs. Ramachandran as and when she wishes.

Both the petitioner and the respondent are directed to pay heed to the advice of Mrs. Ramachandran and take part in mediation, as suggested by her, with an open mind. A

List on May 01, 2013.

Before that date, Mrs. Sadhana Ramachandran is requested to submit a final report.” B

9. On 01.05.2013, this Court took note of the fact that the respondent was leaving for U.K. In these circumstances, direction was given to her to return the custody of Vaishali to her father i.e. the appellant. The aforesaid background needs to be kept in mind while deciding this custody dispute. C

10. We have gone through the entire record, including the orders passed by the Courts in U.K. from time to time in various proceedings. In a recent judgment pronounced on 13.02.2017 delivered by this Court in the case of *Vivek Singh v. Romani Singh*, of which one of us (A.K. Sikri, J.) was the member of the Bench, dilemma of the Court and the law on the subject was taken note of. We reproduce the following paras of the said judgment in order to make it self-contained in all respects: D

“7. We have given our utmost serious consideration to the respective submissions which a case of this nature deserves to be given. In cases of this nature, where a child feels tormented because of the strained relations between her parents and ideally needs the company of both of them, it becomes, at times, a difficult choice for the court to decide as to whom the custody should be given. No doubt, paramount consideration is the welfare of the child. However, at times the prevailing circumstances are so puzzling that it becomes difficult to weigh the conflicting parameters and decide on which side the balance tilts. E

8. The Hindu Minority and Guardianship Act, 1956 lays down the principles on which custody disputes are to be decided. Section 7 of this Act empowers the Court to make order as to guardianship. Section 17 enumerates the matters which need to be considered by the Court in appointing guardian and among others, enshrines the principle of welfare of the minor child. This is also stated very eloquently in Section 13 which reads as under: F

“13. Welfare of minor to be paramount consideration.

(1) In the appointment or declaration of any person as H

A guardian of a Hindu minor by a court, the welfare of the minor shall be the paramount consideration.

(2) No person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating to guardianship in marriage among Hindus, if the court is of opinion that his or her guardianship will not be for the welfare of the minor.”

9. The Court in the case of *Gaurav Nagpal v. Sumedha Nagpal*¹ stated in detail, the law relating to custody in England and America and pointed out that even in those jurisdictions, welfare of the minor child is the first and paramount consideration and in order to determine child custody, the jurisdiction exercised by the Court rests on its own inherent equality powers where the Court acts as ‘*Parens Patriae*’. The Court further observed that various statutes give legislative recognition to the aforesaid established principles. The Court explained the expression ‘welfare’, occurring in Section 13 of the said Act in the following manner:

“51. The word “welfare” used in Section 13 of the Act has to be construed literally and must be taken in its widest sense. The moral and ethical welfare of the child must also weigh with the court as well as its physical well-being. Though the provisions of the special statutes which govern the rights of the parents or guardians may be taken into consideration, there is nothing which can stand in the way of the court exercising its *parens patriae* jurisdiction arising in such cases.

52. The trump card in the appellant’s argument is that the child is living since long with the father. The argument is attractive. But the same overlooks a very significant factor. By flouting various orders, leading even to initiation of contempt proceedings, the appellant has managed to keep custody of the child. He cannot be a beneficiary of his own wrongs. The High Court has referred to these aspects in detail in the impugned judgments.”

H ¹ (2009) 1 SCC 42

10. We understand that the aforesaid principle is aimed at serving twin objectives. In the first instance, it is to ensure that the child grows and develops in the best environment. The best interest of the child has been placed at the vanguard of family/custody disputes according to the optimal growth and development of the child primacy over other considerations. The child is often left to grapple with the breakdown of an adult institution. While the parents aim to ensure that the child is least affected by the outcome, the inevitability of the uncertainty that follows regarding the child's growth lingers on till the new routine sinks in. The effect of separation of spouses, on children, psychologically, emotionally and even to some extent physically, spans from negligible to serious, which could be insignificant to noticeably critical. It could also have effects that are more immediate and transitory to long lasting thereby having a significantly negative repercussion in the advancement of the child. While these effects don't apply to every child of a separated or divorced couple, nor has any child experienced all these effects, the deleterious risks of maladjustment remains the objective of the parents to evade and the court's intent to circumvent. This right of the child is also based on individual dignity.

11. Second justification behind the 'welfare' principle is the public interest that stand served with the optimal growth of the children. It is well recognised that children are the supreme asset of the nation. Rightful place of the child in the sizeable fabric has been recognised in many international covenants, which are adopted in this country as well. Child-centric human rights jurisprudence that has been evolved over a period of time is founded on the principle that public good demands proper growth of the child, who are the future of the nation. It has been emphasised by this Court also, time and again; following observations in *Bandhua Mukti Morcha v. Union of India & Ors.*²:

"4. The child of today cannot develop to be a responsible and productive member of tomorrow's society unless

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A an environment which is conducive to his social and
 physical health is assured to him. Every nation, developed
 or developing, links its future with the status of the child.
 B Childhood holds the potential and also sets the limit to
 the future development of the society. Children are the
 greatest gift to humanity. Mankind has the best hold of
 itself. The parents themselves live for them. They
 embody the joy of life in them and in the innocence
 relieving the fatigue and drudgery in their struggle of
 C daily life. Parents regain peace and happiness in the
 company of the children. The children signify eternal
 optimism in the human being and always provide the
 potential for human development. If the children are
 better equipped with a broader human output, the society
 will feel happy with them. Neglecting the children means
 D loss to the society as a whole. If children are deprived
 of their childhood — socially, economically, physically
 and mentally — the nation gets deprived of the potential
 human resources for social progress, economic
 empowerment and peace and order, the social stability
 and good citizenry. The Founding Fathers of the
 E Constitution, therefore, have emphasised the importance
 of the role of the child and the need of its best
 development.”

12. Same sentiments were earlier expressed in *Rosy Jacob
 v. Jacob A. Chakramakkal*³ in the following words:

F “15. ...The children are not mere chattels : nor are they
 mere play-things for their parents. Absolute right of
 parents over the destinies and the lives of their children
 has, in the modern changed social conditions, yielded to
 the considerations of their welfare as human beings so
 that they may grow up in a normal balanced manner to
 G be useful members of the society...”

13. It hardly needs to be emphasised that a proper education
 encompassing skill development, recreation and cultural
 activities has a positive impact on the child. The children
 are the most important human resources whose development

H ³(1973) 1 SCC 840

has a direct impact on the development of the nation, for the child of today with suitable health, sound education and constructive environment is the productive key member of the society. The present of the child links to the future of the nation, and while the children are the treasures of their parents, they are the assets who will be responsible for governing the nation. The tools of education, environment, skill and health shape the child thereby moulding the nation with the child equipped to play his part in the different spheres aiding the public and contributing to economic progression. The growth and advancement of the child with the personal interest is accompanied by a significant public interest, which arises because of the crucial role they play in nation building.”

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11. In the case of *Vivek Singh*, the girl was 8 years of age. There also, the child had remained with father for most of the period. It was decided to give the custody to the mother. Among others, two weighty reasons which prevailed with this Court were the age of the child, i.e. 8 years, and that during this period, custody had remained with the father because of no fault of the mother. This is clear from the following discussion in the said judgment:

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“14. In the instant case, the factors which weigh in favour of the appellant are that child Saesha is living with him from tender age of 21 months. She is happy in his company. In fact, her desire is to continue to live with the appellant. Normally, these considerations would have prevailed upon us to hold that custody of Saesha remain with the appellant. However, that is only one side of the picture. We cannot, at the same time, ignore the other side. A glimpse, nay, a proper glance at the other side is equally significant. From the events that took place and noted above, following overwhelming factors in favour of respondent emerge.

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(a) For first 21 months when the parties were living together, it is the respondent who had nursed the child. The appellant cannot even claim to have an edge over the respondent during this period, when the child was still an infant, who would have naturally remained in the care and protection of the respondent - mother, more than the appellant - father. Finding to this effect has been arrived at by the High Court

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A as well. This position even otherwise cannot be disputed.
(b) The respondent was forcibly deprived by the custody
of Saesha from August 04, 2010 when she was forced to
leave the matrimonial house. As per the respondent, on that
date the appellant in a drunken state gave beatings to her
and threw her out of the house. The respondent had called
B the police. The police personnel called the military police
and a complaint was lodged. The respondent had also called
her parents who had come to her house from NOIDA. Her
parents took hold of the child and the appellant and when
they were about to leave, the appellant pulled out the child
C from the hands of her mother and went inside the house
and locked himself. He was drunk at that time. The police
suggested not to do anything otherwise appellant would harm
the child. It was assured that the child would be returned
to her in the morning. In any case, the respondent and the
D appellant were instructed to come to the police along with
the child, next morning. The appellant did not bring the
child and threatened that he would not give the child to her.
Since then, she had been running from pillar to post to get
the child back but respondent had been refusing.

E The respondent, therefore, cannot be blamed at all, if
the custody of the child remained with the appellant, after
the separation of the parties.

(c) Within the few days, i.e. on August 26, 2010, the
respondent filed the petition seeking custody of the child
and for appointment of her guardian. She did not lose any
time making her intentions clear that as a natural mother
she wanted to have the custody of the child. It was her
mis-fortune that the trial court vide its judgment dated
December 07, 2011 dismissed her petition. Though, she
filed the appeal against the said judgment immediately, but
F during the pendency of the appeal, the custody remained
with the appellant because of the dismissal of the petition
by the Family Court. The High Court has, by impugned
G judgment dated April 02, 2013 granted the custody to the
respondent. However, the respondent has not been able to
reap the benefit thereof because of the interim orders passed

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in the instant appeal. It is in these circumstances that child Saesha from the tender age of 21 months has remained with the appellant and today she is 8 years and 3 months. Obviously, because of this reason, as of today, she is very much attached to the father and she thinks that she should remain in the present environment. A child, who has not seen, experienced or lived the comfort of the company of the mother is, naturally, not in a position to comprehend that the grass on the other side may turn out to be greener. Only when she is exposed to that environment of living with her mother, that she would be in a position to properly evaluate as to whether her welfare lies more in the company of her mother or in the company of her father. As of today, the assessment and perception are one sided. Few years ago, when the High Court passed the impugned judgment, the ground realities were different.

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16. 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..."

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12. The circumstances, in the present case, however, are materially different. Vaishali is a mature girl of 15 years of age. At this age, she can fully understand what is in her best interest. She is competent to take a decision for herself. There has been interaction with her by different Benches of this Court from time to time, outcome whereof is reflected in the orders passed after such meetings. She has unequivocally and without any reservations expressed her desire to be with her father. More importantly, she has very categorically said that she does not want to go to U.K.

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A 13. On 31.01.2013, this Court had noted that when her mother
came to India, she was not even willing to meet her. However, with the
intervention of the Court, a meeting was arranged between Vaishali and
her mother. Even after the said meeting, she was not willing to live with
the respondent, her mother. Fully realising that it may be due to the
reason that all this period, she had lived with her father, the Court deemed
B it proper to give opportunity to the respondent to win love, confidence
and trust of Vaishali. The mother was allowed to stay for one month
with Vaishali. This order was continued on 02.04.2013 by extending the
period by another month. This time the arrangement that was made
was to be monitored by Mrs. Sadhana Ramachandran who was appointed
C for this purpose. Specific job given to Mrs. Sadhana Ramachandran
was to see how the relationship between the child and the mother is
developing. In case of need she was to counsel both the child as well as
the mother. Thus, an opportunity was given to the respondent by allowing
her the access of Vaishali for significant period i.e. till 01.05.2013,
D whereafter the child was restored back to her father, since the respondent
had decided to go back to U.K. It is unfortunate that even during this
period, she was not able to influence the thought process of Vaishali
who is determined to remain with her father.

14. In fact, during the course of arguments before us, when the
respondent was also present, we asked the respondent as to whether
E she could shift to India, even temporarily for a year or so, as in that
eventuality, the Court can consider giving custody of Vaishali to her for
that period. However, she expressed her inability to do so. She wants
custody of Vaishali on her own terms. She wants Vaishali to come to
U.K. and live with her. Vaishali does not want to go to U.K. at all. This
F Court cannot take the risk of sending Vaishali to a foreign country, against
the wishes of a mature girl like Vaishali, as it may prove to be a turbulent
and tormenting experience for her. That would not be in her interest.

15. We also had interaction with Vaishali in the Chambers earlier.
On the date of hearing also, Vaishali was present in the Court and in
front of her parents, she unequivocally expressed that she was happy
G with her father and wanted to continue in his company and did not want
to go with her mother, much less to U.K. From the interaction, it is
clearly discernible that she is a mature girl who is in a position to weigh
the pros and cons of two alternatives and to decide as to which course
of action is more suited to her. She has developed her personality and
H formed her opinion after considering all the attendant circumstances.

Her intellectual characteristics are adequately developed. She is able to solve problems, think about her future and understands the long term effects of the decision which she has taken. We also find that she has been brought up in a conducive atmosphere. It, thus, becomes apparent that in the instant case, we are dealing with the custody of a child who is 15 years of age and has achieved sufficient level of maturity. Further, in spite of giving ample chances to the respondent by giving temporary custody of Vaishali to her, respondent has not been able to win over the confidence of Vaishali. We, therefore, feel that her welfare lies in the continued company of her father which appears to be in her best interest.

16. The High Court in the impugned judgment had stated that since Vaishali was a minor girl, she needed company of her mother more to understand girly things. The High Court mentioned about the bond between girl child and mother in abstract and from there only the High Court came to the conclusion that it would be better to give the custody to the mother. The High Court did not go into the specific situation and circumstances of this case and did not make any objective assessment about the welfare of Vaishali. Many circumstances which we have narrated above were not taken note of.

17. On the facts of the present case, we are convinced that custody of the child needs to be with father. She is already 15 years of age and within 3 years, she would be major and all this custody battle between her parents would come to an end. She would have complete freedom to decide the course of action she would like to adopt in her life. We, thus, allow this appeal and set aside the judgment of the High Court.

No costs.