

Home › Case Briefs › **Supreme Court Settles Child Custody Battle After 9 Yrs; Discusses Seriousness Of Allegations Of Parental Alienation Syndrome**

Supreme Court settles child custody battle after 9 yrs; Discusses seriousness of allegations of parental alienation syndrome



“The Courts ought not to prematurely and without identification of individual instances of ‘alienating behaviour’, label any parent as propagator and or potential promoter of such behaviour and that this label has far-reaching implications which must not be imputed or attributed to an individual parent routinely.”

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Supreme Court: In a civil appeal against the Delhi High Court’s decision partly allowing the appeal filed by the Respondent- mother against the Family Court’s decision and setting aside the underlying order, whereby the permanent custody of minor children was granted to the appellant-father and provided visitation rights to the mother, the Division Bench of Vikram Nath and **Satish Chandra Sharma***, JJ. allowed the appeal and set aside the High Court’s decision. The Court directed that the custody of the minor children be retained by the father, subject to the mother’s visitation rights as granted by the Family Court vide the underlying order.

Factual Matrix

The parties got married in 2002 and two children were born from the marriage. The parties decided that the mother would live together with the minor children in New Delhi, when father was posted to serve in Jammu and Kashmir. The relationship between the parties deteriorated significantly; and thereafter took a turn for the worst on 08-08-2015, forcing the

mother to leave the matrimonial home for one night. Upon returning the next day the mother found the house locked and filed a missing children's report, and thereafter an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 ('the DV Act') was filed. Subsequently, a petition under Section 7, 9 and 25 of the Guardian and Wards Act, 1890 ('the Act') was filed seeking a custody of the minor children. The father also filed a similar application for the custody of the minor children before the Principal Judge, Family Court, Bikaner, Rajasthan. The custody petition filed by the father was transferred to Family Court in Delhi. Thereafter, vide an order dated 16-10-2017, the Family Court granted interim custody of the minor children to the mother. The High Court initially stayed the operation of the interim custody order and thereafter, granted the custody of the minor children to the mother on alternative weekends. In the impugned decision, the High Court granted the parties shared custody of the minor children. Aggrieved by the impugned order, the father preferred special leave petition before the Court which came to be converted to this instant appeal.

Analysis and Decision

The Court reiterated that the principal consideration of the Court whilst deciding an application for guardianship under the Act in exercise of its *parens patriae* jurisdiction would be the 'welfare' of the minor children. The Court perused Section 17 of the Act wherein the said principle has been enshrined. The Court referred to *Nil Ratan Kundu v. Abhijit Kundu*, (2008) 9 SCC 413, wherein, the parameters of 'welfare' and principles to be considered by Courts whilst deciding questions involving the custody of minor children came to be enunciated. The Court referred to *Gaurav Nagpal v. Sumedha Nagpal* (2009) 1 SCC 42, wherein, it was observed that the Court must construe the term 'welfare' in its widest sense i.e., the consideration by the Court would not only extend to moral and ethical welfare but also include the physical well-being of the minor children.

Preference of minor children

Regarding the preference of guardianship expressed by the minor children, the Court perused their expression before fora. In conclusion, the Court noted that the children were well groomed and doing well in their education and co-curricular activities whilst residing with the father and that the minor children were well-settled and progressing fine. The Court also noted that the children had expressed their desire to reside with the father at several points of time. The Court also pointed that on 05-04-2024, the Court interacted with both the minor children and found them to be intelligent, confident, cognisant of the pros and cons of their decisions and most importantly content and happy. The Court said that the children have expressed an unwavering and strong desire to continue to reside with the father. The Court clarified that such desire or preference, in itself cannot be determinative of custody of the children, but it must be given due consideration on account of a factor of utmost importance.



Considerations of welfare of the children and Allegations of PAS

Regarding the contention for the nature of father's employment posing a challenge in the upbringing and welfare of the minor children, the Court refused to agree with the said contention and said that the Indian Armed Forces provides a robust support system to the kin of its officers so as to ensure minimal disruption in the lives of the civilian members of an officer's family. The support system is inclusive of residential accommodation, a network of army schools, hospitals and healthcare facilities. Moreover, various extra-curricular activities i.e., sports facilities and recreational clubs; and other social and cultural functions are made available for the benefit of the kin of officers and aids in the mental stimulation, growth and overall development of personality of a child.

Further, in respect of the allegation that the matter at hand is a classic case of 'parental alienation syndrome' (PAS) wherein the minor children were influenced against the mother, the Court noted that in the impugned order, the High Court observed that there was a possibility of the minor children having been influenced against the mother. However, the Court refused to agree with the High Court as it failed to appreciate the intricacies and complexities of the relationship between the parties and accordingly, proceeded to entertain allegations of PAS on an unsubstantiated basis. The Court stated that *PAS is a thoroughly convoluted and intricate phenomenon that requires serious consideration and deliberation. Recognising and appreciating the repercussions of PAS certainly shed light on the realities of long-drawn and bitter custody and divorce litigations on a certain identified sect of families, however, it is equally important to remember that there can no straitjacket formula to invoke the principle laid down by this Court in Vivek Singh v. Romani Singh, (2017) 3 SCC 231.*

The Court relied on *In re C, [2024] 1 WLR 1*, wherein, the role of a Court vis-à-vis allegations of PAS was considered and reflected on the changing narrative in relation to PAS, placed by an expert body- the Association of Clinical Psychologists- UK (ACP). The Court noted the observation by the English Court as to- *"What is important, as with domestic abuse, is the particular behaviour that is found to have taken place within the individual family before the court, and the impact that that behaviour may have had on the relationship of a child with either or both of his/her parents. In this regard, the identification of 'alienating behaviour' should be the court's focus, rather than any quest to determine whether the label 'parental alienation' can be applied."* The Court agreeing with the English Court's view said that Courts ought not to prematurely and without identification of individual instances of 'alienating behaviour', label any parent as propagator and or potential promoter of such behaviour and that this label has far-reaching implications which must not be imputed or attributed to an individual parent routinely.

The Court reiterated from *Vivek (supra)* that the individual instances of 'alienating behaviour' must be identified by the Court in order to invoke the principle of parental alienation so as to overcome the preference indicated by the minor children.



In the matter at hand, the Court note that Single Judge of the High Court interacted with the Minor Children on 24-02-2020 i.e., a period of close to 4.5 (four and a half) years after the alleged incident, and recorded that the minor children expressed no overt preference

amongst their parents, the Court said that the said observation was crucial as it underscores that while the relationship between the parties may have been strained, the minor children did not exhibit any indication of 'parental alienation' i.e., there was no overt preference expressed by the minor children between the parents and thus, the foundation for any claim of parental alienation was clearly absent. Further, the Court added that the minor children were cognisant and aware of the blame game being played amongst the parties; and that the children did not foster unbridled and prejudiced emotions towards their mother. Accordingly, the Court held that the father did not engage or propagated 'alienating behaviour' as alleged by the mother. Therefore, the Court held that the High Court was neither correct nor justified in interfering with the well-considered and reasoned order passed by the Family Court granting custody of the minor children to the father.

[Ramneesh Pal Singh v. Sugandhi Aggarwal, 2024 SCC OnLine SC 847, Decided on: 08-05-2024]

***Judgment Authored by: Justice Satish Chandra Sharma**

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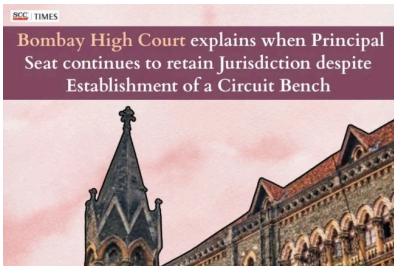
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