SUPREME COURT OF INDIA

Arathi Bandi

Vs.

Bandi Jagadrakshaka Rao

Crl.A.No.934-936 of 2013

(Surinder Singh Nijjar and Pinaki Chandra Ghose JJ.)

16.07.2013

JUDGEMENT

SURINDER SINGH NIJJAR, J.

1. Leave granted.

2. These appeals arising out of Special Leave Petition (Crl.) No. 10606-10608 of 2010 are directed against the judgment and final order dated 24th September, 2010 passed by the High Court of Judicature of Andhra Pradesh, Hyderabad in Writ Petition No. 25479 of 2009 issuing a writ in the nature of Habeas Corpus directing the petitioner to submit to the jurisdiction of U.S. Courts. The petitioner also assails the orders dated 3rd December, 2010 and 14th December, 2010 passed by the Andhra Pradesh High Court in W.P.M.P. No. 31378 of 2010 in W.P. No. 25479 of 2010, directing the petitioner to produce the child along with necessary documents to give effect to the main judgment and order dated 24th September, 2010. The appellant has framed three questions of law for the consideration of this Court in the Special Leave Petition giving rise to these appeals. They are as under:-

> "(A) Has not the Hon'ble High Court failed to exercise jurisdiction vested in it under law in not considering the welfare and well being of the minor child before issuing the impugned directions ?
>
> (B) Has not the Hon'ble High Court erred in holding that when there is an order passed by foreign court, it is not necessary to go into the facts of the case?

(C) Is not the judgment of US Court "not conclusive" as between the parties and hence unenforceable in India for being in violation of Section 13(c) and (d) of the Code of Civil Procedure, 1908?"

3. The relevant facts giving rise to the aforesaid questions of law as narrated by the parties are as under:-

(a) Respondent No. 1 (hereinafter referred to as the "husband") invoked the Habeas Corpus jurisdiction of the Andhra Pradesh High Court under Article 226 of the Constitution of India for production of the minor child, i.e., Master Anand Saisuday Bandi before the Court and permit him to take custody of the minor child in compliance of the orders passed in Case No.06-3-08145-9-KNT by the Superior Court of Washington, County of King (hereinafter referred to as "the U.S. Court"). Upon consideration of the entire facts and circumstances, the High Court issued the following directions:-

" i) The petitioner shall obtain necessary travel tickets for the 7th respondent and the child for their visit to the place where U.S. Court is situated;

ii) On obtaining travel tickets, the petitioner shall intimate the same to the 7th respondent three weeks in advance of the date of departure to enable her to make necessary arrangements;

iii) The petitioner shall deposit a sum of $5000 (Five thousand American dollars) in the name of the 7th respondent for enabling her to engage an advocate in US and to submit to the jurisdiction of the US Court;

iv) The petitioner shall make necessary arrangements for the stay of the 7th respondent and the child for a period of fifteen (15) [sic] on their landing in USA.

v) On petitioner providing travel tickets, depositing the amount as ordered above, and intimating the date of departure, if 7th respondent fails to submit to the jurisdiction of the US Court along with the child, Master Anand Saisuday Bandi, in obedience to the orders passed in writ of Habeas Corpus by the US Court, she shall handover the custody of the child to the

petitioner, who in turn shall produce the child before the US Court and custody of the child will abide by the decision of the US Court since the child is a citizen of USA."

(b) The petitioner (hereinafter referred to either as "the petitioner", "the wife" or "the mother"), aggrieved by the aforesaid directions, filed the special leave petitions giving rise to the present appeals.

Events/ Legal Proceedings in the U.S.A.:

(c) The marriage between the parties was solemnized according to Hindu rights on 9th November, 2003 in Atlanta, USA. They were both divorcees. After marriage, they had settled down in Seattle, USA. Anand (hereinafter referred to either as "the child", "the minor child," or "Anand") was born on 5th June, 2005 in USA and, therefore, is a US citizen by birth. On 30th October, 2006, respondent No.1 (hereinafter referred to as "respondent No.1", "the husband" or "the father") filed a petition for dissolution of marriage in Superior Court of Washington, County of King at Seattle. In these proceedings, an ex parte order was issued restraining the wife from leaving the State of Washington. The husband was authorised to hold on to the passport and Person of Indian Origin Card (PIO Card) of Anand. Within days of the husband petitioning for dissolution of marriage, the wife on 13th November, 2006 submitted a complaint of domestic violence in which the Superior Court of Washington, Kent directed the husband to move out of the matrimonial home. Anand was to remain in the custody of wife with limited visitation rights were granted to the husband. The wife was, however, directed to pay US $ 1500 for the husband's expenses until the regular hearing. On 4th December, 2006, further orders were issued stipulating that the wife/mother would occupy the family home with the child. Furthermore, the father was to bear half of the mortgage on family home, child's day care expenses and insurance costs for the child and the mother. The unsupervised visitation rights of the father were increased from 9 hours to 12 hours per week. Father's attorney was required to hold Anand's U.S.A. passport. On 1st March, 2007, Ms. Jennifer Keilin was appointed by the Superior Court of Washington, Kent as Guardian ad litem to make recommendations regarding the marriage and child custody. On 22nd June, 2007, Parenting Evaluation Report was submitted to the U.S. Court. The wife/mother was found suitable for custody in view of the problems of the husband/father at the work place, alcohol dependency and smoking addiction. It was also noted that the child

Anand has very serious food allergies. On 9th July, 2007, the wife filed a motion before the Superior Court of Washington, Seattle for an emergency hearing on her petition requesting travel to India for two weeks. This was denied by the aforesaid court on 10th July, 2007. On the same day, the wife moved the Superior Court of Washington, Kent seeking an emergency hearing. This too was denied by the Court. However, regular hearing was set for 24th July, 2007. On 25th July, 2007, at the regular hearing, the Superior Court of Washington, Kent passed an order permitting the wife to travel to India with the child. However, at the request of the husband, the said order was stayed, until his motion of reconsideration could be adjudicated. On 17th August, 2007, the wife filed motion for continuance of trial, permanent relocation to India with the child and requesting the court to order the father to undergo domestic violence assessment. On 4th September, 2007, Superior Court of Washington, Kent passed orders granting request of the wife for continuance of trial, appointing Ms. Keilin to conduct another evaluation to make recommendations regarding relocation. However, the request of the wife to order the husband to go through a further domestic violence assessment was denied. On the same day, i.e. 4th September, 2007, the appeal of the father against the order dated 25th July, 2007, permitting the wife to travel to India with the child, was allowed.

(d) The trial in the main petition for dissolution of marriage on the ground of irretrievable breakdown of marriage commenced on 18th March, 2008 in the Superior Court of Washington, Kent. On 19th March, 2008, parenting plan was approved with primary custody of Anand given to the mother and limited visitation rights granted to the father. During summer vacations of two weeks, each parent was granted five consecutive days of residential time, at a time. Out of State or International travel was permitted to both the parties during the residential time. The attorney of the husband was ordered by the Superior Court of Washington to prepare final orders.

4. On 20th March, 2008, the motion of the wife for relocation to India was denied. On 7th July, 2008, the wife filed a motion petition before the Superior Court of Washington, Kent requesting a clarification on final parenting plan to permit 13 consecutive days of vacation with the child for travelling to India. On 16th July, 2008, Superior Court of Washington denied her motion. In violation of the aforesaid orders, the wife travelled to India with Anand on 17th July, 2008. On 22nd August, 2008, final orders were passed in the petition filed by the husband for dissolution of marriage. The order includes findings of fact and law entered by

the Superior Court of Washington. The Court specifically recorded the reasons that led to the denial of the motion filed by the wife for relocation on 20th March, 2008. On 23rd August, 2008, divorce decree entered by the Superior Court of Washington as part of final orders.

5. On the same day, i.e., 23rd August, 2008, the wife sent an e-mail to the husband informing him that she will return on 16th September, 2008 alongwith the child. This E-mail also contained the confirmed itinerary. Since the wife did not return with the child, the husband moved an application in September, 2008 seeking modification of the final parenting plan on the grounds of violation of earlier parenting plan (19th March, 2008) and interference with his visitation rights. On 9th December, 2008, Superior Court of Washington, Kent modified the parenting plan. The husband was made custodial parent and the wife was granted visitation rights. On 12th December, 2008, Superior Court of Washington, Seattle also issued a Writ of Habeas Corpus, directing the State and its officers to locate and take Anand into immediate custody and deliver him to the Presiding Judge of the Superior Court of Washington, County of King. On 11th January, 2009, abduction notices were issued against the wife. This was followed by a Red Corner Notice. In the meantime, the services of the husband were terminated by his employer in February, 2009, due to the economic downturn. Similarly, the wife was also affected by the downturn and was not able to take up a new job in the USA. Since the wife did not return with the child on 13th March, 2009, Superior Court of Washington, Kent issued bailable warrants against her for Custodial Interference in the First Degree. In May, 2009, the husband sold the matrimonial house in USA.

Events and legal proceedings in India -

6. On 20th November, 2009, the husband filed a Habeas Corpus petition in the Andhra Pradesh High Court. Since there was no representation from the wife, the writ petition was admitted. Upon completion of the proceedings, which according to the husband, were deliberately delayed by the wife, the High Court delivered the impugned judgment on 24th September, 2010. A few days thereafter, the husband filed W.P.M.P. No.31378 of 2010 on 29th September, 2010, seeking inter alia custody of Anand for producing him before the US Consulate in Hyderabad; a direction to the Registrar (Judicial) of the Andhra Pradesh High Court to return his own Indian Passport; and a direction to the wife for providing her “current name”, “xerox copies of her current passport”, “visa papers” and “PIO Card” of Anand to the husband. On 3rd December, 2010, the High Court directed the wife to be present along with Anand before it on the next date of hearing, i.e., 10th

December, 2010. She was also directed to produce her passport and visa papers and the PIO Card of Anand, so as to enable the husband to comply with the directions of the High Court issued in Writ Petition No. 25479 of 2009 dated 24th September, 2010. It seems that on 10th December, 2010, another Advocate, who replaced the earlier counsel, appeared for the wife and sought some more time to comply with the order dated 3rd December, 2010. On 14th December, 2010, the wife came to the High Court, albeit without Anand and served the copy of her Review Petition against the judgment dated 24th September, 2010 to the petitioner/husband. On 18th December, 2010, the present appeal was preferred before this Court, by the wife. Meanwhile on 22nd December, 2010, neither the wife nor Anand came to the High Court and a death in the family at Vijayawada was reported by her as the reason for the absence. Again on 28th December, 2010, the wife and Anand absented themselves from the High Court. The High Court, however, issued directions on the same date to the Commissioner of Police, Hyderabad City to produce Anand before the Court on 17th January 2011. On 18th January, 2011, the police could not locate either wife or Anand. Upon this, the High Court granted a week's time to the police to produce Anand. On 25th January, 2011, since the police could not locate Anand, the High Court issued a non-bailable warrant against wife and directed the matter to be listed on 8th February, 2011. Meanwhile, this Court on 31st January, 2011, issued notice in the Civil Appeal filed by the wife and order dated 25th January, 2011 was stayed. The Review Petition pending before the High Court appears to have been withdrawn by the petitioner after the notice was issued by this court in the present Civil Appeal.

7. We have heard the learned counsel for the parties at length.

8. Mr. Pallav Shishodia, learned senior counsel appearing for the wife has submitted that both the mother and the child have been in India since July, 2008. The mother has been looking after Anand single handedly without any help from the father. She has got a well paid job with IBM at Bangalore. Anand now lives in a joint family and is happy. He enjoys the company of his cousins. He is now 8 years of age and has developed roots in India. He has emphasised that the High Court has not considered the welfare of the child in passing the impugned judgment. He has submitted, by making exhaustive reference to the Parenting Evaluation Report, that it would be for the welfare of the child to remain with the mother in India. Learned senior counsel submitted that this Court would have to consider the benefits that would accrue to Anand if he is permitted to remain with her in India as opposed to the undesirability of compelling her to handover his custody to the father. Learned senior counsel submits that the Parenting Evaluation

Report clearly notices that the father was subjected to Urinalysis Testing for alcohol. The mother had objected to her husband's use of alcohol. The husband frequently drank alcohol during the evening. At the same time, he tried to hide his alcohol dependency from his parents who were staying with him. The wife had also narrated before Ms. Jennifer Keilin who gave the Parenting Evaluation Report that the husband drank while watching television, consuming half a bottle of rum every evening. His drinking had increased while she was visiting India in April and May, 2004. She had also claimed that the husband sometimes had difficulty in waking up in the morning and after drinking he suffered occasional hangovers. Mr. Shishodia also pointed out that the husband is also addicted to cigarette smoking. He also has a history of employment problems. This apart, the husband had also admitted before the evaluator about his past drug use. Referring to the Parenting Evaluation Report, Mr. Shishodia pointed out the numerous other difficulties which were being faced by both the parties whilst they were married. On the basis of the aforesaid, he submitted that the High Court erred in law by not taking into consideration the relevant factors whilst passing the impugned judgment. At this stage, he relied on the judgment of this Court in Smt. Surinder Kaur Sandhu Vs. Harbax Singh Sandhu & Anr.[1]. He submitted that the High Court has totally ignored the relevant facts for determining what would be in the best interest of the child. He also pointed out to the conclusion in the Parenting Evaluation Report which is as under:

> "In my opinion, Anand should reside primarily with Ms. Bandi. He should have regular, limited visitation with Mr. Rao, increasing at regular intervals. These intervals should be based on Mr. Rao completing and maintaining certain criteria as well as on Anand's development needs. Mr. Rao should engage in specific services, including alcohol treatment and a parenting class, and both parents should participate in co-parent counseling."

9. Learned senior counsel further submitted that the High Court has totally misconstrued the principle of Comity of Courts, as applicable in private international law matters. The High Court has erred in holding that it was not necessary to hold an elaborate enquiry in the facts and circumstances of this case. He submitted that the High Court has misconstrued the principles of law laid down by this Court in V. Ravi Chandran (Dr.) (2) Vs. Union of India & Ors.[2]. He submitted that the observations made by this Court in the case of Shilpa Aggarwal (Ms.) Vs. Aviral Mittal & Anr.[3] would not be applicable in the facts and circumstances of this case. In fact, the matter is squarely covered by the judgment of this Court in Dhanwanti Joshi Vs. Madhav Unde[4]. Learned senior counsel also

relied on the judgment in Sarita Sharma Vs. Sushil Sharma[5] and Ruchi Majoo Vs. Sanjeev Majoo[6]. Learned counsel pointed out that the High Court has totally ignored some very important issues as to why it would not be in the interest of Anand to be sent back to USA to live with the father. He also pointed out that the husband has lost his job in the USA and has been living in India for the past three years. He has also sold the family house in USA. Therefore, Anand would have no family atmosphere if he is taken back to the USA. He pointed out that initially the custody of Anand had been given to the mother on the basis of the recommendations made in the parenting plan. However, subsequently, orders have been passed granting custody to the respondent-husband. It is these orders which are sought to be enforced in the USA Courts which had led to the filing of the Habeas Corpus petition in the Andhra Pradesh High Court. He submitted that the mother had been compelled to leave the USA due to the irrational behaviour of the husband. Learned senior counsel also pointed out even at the time of the marriage, the plan was actually to settle in India. Subsequently, however, the husband declined to return to India. He also pointed out that the removal of Anand from USA was neither thoughtless nor malicious. The wife had to return to India due to the serious ailment and old age of her parents. She is now looking after them in India. Therefore, it cannot be concluded that the wife is trying to alienate the child from the husband.

10. Mr. Patwalia, learned senior counsel, for the respondent- husband submitted that the wife has come to India in violation of the parenting plan. It is submitted that she participated in the proceedings in USA, where some orders were passed in her favour while the others were against her.

11. He submits that all efforts of the wife are simply to alienate the child from the father. He emphasises that the petitioner and respondent No.1 were married in USA. At the time of marriage, they were both divorcees. They had settled in Seattle, USA. Anand was born in USA and is, therefore, a US citizen by birth. Due to irreconcilable differences, the husband was constrained to initiate proceedings in the USA Court for dissolution of marriage. During the pendency of the proceedings in the USA Court, the wife had shown a consistent propensity to disobey the orders of the Court. At the same time, she filed a number of motions in the pending proceedings with regard to domestic violence; independent occupation of the matrimonial home, at the same time demanding that the husband bears half of the mortgage of the family home and other expenses for her as well as the child. Although both the parents were allowed five days residential time with the child during the two weeks summer vacation, the effort of the wife was always to

remove him from the country of his birth. Her motion for permanent location to India was ultimately denied on 16th July 2008. In defiance of the said order, she travelled to India with Anand on 17th July, 2008. The learned senior counsel submits that the facts which have been narrated above would clearly indicate that the petitioner has little or no regard for the orders of the Court.

12. Mr. Patwalia further submitted that the conduct of the petitioner in the courts in this country follows the same pattern. In fact, the counsel for the petitioner has admitted before the High Court the fact of US Court passing order for the custody of the child and that it has not permitted the petitioner to remove the child out of Washington. It was further admitted that in spite of the aforesaid direction, the child was removed from the jurisdiction of the Courts in which he was born. The fact of issuance of the Writ of Habeas Corpus by the United States Superior Court for production of the child was also admitted. Before the High Court, a submission was made on behalf of the petitioner-wife for grant of some time to submit to the jurisdiction of the US Court and to enable her to obtain necessary orders from the aforesaid court. Relying on the aforesaid submissions of the petitioner, the High Court had issued the directions reproduced earlier in this judgment. After obtaining such orders, the wife disappeared again from the scene. Consequently, the respondent-husband had to file a miscellaneous application seeking directions to the petitioner to handover the custody of the child for producing before the US Consulate in Hyderabad. On 3rd December, 2010, the High Court directed the petitioner to be present before the Court on 10th December, 2010 along with the child, so that the husband could comply with the directions issued by the Court on 24th September, 2010. On 14th December, 2010, the wife appeared in Court but did not produce the child, as directed. It was submitted before the Court that she had filed a review petition which ought to be taken up for hearing and sought one week's time for production of the child. Upon this assurance, the Court again directed that the child be produced on 22nd December, 2010. According to Mr. Patwalia, she was all along misleading the Andhra Pradesh High Court, whilst preparing to file the SLP against the impugned judgment. The SLP was actually filed on 18th December, 2010, challenging three orders viz. orders dated 24th September, 2010 passed in W.P.No.25479 of 2009 and subsequent orders dated 3rd December, 2010 and 14th December, 2010 passed in W.P.M.P. No.31378 of 2010 in the aforesaid writ petition.

13. Mr. Patwalia points out that, in fact, the conduct of the petitioner is noticed in the order dated 28th December, 2010. The High Court noticed that in spite of the directions having been given, the petitioner has not produced the child in the Court.

She had also not produced necessary papers relating to the child. On 14th December, 2010, she had undertaken to produce the child on 22nd December, 2010. On 22nd December, 2010, the counsel for the petitioner had submitted that her maternal uncle had died and, therefore, she had left for Vijayawada. But on 28th December, 2010, it was brought to the notice of the court that her maternal uncle had already died on 16th December, 2010. It was then represented before the High Court that the petitioner was staying at Vijayawada because the child was unwell and admitted in hospital. The High Court noticed that the petitioner appears to have made a false statement on the last date of hearing. Therefore, the directions were issued to the Commissioner of Police, Hyderabad to produce the child before the Court on 17th January, 2011 at 4.00 p.m. On 18th January, 2011, the Court was informed by the Assistant Government Pleader that in spite of best efforts by the police, the child could not be traced and she sought further time to locate and produce the child in Court. Since the petitioner was failing to assist the authorities in locating the child, non-bailable warrants were issued for her. The matter was posted for further proceedings on 8th February, 2011. In the meantime, this Court on 31st January, 2011 issued notice in the SLP and stayed the operation of the impugned orders.

14. Learned senior counsel further submitted that the petitioner is able to defy the orders issued by the Court of Competent Jurisdiction in USA as India is not a signatory to the Hague Convention of 1980 on "Civil Aspects of International Child Abduction". The aforesaid Convention fully recognizes the concept of doctrine of Comity of Courts in private international law. He submits that taking note of the undesirable effect of not being the signatory to the aforesaid convention, the then Chairman of the Law Commission of India recommended that India should keep pace and change according to the changing needs of the society. The Commission recommended that the Government may consider that India should become a signatory to the Hague Convention of 1980 which will, in turn, bring the prospect of achieving the return to India of children who have their homes in India. [See Law Commission of India Report No.218 entitled "Need to accede to the Hague Convention on the Civil Aspects of International Child Abduction (1980)"]. Mr. Patwalia also submits that the impugned order/judgment of the Andhra Pradesh High Court is in consonance with the law as declared by this Court in numerous judgments. In support of his submission, the learned senior counsel relies on the same judgments which were cited by Mr. Shishodia.

15. Mr. Patwalia also pointed out that not only the petitioner had made false statements before the Court but she had denied the husband any contact with the

child. From 6th April, 2010, the husband was entitled to see the child for 2½ hours. From 3rd October, 2010, the period was increased to 4 hours. Mr. Patwalia further submitted that the petitioner has also filed a complaint in the Court of XIII Additional Chief Metropolitan Magistrate, Hyderabad against her husband, both his parents and his brother, alleging commission of offences under Sections 498-A, 506 of IPC; and Sections 4 & 6 of the Dowry Prohibition Act, 1961. The respondent and his parents had filed Criminal Petition no. 6711 of 2009 under section 482 of Cr.P.C., before the High Court of Andhra Pradesh seeking quashing of the criminal complaint. In the said proceedings, the High Court, vide order dated 23rd December 2011, partly allowed the said criminal petition and directed that the respondent husband and other co-accused should not be prosecuted for offences said to have taken place in USA without necessary permission from the Central Government. However, the proceedings emanating from the said complaint were not quashed because the High Court was of the opinion that there is sufficient prima facie material in the complaint in the context of offences alleged to have been committed in India. The said order is under challenge before us, in Criminal Appeal arising from S.L.P. (Criminal) No. 3385 of 2012.

16. In this context, Mr. Patwalia submits that the aforesaid complaint is merely a counter blast to the divorce and child custody proceedings initiated by the husband against the wife.

17. We have anxiously considered the submissions made by the learned senior counsel for the parties and minutely perused the material on record.

18. From the facts narrated above, it becomes evident that the wife has reached India in defiance of the orders passed by the Courts of competent jurisdiction in U.S. It is apparent that the appellant has scant regard for the orders passed by the Andhra Pradesh High Court also. Keeping in view the aforesaid facts and circumstances, the Andhra Pradesh High Court issued the directions which have been reproduced in the earlier part of the judgment. Although the learned counsel for the parties have relied on a number of judgments of this Court in support of their respective submissions, in our opinion, the matter is squarely covered by the ratio of law in the case of V. Ravichandran (supra).

19. In the aforesaid judgment, this Court considered a similar factual situation. The petitioner, who was of Indian origin, was a citizen of the United States of America. He married respondent No. 6 on 14th December, 2000 at Tirupathi in India. On 1st July, 2002, child Aditya was born while they were in USA. Subsequently, a dispute

arose between the parties regarding custody of Aditya, and the parties had obtained consent order dated 18th June, 2007 from the court of competent jurisdiction in USA under which both the parents were to have alternate custody of the child on weekly basis. However, respondent No. 6, in violation of the said court's orders, removed the child to India on 28th June, 2007 for staying with her parents in Chennai. The petitioner in turn moved the USA Court on 8th August, 2007 for modification of custody order and for taking action against respondent No. 6 for violation of court order. On that very day, the petitioner was granted temporary sole legal and physical custody of the minor child and respondent No. 6 was directed to immediately turn over the minor child and his passport to the petitioner. The order could not however be implemented in USA because of illegal removal of child by respondent No. 6 to India. The petitioner thereafter filed habeas corpus petition under Article 32 of the Constitution in the Supreme Court for production of the minor child and for handing over his custody to the petitioner along with the child's passport. Despite orders of the Supreme Court, the State Police could not produce the child for two years, but CBI, on the directions of the Supreme Court, was able to trace and produce the child within two months. The Court considered what would be an appropriate order in the facts and circumstances, keeping in mind the interests of the child and the orders of the courts of the United States of America. The Supreme Court while passing orders in this case also took into consideration several concessions which the petitioner husband made so that the wife could return to USA and present her claim, if any, over the child in the Courts in USA.

20. This Court partly allowed the writ petition with certain observations which are very relevant in the decision in the present case. We may notice the observations made in different paragraphs of the judgment. In Paragraph 25, the Court noticed the observation made by a Three Judge Bench of this Court in the case of Smt. Surinder Kaur Sandhu (supra), particular notice was taken of the observations made in Paragraph 10 of the judgment, which are as under:-

> "10. In B's Settlement, In re, B. v. B. the Chancery Division was concerned with an application for custody by the father of an infant who had been made a ward of court. The father was a Belgian national and the mother a British national who took Belgian nationality on marriage to him. The infant was born in Belgium. The mother was granted a divorce by a judgment of the court in Belgium, but the judgment was reversed and the father became entitled to custody by the common law of Belgium. The mother, who had gone to live in England, visited Belgium and was by arrangement given the

> custody of the infant for some days. She took him to England and did not return him. The infant had been living with the mother in England for nearly two years. The father began divorce proceedings in Belgium, and the court appointed him guardian. Pending the proceedings, the court gave him the custody and ordered the mother to return the infant within twenty-four hours of service of the order on her. She did not return the infant. The correctional court in Brussels fined her for disobedience and sentenced her to imprisonment should the fine be not paid. The correctional court also confirmed the custody order."

21. In our opinion, these observations leave no manner of doubt that no relief could be granted to the appellant in the present proceedings given her conduct in removing Anand from U.S.A. in defiance of the orders of the Court of competent jurisdiction. The Court has specifically approved the modern theory of Conflict of Laws, which prefers the jurisdiction of the State which has the most intimate contact with the issues arising in the case. The Court also holds that Jurisdiction is not attracted "by the operation or creation of fortuitous circumstances". The Court adds a caution that to allow the assumption of jurisdiction by another State in such circumstances will only result in encouraging forum- shopping. The aforesaid observations are fully applicable in the facts and circumstances of this case.

22. Again in Mrs. Elizabeth Dinshaw Vs. Arvand M. Dinshaw & Anr.[7], this Court reiterated the principle that it was the duty of Courts in all countries to see that a parent doing wrong by removing children out of the country does not gain any advantage by his or her wrongdoing. In Re H. (Infants)[8], the Court of Appeal in England had also observed that the sudden and unauthorized removal of children from one country to another is far too frequent nowadays. Therefore, it is the duty of all courts in all countries to do all they can to ensure that the wrongdoer does not gain an advantage by his wrongdoing. These observations were also approved specifically by the Court in the case of Mrs. Elizabeth Dinshaw (supra). In the case of V. Ravichandran (supra), in Paragraph 29 and 30, this Court has concluded as follows:-

> "29. While dealing with a case of custody of a child removed by a parent from one country to another in contravention of the orders of the court where the parties had set up their matrimonial home, the court in the country to which the child has been removed must first consider the question whether the court could conduct an elaborate enquiry on the question of custody or by dealing with the matter summarily order a parent to return custody of the

> child to the country from which the child was removed and all aspects relating to the child's welfare be investigated in a court in his own country. Should the court take a view that an elaborate enquiry is necessary, obviously the court is bound to consider the welfare and happiness of the child as the paramount consideration and go into all relevant aspects of welfare of the child including stability and security, loving and understanding care and guidance and full development of the child's character, personality and talents. While doing so, the order of a foreign court as to his custody may be given due weight; the weight and persuasive effect of a foreign judgment must depend on the circumstances of each case.

30. However, in a case where the court decides to exercise its jurisdiction summarily to return the child to his own country, keeping in view the jurisdiction of the court in the native country which has the closest concern and the most intimate contact with the issues arising in the case, the court may leave the aspects relating to the welfare of the child to be investigated by the court in his own native country as that could be in the best interests of the child. The indication given in McKee v. McKee that there may be cases in which it is proper for a court in one jurisdiction to make an order directing that a child be returned to a foreign jurisdiction without investigating the merits of the dispute relating to the care of the child on the ground that such an order is in the best interests of the child has been explained in L (Minors), In re and the said view has been approved by this Court in Dhanwanti Joshi. Similar view taken by the Court of Appeal in H. (Infants), In re has been approved by this Court in Elizabeth Dinshaw."

23. In our opinion, the Andhra Pradesh High Court has decided to exercise jurisdiction summarily and directed the appellant to return the child to the U.S.A. This course is absolutely permissible as is apparent from the observations made by this Court in Paragraph 30 of the aforesaid judgment. This Court also rejected the objection raised by respondent No. 6 in the Counter Affidavit that the American court, which passed the order/decree has no jurisdiction and being inconsistent in Indian Laws can not be executed in India. It was observed that despite the fact that the respondent had been staying in India for more than 2 years, she has not pursued any legal proceeding for the sole custody of the minor child or for the declaration that the orders passed by the American courts concerning the custody of minor child are null and void and without jurisdiction. Similar are the facts in the present case. The wife has not pursued any legal proceeding for seeking custody of Anand. She has also not sought a declaration that the orders passed by the American Courts are null and void and are without jurisdiction. Therefore, in our opinion, the

High Court of Andhra Pradesh can not be said to have acted erroneously. In V. Ravichandran's case (supra), this court again observed in Paragraph 35 as follows:-

> "35. The facts and circumstances noticed above leave no manner of doubt that merely because the child has been brought to India by Respondent 6, the custody issue concerning minor child Adithya does not deserve to be gone into by the courts in India and it would be in accord with principles of comity as well as on facts to return the child back to the United States of America from where he has been removed and enable the parties to establish the case before the courts in the native State of the child i.e. the United States of America for modification of the existing custody orders. There is nothing on record which may even remotely suggest that it would be harmful for the child to be returned to his native country."

24. These observations are squarely applicable in the facts and circumstances of the present case. Mr. Shishodia has, however, placed strong reliance on the judgment of this Court in Ruchi Majoo (supra). The aforesaid judgment would not be of any assistance to the appellant in the facts and circumstances of the present case. In that case, the respondent and wife had been living in America, the child was born in America and was, therefore, an American Citizen. The wife on account of husband's addiction to pornographic films, internet sex and adulterous behavior during the couple's stay in America took a decision to take the child to Delhi and the husband consented to it. The parties had agreed that the wife will stay with the minor child in India and make the best arrangements for his schooling. Subsequently, however, the husband objected to the wife staying in India. On the other hand, the wife had no intentions of returning to the country in the foreseeable future especially after she has had a very traumatic period on account of matrimonial discord with the respondent husband. The wife had taken out proceedings under Section 9 of the Guardian and Wards Act, 1890 seeking custody of the minor child. Shortly after the presentation of the main petition, an application under Section 12 of the Guardian and Wards Act read with Section 151 of the Code of Civil Procedure, 1908 was filed by the wife/mother of the child praying for an ex-parte interim order restraining the respondent from removing the minor from her custody and for an order granting interim custody of the minor to the Appellant. On the other hand, the husband had filed a case against the appellant alleging that she had abducted the minor child. On his application, a Red Corner Notice was issued against the wife. In the meantime, the Additional District Court at Delhi had granted interim custody to the appellant by order dated 4th April, 2009. This order was challenged by the husband under Article 227 of the

Constitution of India before the High Court of Delhi. The Delhi High Court accepted the petition, set aside the order of the District Court and dismissed the custody case filed by the mother primarily on the ground that the Court at Delhi had no jurisdiction to entertain the claim as the minor was not ordinarily residing at Delhi. The High Court also held that all issues relating to the custody of child ought to be adjudicated by the Courts in America not only because that Court had already passed an order to that effect in favour of the father, but also because all the three parties namely, the parents of the minor and the minor himself were American citizens. The High Court then buttressed its decision on the principle of comity of courts and certain observations made by this Court in the earlier decisions relied upon by the husband. It was in these circumstances that the appeal filed by the wife/mother against the order of the High Court was allowed. This Court specifically took note of the following circumstances:-

> "34. The appellant's case is that although the couple and their son had initially planned to return to USA, that decision taken with the mutual consent of the parties was changed to allow the appellant to stay back in India and to explore career options here. Master Kush was also according to that decision of his parents, to stay back and be admitted to a school in Delhi. The decision on both counts, was free from any duress whatsoever, and had the effect of shifting the "ordinary residence" of the appellant and her son Kush from the place they were living in America to Delhi. Not only this the respondent father of the minor, had upon his return to America sent e-mails, reiterating the decision and offering his full support to the appellant. This is, according to the appellant, clear from the text of the e-mails exchanged between the parties and which are self- explanatory as to the context in which they are sent."

25. This Court accepted the submission of the appellant that on the consent of the parties, the ordinary residence of the minor had shifted to India. In coming to the aforesaid conclusions, the Court examined the e-mails exchanged between the parties, which totally demolished the respondent's defence that his consent for shifting the residence of the minor was obtained by coercion. In Paragraph 45 of the judgment, it is observed as follows:-

> "45. It is difficult to appreciate how the respondent could in the light of the above communications still argue that the decision to allow the appellant and Master Kush to stay back in India was taken under any coercion or duress. It is also difficult to appreciate how the respondent could change his mind so

soon after the above e-mails and rush to a court in US for custody of the minor accusing the appellant of illegal abduction, a charge which is belied by his letter dated 19-7- 2008 and the e-mails extracted above. The fact remains that Kush was ordinarily residing with the appellant, his mother and has been admitted to a school, where he has been studying for the past nearly three years. The unilateral reversal of a decision by one of the two parents could not change the fact situation as to the minor being an ordinary resident of Delhi, when the decision was taken jointly by both the parents."

26. The Court on facts rejected the contention of the husband in that case that the minor child has been removed from the jurisdiction of the American Courts in contravention of the orders passed by them. In Paragraph 64, the Court observed as follows:- "64. Secondly, the respondent's case that the minor was removed from the jurisdiction of the American courts in contravention of the orders passed by them, is not factually correct. Unlike V. Ravi Chandran case, where the minor was removed in violation of an order passed by the American court there were no proceedings between the parties in any court in America before they came to India with the minor. Such proceedings were instituted by the respondent only after he had agreed to leave the appellant and the minor behind in India, for the former to explore career options and the latter to get admitted to a school. The charge of abduction contrary to a valid order granting custody is, therefore, untenable."

27. These observations clearly are of no assistance to the appellant herein. She had participated in the proceedings in America for two years prior to fleeing to India in the defiance of the orders passed by the Court of competent jurisdiction restraining her from taking the child to India for a period of more than 5 days. The appellant, therefore, can not be allowed to take advantage of her own wrong. Therefore, the present case would be squarely covered by the ratio of law in the case of V. Ravichandran (supra).

28. The Courts have taken cognizance of growing practice of children being removed from one country to another just to put pressure/influence the legal proceedings that are usually pending in these cases in relation to irretrievable breakdown of marriage. In the case of Re H. (Infants) (supra), Willmer, L.J., as long as 1961, observed as follows :

"…….The sudden and unauthorized removal of children from one country to another is far too frequent nowadays, and, as it seems to me, it is the duty of

all courts in all countries to do all they can to ensure that the wrongdoer does not gain an advantage by his wrongdoing."

29. Further, in V. Ravichandran's case (supra), even though the Court had directed that the child will be taken back to America, this Court took assurances from the husband that he would bear all the travelling expenses and make suitable arrangements for respondent No.6 in the U.S.A. He had also given an undertaking that he would take out necessary application for the removal of the Red Corner Notice so that the wife was not arrested on arrival in America.

30. After the arguments in this matter had been concluded, we interviewed at length the husband and wife. The wife was prepared to go back to the USA and live with her husband. However, the husband was not prepared to cohabit with the wife. Sadly, therefore, there was no chance of reconciliation between the parties. We are conscious of the fact that the child has now been residing in India since 17th July, 2008. He is now 8 years of age. In spite of the manner in which the child has been brought to India, it is quite evident that he has been studying at one of the best English medium schools. When we interviewed the child, it appeared that he had been thoroughly brain washed against the father. We, therefore, permitted the father to be alone with the child for about three hours in the chamber of Nijjar, J. and after the meeting the child seemed to be not wholly averse to meeting the father again. All said and done, in such circumstances, the Court is left with making a very unpleasant decision. Either way, certain collateral damage being caused to the child can not be avoided. The facts narrated above would clearly indicate that the mother is singularly responsible for removal of the child from the jurisdiction of U.S. Courts. In view of the above, we are constrained to pass the following order:-

31. The directions issued by the High Court in the impugned order are upheld with the following additions and modifications:-

Direction No.(iv) of the High Court shall be substituted by the following :

"(iv) The petitioner shall make necessary arrangements for the stay of the respondent No.7 and the child in suitable accommodation in a locality according to her status prior to the dissolution of marriage for a period of three months on their landing in USA."

Direction No.(vi) – Prior to making any travel arrangements for the 7th respondent and Anand, the petitioner shall move the Court of Competent Jurisdiction in USA for withdrawal of the bailable warrants issued against the respondent No.7 to enable her to attend the custody proceedings in the US Courts.

Direction No.(viii) – Upon the bailable warrants having been withdrawn, the petitioner shall personally escort respondent No.7 and Anand from India to the USA.

32. With these observations, the judgment of the High Court is upheld and the Criminal Appeals No.934-936 of 2013 @ SLP(Crl.) Nos. 10606-10608 of 2010 are hereby dismissed.

33. Before parting with this order, we may also notice here that the respondent (husband) filed a Criminal Appeal No. 937 of 2013 @ SLP(Crl.)No.3335 of 2012, challenging the order dated 23rd December, 2011 of the High Court of Andhra Pradesh. As noticed earlier, the aforesaid order was passed in the criminal petition filed by the respondent husband, seeking quashing of the criminal complaint filed by the appellant/wife against the respondent himself and his parents under Sections 498-A, 506 of IPC and Sections 4 & 6 of the Dowry Prohibition Act, 1961. Since no arguments were advanced in the aforesaid matter, let this appeal be listed for arguments separately.

[1] (1984) 3 SCC 698
[2] (2010) 1 SCC 174
[3] (2010) 1 SCC 591
[4] (1998) 1 SCC 112
[5] (2000) 3 SCC 14
[6] (2011) 6 SCC 479
[7] (1987) 1 SCC 42
[8] (1966) 1 W.L.R. 381 (Ch & CA) ; (1966) 1 All ER 886