



CASE COMMENT: YASHITA SAHU VS STATE OF RAJASTHAN

Palla Navanya*

CITATION: AIR 2020 SUPREME COURT 577

BENCH: Aniruddha Bose and Deepak Gupta

JUDGMENT: 20th January, 2020

INTRODUCTION

This case deals with *habeas corpus*, respect between courts, and the best interests of children in custody disputes. *Habeas corpus* is used to protect a person's freedom, especially when someone is being held unlawfully. The idea of comity of courts means that different courts, especially in different countries, should respect each other's decisions. However, when it comes to child custody, the most important factor is the child's well-being. Courts focus on the child's emotional, mental, and overall development to ensure they are in the best possible situation.

FACTS OF THE CASE

Yashita Sahu and Varun Varma tied the knot on May 30, 2016, in India. At the time, Varun was already working in the United States. On July 17, 2016, Yashita joined him in the U.S., and their daughter, Kiyara, was born on May 3, 2017. Kiyara holds American citizenship. However, their relationship hit a rough patch, leading to several accusations from both sides. On August 25, 2018, Yashita sought an Emergency Protection Order from the Norfolk Juvenile and Domestic Relations District Court, requesting safety measures against Varun. The court issued a preliminary protection order in her favor. Shortly after, on August 29, 2018, Yashita filed another petition in the same court, this time asking for sole custody of Kiyara. She also requested financial support for herself and their daughter. On September 26, 2018, the court issued an order based on an agreement the couple reached regarding these matters.

*BA LLB, SECOND YEAR, SASTRA DEEMED UNIVERSITY.

As per a court order, the husband was to pay rent, utilities, and child support of \$150/week for October-November 2018, and \$200/week for December 2018. Both parents were granted joint custody of their child, with a clear schedule for parenting time. The wife was to stay in the marital home until December 1, 2018, after which she would either leave or take over rent and utilities. They were advised to cooperate and use a neutral third party for disputes. However, on September 30, 2018, the wife left the U.S. with the child and went to India. This was before the next hearing date of October 1, 2018. On discovering this, the husband approached the Norfolk Court, which awarded him sole custody of the child and ordered the wife to return to the U.S. with the child. A warrant was issued against the wife for disobeying the court's previous orders.

The husband also filed a petition in India (Rajasthan High Court) to produce his child. The court directed the wife to return to the U.S. within six weeks, with the husband making all necessary arrangements for her and the child's stay and travel. If she did not wish to stay with him, he was to arrange alternative accommodations. Unhappy with the High Court's decision, the wife appealed against the order.

LEGAL ISSUES

1. Whether a writ of habeas corpus is maintainable in child custody cases where one parent has taken the child to another jurisdiction.
2. Whether Indian courts are bound by foreign custody orders or can independently assess the best interests of the child.
3. Whether the child's welfare should supersede parental rights and international jurisdictional concerns.

OBSERVATION OF THE COURT

In case the wife brought the minor to India in violation of the orders of the jurisdictional court in the USA, her custody of the child cannot be said to be strictly legal. However, we agree with the learned counsel for the appellant that the High Court could not have directed the appellant-wife to go to the USA. The wife is an adult and no court can force her to stay at a place where she does not want to stay. Custody of a child is a different issue, but even while deciding the issue of custody of a child, we are clearly of the view that no direction can be issued to the adult spouse to go and live with the other strained spouse in writ jurisdiction. In today's world, where people often marry and move between countries, legal disputes over child custody have

become more common. Sometimes, courts in two different countries may have jurisdiction over the same case. This issue is sensitive and must be handled with care. While the well-being of the child is the most important factor, courts should also respect custody orders issued by other courts with proper authority, even if they are from another country.

When a parent removes a child from one country to another, especially against a court order the court in the new country must decide how to handle the case. It can either conduct a detailed inquiry into what is best for the child or take a simpler approach by ordering the child's return to the country from which they were taken. If returned, the original court can then assess the child's welfare more thoroughly.

In the case of *Elizabeth Dinshaw*, an American mother was granted custody of her child by a U.S. court after divorcing her Indian husband. However, the father took advantage of his visitation rights and brought the child to India without permission. The mother filed a petition in India's Supreme Court, which ruled in her favor, stating that the child was an American citizen, had spent most of his life in the U.S., and was unlawfully taken away. The Court determined that returning the child to his mother in the U.S. was in his best interest.

In *V. Ravi Chandran v. Union of India*, the Supreme Court reinforced the idea that courts in the country where the child was taken must decide whether to conduct a full inquiry into custody or simply return the child. If a detailed inquiry is necessary, the court must consider factors such as the child's stability, security, education, and emotional well-being. The ruling of the foreign court should be given appropriate consideration based on the specific circumstances. If the court chooses a summary approach, it may return the child to the country of origin and allow the courts there to decide custody matters.¹

The case of *Nithya Anand Raghavan* further clarified that when a child is brought to India, the Indian courts can either conduct a summary or a detailed inquiry. Even if a foreign court has ordered the child's return, Indian courts are not bound to follow that order blindly. The child's welfare must always take priority, and courts should make independent decisions based on the overall situation.²

¹ V. Ravi Chandran (Dr.) (2) vs. Union of India (UOI) and Ors., [\(2010\) 1 SCC 174](#)

² Nithya Anand Raghavan vs State of NCT Of Delhi on 3 July 2017

In *Lahari sakhamuri* the Supreme Court emphasized that while respecting foreign court orders is important, it should not come at the cost of the child's well-being. Returning a child to another country should not cause them any physical, mental, or emotional harm.³

DECISION

The Supreme Court reaffirmed the decision of the Rajasthan High Court, underlining that the child's welfare overrides technicalities in law or issues of jurisdiction. The Court enumerated conditions for the wife to follow the original custody order or grant the current custody order in the husband's favor. While noting the imperative of respecting international court orders, the Supreme Court stressed that the interests of the child should take center stage.⁴

ANALYSIS

The Indian Supreme Court has held that a writ of habeas corpus is tenable in disputes relating to custody of children, even if the child is with one of the parents. This principle has been reinforced in cases like *Mrs.Elizabeth Dinshaw vs M.Dinshaw and Anr* and *Nithya Anand Raghavan v. State (NCT of Delhi) & Anr.*, and *Lahari Sakhamuri v. Sobhan Kodali*. In these instances, the courts exercised their extraordinary writ jurisdiction to prioritize the child's best interests. Consequently, any argument against the maintainability of such writs in these contexts has been dismissed.⁵

In *Nithya Anand Raghavan*, the Court noted that while considering a habeas corpus petition relating to a child, the High Court may either direct the return of the child or determine to continue the existing custody regime. This must be done keeping in view the specific facts and circumstances of a case, the welfare of the child is paramount. The Court also emphasized that foreign custody orders are not intended to replace the child's best interests, and that habeas corpus is not to be used simply to enforce foreign court orders. Similarly, in *Kanika Goel v. State of Delhi*, the Court highlighted that in child custody habeas corpus cases, the focus should be on whether it is in the best interests of the child to send them back to their home country. The Court cautioned against treating children as commodities and underscored the necessity of

³ *LahariSakhamuri vs. Sobhan Kodali* [2019] 5 S.C.R. 240

⁴ Case Mine Jan 2020 <https://www.casemine.com/commentary/in/custody-matters-across-jurisdictions:-insights-from-yashita-sahu-v.-state-of-rajasthan-and-others/view>

⁵ *Mrs. Elizabeth Dinshaw vs Arvand M. Dinshaw and Anr* on 11 November 1986

considering the general welfare of the child, including the potential impact of relocating them to a foreign country.

Here, the wife's taking the child to India in violation of a U.S. court order renders her custody of the child illegal on technical grounds. But the Court held that whereas the issues of custody are subject to judicial scrutiny, an adult cannot be ordered by the court to reside in a particular location against his/her will, especially in writ jurisdiction. This distinction between a child's custody and the independence of an adult spouse is relevant in such court cases.

In determining child custody, the best interest of the child is paramount over technical grounds. The courts have to consider both parents' opinions in deciding what is in the best interest of the child.

Kids usually suffer most from custody wars, with parents negatively showing each other, each vying for sole custody rights. The courts must approach such cases with caution, knowing that children, especially young children, need love and care from both parents. It is unjust to deprive a child of the care of either parent due to parental differences. Children are not commodities to be transferred between parents; repeated separation and reunions can be harmful. Hence, courts need to carefully evaluate all aspects before determining custody arrangements. Even if one parent is awarded custody, the other must have sufficient visitation rights so that a child remains attached to both parents. A parent can be denied contact only in exceptional situations, where good reasons are cited. Courts must be clear on the scope of visitation rights in their decisions.

In India, the law of visitation rights is not well established. Sometimes, courts award custody to one parent without considering the other parent's right to visitation. Nevertheless, children are entitled to the love and company of both parents. Courts must make sure that custody orders do not deny children this right. Where the parents reside in the same neighborhood, the non-custodial parent is usually granted weekend visitation. Where they are distant from each other, regular visits will interfere with the child's schooling. Where this is the case, visitation should be done during long weekends, vacations, and holidays. For parents who reside on different continents, every effort should be made to ensure maximum visitation for the non-custodial parent.

Aside from physical visits, 'contact rights' are important, particularly when parents live in separate states or nations. Technology today makes communication possible via phone calls, emails, and video calls. Courts must facilitate the non-custodial parent's ability to communicate

with his or her child regularly, preferably every day for 5-10 minutes. Keeping the parent-child bond intact and making transitions during visits smooth. If a two-parent home is not feasible, the objective must be to give the child the advantage of two loving homes. In the present case, we shall not go into the details of the allegations between the spouses. It is, however, mentioned that the husband does not intend to divorce his wife.

CONCLUSION

The case established that in custody cases, the welfare of the child is paramount, above legal provisions or parental rights. While respect should be given to decisions from other nations, this should never compromise the child's well-being. The ruling emphasized that courts need to consider the child's overall requirements, including their emotions, mental condition, and development. This case brought to light the judiciary's role in ensuring that custody determinations always prioritize what is best for the child.