APHC010260872021

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3479]**
(Special Original Jurisdiction)

THURSDAY, THE TWENTIETH DAY OF JUNE
TWO THOUSAND AND TWENTY FOUR

PRESENT
THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO
THE HONOURABLE SMT JUSTICE SUMATHI JAGADAM

WRIT PETITION NO: 31096/2023

Between:
Srinivas Ramineni, **...PETITIONER**

AND

State of Andhra Pradesh rep. by its Principal Secretary and others. **...RESPODENTS**

The Court made the following:

ORDER: *(Per Hon'ble Sri Justice U. Durga Prasad Rao)*

The petitioner in this Writ of Habeas Corpus prays for declaration of the custody of his minor son Master Gautam Ramineni, aged 4 ½ years with respondents 3 & 4 as illegal and seeks direction to the respondents to produce his son before this court and to give the custody of his son to the petitioner.

2. Shorn of unnecessary details, pithily the petitioner's case is thus:

(a) The 2nd respondent is the wife and respondents 3 & 4 are parents-in-laws of the petitioner. The marriage of the petitioner with the

2nd respondent was performed in December, 2010 at Vijayawada. The petitioner is a citizen of USA, working as software professional. After marriage, both the couple lived in Chicago till July, 2022 and then shifted to Dallas area. The 2nd respondent is also permanent resident of USA with US Green Card. Both the couple blessed with a male child Gautam Ramineni on 25.05.2019 and he is a citizen of USA having USA passport. The boy was admitted in a good school in Dallas area and he stayed in USA till February, 2023.

(b) While so, due to the strained relationship between the petitioner and 2nd respondent, the 2nd respondent came to India in March, 2023 along with her son and went to Rajamahendravaram and staying with her parents i.e., respondents 3 & 4.

(c) Due to irreconcilable differences, the petitioner filed divorce petition in FCOP No.468/2023 in Family Court at Vijayawada in April, 2023 attributing physical and mental cruelty against the 2nd respondent. In retaliation, the 2nd respondent initiated criminal proceedings against him in Disha Police Station, Rajamahendravaram under Sections 498-A, 506 r/w 34 IPC and Sections 3 & 4 of Dowry Prohibition Act in Cr.No.92/2023. She also filed a maintenance case in FCOP No.218/2023 for grant of maintenance and further filed FCOP No.232/2023 seeking Restitution of Conjugal Rights against the petitioner in the Family Court at Rajamahendravaram which are pending. She also filed Tr.C.M.P. No.196/2023 before this High Court for direction to transfer the divorce petition filed by the petitioner to the Family Court at Rajamahendravaram.

(d) Then, the main thrust of the petitioner's pleadings is that the 2nd respondent abandoned his minor son and left for USA in August, 2023. The boy is now with the respondents 3 & 4 who are the residents of Rajamahendravaram. They are elderly citizens and unable to look after the physical and mental health of the boy and particularly his educational requirements. The minor boy could not acclimatize himself to the new environment at Rajamahendravaram where he lost his appetite and severely malnutritioned and he is dripped to underweight due to lack of proper care, attention, nutrition and congenial atmosphere. The boy is living in unhygienic surroundings in a cramped house with a stinking open drain in front of the house which he was not accustomed at all, while he was in USA in a clean, neat and hygienic atmosphere. Further, the atmosphere in the house of respondents 3 & 4 is not conducive for the child to grow as the respondents 3 & 4 besides old, respondent 3 and his son consume alcohol at home creating unhealthy and unfriendly environment for the child. Above all, the emails shared by the 2nd respondent would reveal that the minor boy is being given poor quality of education with the local school at Rajamahendravaram and his health is also not good. On all these pleas, the petitioner sought for direction to the respondents.

3. The respondent No.2 filed counter on behalf of respondents 2 to 4 inter alia contending thus:

(a) She denied all the material averments in the petition. It is further contended that the Writ of Habeas Corpus is not maintainable in

view of the facts involved in the case and instead of filing a guardian application, the petitioner filed the present petition.

(b) The allegation that the 2nd respondent has abandoned her son and went away to USA is not correct. On the other hand, she went to USA for applying and to appear for the citizenship test in USA and returned back.

(c) The allegation that their son now is not in safe and secured atmosphere in the residence of the respondents 3 & 4 and his health is deteriorated due to malnourishment is not correct. They are all baseless allegations. Though the respondents 3 & 4 are old, they are taking every care for their grandson and the contra allegations are incorrect.

(d) The 2nd respondent further contended that, though the petitioner was not taking care of her and her son, for their maintenance, she was waiting with a fond hope that he would take them back and in that process, she updated information by way of e-mail about her son's health which was misinterpreted by the petitioner, as if their son's health was completely deteriorated which is not correct. The boy was only slightly sick at that time, but it was not a serious illness. He is now hale and healthy. The 2nd respondent filed petitions for Restitution of Conjugal Rights and for maintenance, but there is no change in the attitude of the petitioner and he bluntly refused to take them back. All the allegations are false to the core and the petition may be dismissed.

4. Heard arguments of Sri V.V.Satish, learned counsel for petitioner and Sri P.Rajesh Babu, learned counsel for respondents 2 to 4.

5. Learned counsel for petitioner Sri V.V.Satish would argue that the boy was born in USA on 25.05.2019 when the petitioner and 2nd respondent were working at USA, he is a citizen of USA and he was also brought up in USA for about 4 ½ years and admitted in a school at Dallas. Referring to these facts, learned counsel would submit that the boy was thus physically and mentally accustomed to the conditions in USA. However, when the 2nd respondent came to Indian in March, 2023, she brought back the boy with her to Rajamahendravaram due to some matrimonial disputes and since then she kept the boy with respondents 3 & 4 who are her parents. Learned counsel would submit that since the boy was abruptly and forcibly extracted from USA and planted in Indian conditions, he could not acclimatize to Indian atmosphere both physically and mentally. Respondents 2 to 4 admitted him in a normal school where there are no facilities for the boy to develop his intellectual faculties. He submitted that the petitioner resides in USA and being the father, he will provide all the comforts for the safe growth of the boy. Therefore, considering the welfare of the boy, his custody may be granted to the petitioner. He placed reliance on **Nilanjan Bhattacharya v. State of Karnataka and others**[1] to argue that when a child is removed from his native country to India, it would be in the best interest of the child to return the child to his native country if the child has not developed roots in India.

[1] (2021) 12 SCC 376

6. Per contra, learned counsel for respondents 2 to 4 Sri P.Rajesh Babu while admitting that the boy was born at USA in 2019 while the couple were residing there and that due to the matrimonial bickerings between the parties, he was brought back to India along with mother, would however submit that all cares were taken for the growth of the boy as he was admitted in a good school at Rajamahendravaram and the 2nd respondent as well as respondents 3 & 4 are taking care for him. Learned counsel would further submit that the 2nd respondent did not abandon the boy with respondents 3 & 4 and left for USA as alleged by the petitioner and on the other hand, she went to USA for attending citizenship test and she came back to Rajamahendravaram in the last week of March, 2024 and eversince, she has been personally taking care of the boy. Since, she is the mother and natural guardian of minor boy, the petitioner cannot contend that she either neglected, or failed to look after the welfare of the boy. Learned counsel submitted that the welfare of the children shall be paramount interest of the court and since the welfare and interest of the minor boy is protected under the guardianship of mother, the petition is liable to be dismissed. He placed reliance on **Rajeswari Chandrasekar Ganesh v. State of Tamil Nadu and others**[2]

7. The points for consideration are:

(I) Whether the minor boy Gautam Ramineni is in the illegal custody of respondents 2 to 4? If not, what other legal parameters have to be considered by the court to entertain the writ of habeas corpus?
(II) To what relief?

[2] 2022 (10) Scale 163

8. **Points I & II**: The scope and amplitude of writ of habeas corpus filed seeking child custody due to the increased matrimonial wranglings among the Indian as well as NRI couples, sometimes obtaining orders in foreign courts and returning India and continuing their matrimonial litigation in Indian courts for different reliefs, including custody of children by way of writ of habeas corpus, is no more *res integra.* The instant case is one such dispute with slight difference that neither couple obtained orders, interim or final in the foreign court in USA relating to their disputes. Rather, all their matrimonial disputes including the instant petition are pending before different courts in our country.

9. In **Rajeswari Chandrasekar Ganesh's case** (supra 2) the Apex Court was dealing with one such case where after passing of orders by foreign court relating to the child custody, allegedly the husband brought back the minor children to India and the wife filed habeas corpus petition seeking their custody. In that context, a Division Bench of Hon'ble Apex Court speaking through Hon'ble Justice J.B.Pardiwala discussed the different laws governing the custody of minor children. It was observed thus:

> "PRINCIPLES OF LAW GOVERNING THE RIGHTS OF THE PARTIES:
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> 71. The Guardians and Wards Act, 1890, was primarily enacted to consolidate the various Acts then in force keeping in view the personal law of diverse communities in India. It, however, did not encroach upon the jurisdiction of the Courts of Wards and did not take away any powers vested in the High Courts or the Supreme Court. xxxx

72. The Hindu Minority and Guardianship Act, 1956 was enacted as a law complementary to the Guardians and Wards Act, 1890. This defines a 'minor' to be a person who has not completed the age of eighteen years. 'Guardian' has been defined as a person having the care of the person of a minor or of his property or of both his person and property and includes - (i) a natural guardian, (ii) a guardian appointed by the will of the minor's father or mother, (iii) a guardian appointed or declared by a Court, and (vi) a person empowered to act as such by or under any enactment relating to any court of wards. 'Natural guardian', according to this Act, means any of the guardians mentioned in Section 6. Section 6 says that the natural guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in the joint family property) are - (a) in the case of a boy or an unmarried girl, the father, and after him, the mother, provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother. xxxxxxxx. Indeed Subsection (2) of Section 13 lays down that no person shall be entitled to the guardianship by virtue of the provisions of the 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. This Section is complementary to Section 17 of the Guardians and Wards Act, 1890 which lays down that in appointing or declaring the guardian of a minor the Court shall be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor (emphasis supplied).

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WRIT OF HABEAS CORPUS:

75. In a petition seeking a writ of Habeas Corpus in a matter relating to a claim for custody of a child, the principal issue which should be taken into consideration is as to whether from the facts of the case, it can be stated that the custody of the child is illegal.

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80. The object and scope of a writ of Habeas Corpus in the context of a claim relating to the custody of a minor child fell for the consideration of this Court in Nithya Anand Raghavan (supra) and it was held that the principal duty of the court in such matters should be to ascertain whether the custody of the child is unlawful and illegal and whether the welfare of the child requires that his present custody should be changed and the child be handed over to the care and custody of any other person.

81. Taking a similar view in the case of Syed Saleemuddin v. Dr. Rukhsana and Ors. MANU/SC/0278/2001 : (2001) 5 SCC 247, it was held by this Court that in a Habeas Corpus petition seeking transfer of custody of a child from one parent to the other, the principal consideration for the court would be to ascertain whether the custody of the child can be said to be unlawful or illegal and whether the welfare of the child requires that the present custody should be changed. It was stated thus:

> 11. ...it is clear that in an application seeking a writ of Habeas Corpus for custody of minor children the principal consideration for the Court is to ascertain whether the custody of the children can be said to be unlawful or illegal and whether the welfare of the children requires that present custody should be changed and the children should be left in care and custody of somebody else. The principle is well settled that in a matter of custody of a child the welfare of the child is of paramount consideration for the court...

82. The question of maintainability of a Habeas Corpus petition Under Article 226 of the Constitution of India for the custody of a minor was examined by this Court in Tejaswini Gaud and Ors. v. Shekhar Jagdish Prasad Tewari and Ors. MANU/SC/0692/2019 : (2019) 7 SCC 42, and it was held that the petition would be maintainable where the detention by parents or others is found to be illegal and without any authority of law and the extraordinary remedy of a prerogative writ of Habeas Corpus can be availed in exceptional cases where the ordinary remedy provided by the law is either unavailable or ineffective. xxxx

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91. Thus, it is well established that in issuing the writ of Habeas Corpus in the case of minors, the jurisdiction which the Court exercises is an inherent jurisdiction as distinct from a statutory jurisdiction conferred by any particular provision in any special statute. In other words, the employment of the writ of Habeas Corpus in child custody cases is not pursuant to, but independent of any statute. The jurisdiction exercised by the court rests in such cases on its inherent equitable powers and exerts the force of the State, as parens patriae, for the protection of its minor ward, and the very nature and scope of the inquiry and the result sought to be accomplished call for the exercise of the jurisdiction of a court of equity. The primary object of a Habeas Corpus petition, as applied to minor children, is to determine in whose custody the best interests of the child will probably be advanced. In a Habeas Corpus proceeding brought by one parent against the other for the

> custody of their child, the court has before it the question of the rights of the parties as between themselves, and also has before it, if presented by the pleadings and the evidence, the question of the interest which the State, as *parens patriae*, has in promoting the best interests of the child (emphasis supplied).

10. Then, applying the above law to the facts of the case and holding that the welfare of the minor children would be better served in USA, the Apex Court directed the 2nd respondent therein to go back to USA at the earliest with both the minor children and abide by the shared parenting plan as ordered by the foreign court at Ohio and issued some other consequential directions.

11. In **Nilanjan Bhattacharya's case** (supra 1) cited by the petitioner, the Supreme Court was engaged with similar case. Facts briefly are, the couple married in the year 2012 and moved to USA in April, 2015 and both of them were employed in different places and in March, 2019 the 2nd respondent/wife planned to travel to India for a short period with the minor son aged about 3 ½ years and accordingly returned to India. The efforts of the appellant to persuade the 2nd respondent to return to the USA could not fructify. Hence, the appellant filed a custody petition before the Superior Court in New Jersey, Hudson County, Chancery Division-Family Part. The court on 21.05.2019 granted temporary custody of the child to the appellant. Added to it, the appellant also filed divorce application dated 06.06.2019 before the court in New Jersey. However the 2nd respondent did not give custody of the minor son. So on 10.07.2019 the appellant filed habeas corpus petition before the High Court of

Karnataka and by its judgment dated 07.04.2020 the Division Bench allowed the petition with certain conditions. Aggrieved by the contentions, the appellant moved to Supreme Court. In that process the Apex Court considered several judgments on the aspect of the effect of the judgment of the foreign court and as well as the scope of habeas corpus in child custody cases and noted:

> "10. In Nithya Anand Raghvan v. State (NCT of Delhi) MANU/SC/0762/2017 : (2017) 8 SCC 454, a three judge Bench of this Court, noted that India is not a signatory to the Hague Convention of 1980 on "Civil Aspects of International Child Abduction", which aims to prevent parents from abducting children across borders. With respect to the law applicable to the non-Convention countries, this Court observed:
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> > 40.... As regards the non-Convention countries, the law is that the court in the country to which the child has been removed must consider the question on merits bearing the welfare of the child as of paramount importance and reckon the order of the foreign court as only a factor to be taken into consideration, unless the court thinks it fit to exercise the summary jurisdiction in the interests of the child and its prompt return for its welfare.
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> This Court observed that in cases where the child is brought to India from a foreign country, which is their native country, the Court may undertake a summary inquiry or an elaborate inquiry. The Court exercises its summary jurisdiction if the proceedings have been instituted immediately after the removal of the child from their state of origin and the child has not gained roots in India. In such cases, it would be beneficial for the child to return to the native state because of the differences in language and social customs. The Court is not required to conduct an elaborate inquiry into the merits of the case to ascertain the paramount welfare of the child, leaving such inquiry to the foreign court. However, this Court clarified that:

> 40...In either situation-be it a summary inquiry or an elaborate inquiry-the welfare of the child is of paramount consideration (emphasis supplied).

While discussing the powers of the High Court in issuing a writ of habeas corpus in relation to the custody of a minor child, this Court further observed:

> 46... Once again, we may hasten to add that the decision of the court, in each case, must depend on the totality of the facts and circumstances of the case brought before it whilst considering the welfare of the child which is of paramount consideration. The order of the foreign court must yield to the welfare of the child. Further, the remedy of writ of habeas corpus cannot be used for mere enforcement of the directions given by the foreign court against a person within its jurisdiction and convert that jurisdiction into that of execution court.

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12. Where a child has been removed from their native country to India, this Court has held that it would be in the best interests of the child to return to their native country if the child has not developed roots in India and no harm would be caused to the child on such return. In V. Ravi Chandran v. Union of India MANU/SC/1826/2009 : (2010) 1 SCC 174, this Court observed:

> 32. Admittedly, Adithya is an American citizen, born and brought up in the United States of America. He has spent his initial years there. The natural habitat of Adithya is in the United States of America. As a matter of fact, keeping in view the welfare and happiness of the child and in his best interests, the parties have obtained a series of consent orders concerning his custody/parenting rights, maintenance, etc. from the competent courts of jurisdiction in America.
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> 35... There is nothing on record which may even suggest that it would be harmful for the child to be returned to his native country.

> 36. It is true that the child Adithya has been India for almost two years since he was removed by the mother-Respondent 6 - contrary to the custody orders of the US court passed by the consent of the parties. It is also true that one of the factors to be kept in mind in exercise of the summary jurisdiction in the interest of the child is that application for custody/return of the child is made promptly and quickly after the child has been removed. This is so because any delay may result in the child developing roots in the country to which he has been removed. From the counter-affidavit that been filed by Respondent 6, it is apparent that in the last two years Adhitya did not have education at one place. He has moved from one school to another. He was admitted in a school at Dehradun by Respondent 6 but then removed within a few months and the child has been admitted in some school in Chennai.
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> 37...In these circumstances, there has been no occasion for the child developing roots in this country."

Applying the above law to the case on hand, Hon'ble Apex Court set aside the conditions in clauses A & B in para 18 of the judgment of the High Court and ultimately allowed the appellant to take the minor boy to USA in the interest of welfare of the minor child.

12. With the above jurisprudence, when the case on hand is scrutinized, the facts would show that the marriage of the petitioner with 2nd respondent was held in December, 2010 at Vijayawada by which time the petitioner was a citizen of USA working as software professional; after marriage the couple lived in USA; the 2nd respondent is also a permanent resident of USA with US Green Card; both couple begot a son Gautam Ramineni on 25.05.2019 and by virtue of his birth he was a native citizen of USA and having USA passport; the boy was

admitted in a school in Dallas and he studied in USA till February, 2023 and subsequently due to matrimonial disputes, the 2nd respondent brought the boy to India to her parents i.e., respondents 3 & 4 at Rajamahendravaram in March, 2023 and admitted in a school there; due to change in climate conditions and also hygienic conditions, the boy now and then suffered health problems; the education facilities in Rajamahendravaram are far lower than in USA and it will not be conducive for the full growth of the boy.

(a) The above facts cannot be denied though the respondents for argument may contradict them. Be that as it may, the respondents claim that the 2nd respondent is the mother of the boy and hence she is a natural guardian and she did not bring back the boy to India forcibly and the custody of the boy with the mother and grandparents cannot be termed as illegal custody and hence habeas corpus is not maintainable.

13. We have given our thoughtful consideration to all the aspects. As has been held by Apex Court, more than the rights of the parents, the custody of the child in the hands of one of the parents being not illegal, the apparent consideration for the court will be the welfare of the child. The court has to make a scrupulous enquiry as to with whose hands the minor's welfare will be safe and his alround welfare will be served. Above all, in cases of dislocation of minors from a foreign country to India, the judgments are in the line that whenever children have been removed from their native country to India, the Court shall, in the best interest of the child, order for the return of the child to his native country

if the child has not developed roots in India and no harm would be caused to the child on such return. In the instant case, the boy Gautam Ramineni was born in America and he was a native citizen over there and he was studying in Dallas till February, 2023 and at that juncture, in March, 2023, the 2nd respondent brought her son to India and of course admitted in a local school at Rajamahendravaram. Therefore, it is needless to emphasize that the boy was born and brought up for considerable period and he adapted to the foreign conditions rather than acclimatizing to Indian conditions. Admittedly, he was suffering with health problems now and then though not of serious nature. So taking the welfare of the minor child i.e., his education, health and future, it appears to us that the minor boy's welfare will be best served in the hands of the petitioner if the custody is given to him and if he is allowed to take the boy to USA and admit him in a good school and look after his education and other welfare activities. Of course, any direction in these lines can be given by us without forgetting the fact that divorce O.P. filed by the petitioner in FCOP No.468/2023 is pending before the Family Court in Vijayawada. In case, divorce were to be granted by the said court, we are sure, the custody of the minor child will also be enquired into and decided by the said court ultimately. In contrast, if divorce is not granted by the court to the petitioner, our order shall continue and ofcourse suitable accommodation has to be made for the 2nd respondent being the mother of the minor boy to see her son and spend with him sometime.

14. Considering all these aspects, this habeas corpus petition is allowed and ordered as follows:

(i) This writ petition is allowed with a direction to respondents 2 to 4 to hand over the custody of the minor Gautam Ramineni to the petitioner within three weeks from today. The petitioner is permitted to take the minor boy along with him to USA and to look after the alround welfare of the minor boy, by admitting him in a good school.

(ii) On every Sunday, the petitioner shall accommodate the 2nd respondent to interact with her minor son through internet atleast for one hour and the parties shall mutually decide the time suitable for them for this purpose.

(iii) The above directions are subject to the result in divorce petition in FCOP No.468/2023 pending on the file of the Family Court, Vijayawada. The parties during trial are at liberty to give evidence on the aspect of the custody of the minor son and the trial court shall, if ultimately grants divorce, also decide the aspect of the custody of the minor boy. Having regard to the facts and circumstances involved, we direct the trial court (whether it be the Family Court at Vijayawada or transferee court) to decide the divorce petition and other related petitions if any expeditiously but not later than one year from the date of receipt of a copy of this order.

(iv) Till disposal of the divorce OP, the petitioner shall arrange for visit of 2nd respondent to his place of residence in USA once in every six months to see her son and spend for one week and petitioner shall

bear the travelling and all other incidental expenses. No costs in the writ petition.

As a sequel, interlocutory applications pending if any in this writ petition shall stand closed.

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U.DURGA PRASAD RAO, J

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SUMATHI JAGADAM, J

Dated: 20.06.2024
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THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO
THE HONOURABLE SMT JUSTICE SUMATHI JAGADAM

WRIT PETITION NO: 31096/2023

20.06.2024

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