



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 12.03.2026
Pronounced on: 01.04.2026

+ W.P.(CRL) 2049/2022 & CRL.M.A. 17762/2022, CRL.M.A. 21553/2022, CRL.M.A. 8060/2023, CRL.M.A. 12478/2023

.....Petitioner
Through: Mr.Jai Anant Dehadrai,
Ms.Srutee Priyadarshini,
Ms.Bhavya Jain, Advocates

versus

UNION OF INDIA & ANR.Respondents
Through: Mr.Shadan Farasat, Sr. Adv.
with Mr.Arkaprava Dass, Adv.
for R-2.

+ W.P.(CRL) 3029/2024 & CRL.M.A. 29390/2024

.....Petitioner
Through: Mr.Shadan Farasat, Sr. Adv.
with Mr.Arkaprava Dass, Adv.

versus

STATE OF NCT OF DELHI & ANR.Respondents
Through: Mr.Sanjay Lao, Standing
Counsel (Crl.) for the State with
SI Sandeep, P.S. Bindapur.
Mr.Jai Anant Dehadrai,
Ms.Srutee Priyadarshini,
Ms.Bhavya Jain, Advocates for
R-2.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MR. JUSTICE RAVINDER DUDEJA



J U D G M E N T

NAVIN CHAWLA, J.

1. As the present petitions concern the custody of the minor daughter- Ms.XXX of the private parties referred to as AK (mother) and PD (father), they are, therefore, being disposed of together by this common judgment.

2. W.P.(Crl.) 2049/2022 has been filed by AK, the mother of the minor child alleging therein that AK and PD had married each other on 24.08.2011. Their marriage got registered on 07.09.2011. She alleges various acts of sexual and physical violence against her by PD. From the wedlock, Ms.XXX was born on 30.03.2015 in Pennsylvania, United States of America (USA), and is therefore, a citizen of the USA by birth. AK claims that in April 2017, she had reason to suspect that PD had sexually abused Ms.XXX during her second birthday celebrations. She alleges that she was thereafter witness to other acts of sexual assaults by PD on Ms. XXX. While being in United States, on 18.09.2017, alleging physical assaults, AK had called the police by dialing 911 and also reported the incidents of sexual assault by PD on Ms.XXX. PD was arrested and a Protection Order dated 19.09.2017 was passed.

3. PD filed a case of divorce before the Superior Court, Judicial District of New Haven (hereinafter referred to as “Superior Court”) on 30.04.2019, wherein, by an order dated 06.05.2022, while granting divorce to AK and PD, the Superior Court also passed a direction of joint-parenting of Ms.XXX as under:



seeks retroactive alimony, that request is denied.

9. The plaintiff/husband shall maintain life insurance in the amount of \$100,000 naming the defendant/wife as irrevocable beneficiary for as long as the husband is subject to an alimony or child support obligation.

Xxxx”

4. AK claims that her father was unwell because of which she had to urgently travel to India on 09.06.2022 alongwith Ms.XXX. She claims to have informed PD of the same by way of an email dated 11.06.2022.

5. AK claims that in retaliation, PD again approached the Superior Court and by an order dated 13.07.2022, the order dated 06.05.2022 was modified with the following directions:

“1. The Father shall have sole legal and physical custody of the minor child, born on 03/30/2015. Within 48 hours of this order, the Mother shall return the minor child to the Father or to a member of his family designated by him. The court is requesting that local authorities in India assist the Father in taking custody of the child by himself or by way of a member of his family designated by him.

2. The Mother shall have supervised parenting time with the minor child upon her return to the State of Connecticut.

3. The Father's child support obligation to the Mother is terminated.

4. The Mother shall immediately return the minor child's passport to either the father's attorney, Daniel W. Adelman, or the minor child's Guardian ad Litem, Attorney Aisha



Roche, or to anyone designated by Attorney Adelman or Attorney Roche.

Judicial Notice (JDNO) was sent regarding this order.”

6. Aggrieved of the same, AK filed W.P.(Crl.) 2049/2022 praying for the following reliefs:

“A. ISSUE a Writ of Mandamus for an Order of protection for the Petitioner and her daughter against the Decision of the Superior Court of New Haven, Connecticut, United States of America dated 06.05.2022 and Order 414024 dated 13.07.2022 of the Superior Court of New Haven, Connecticut.”

7. This Court by an *ad interim* order dated 13.09.2022, stayed the operation of the order dated 13.07.2022 passed by the Superior Court.

8. Various applications were thereafter filed by the parties in the above writ petition, including Crl. M.A. No. 2007/2024 by PD seeking vacation of the *ad interim* order of stay. The said application was filed only on or about 13.01.2024.

9. A learned Single Judge of this Court disposed of the said application of PD, that is, Crl. M.A. No. 2007/2024, *vide* the Order dated 23.12.2024, *inter alia* observing as under:

“17. Thus, perusal of this makes it clear that the Court while dealing with such petition is duty bound to consider the welfare of the child as of paramount interest and foreign court orders are considered as factors but are not conclusive In the present case, it cannot be said that the child as has been divorced from the social customs or subjected to a system which could physiologically disturb the child. It is also to be taken into account that the



(NCT of Delhi)& Anr., (2017) 8 SCC 454, and *Nirmala v. Kulwant Singh & Ors.*, (2024) 10 SCC 595.

SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR PD

16. On the other hand, Mr. Shadan Farasat, the learned senior counsel appearing for PD, submits that the Superior Court, on consideration of the evidence led by the parties before it, had found no merit in the allegations of sexual assaults made by AK against PD. In fact, it found that AK had been tutoring the minor child against PD. The Superior Court, on holistic consideration of the evidence, had directed a joint parenting plan which was subject to further modifications with the passage of time. He submits that AK, instead of complying with the same, on a false pretext, illegally removed the child, Ms.XXX from the jurisdiction of the Competent Court at Connecticut and brought her to India without the permission of the Court or PD. It was in these circumstances that PD was forced to move an application before the Superior Court seeking an emergency order of custody of Ms.XXX. Again, after considering the entire facts and substantial change in circumstances, the Superior Court was pleased to pass the order dated 13.07.2022. He submits that in these facts, the petition filed by AK is liable to be dismissed while that filed by PD is entitled to be allowed.

17. Without prejudice to his submissions, he contends that PD is, even now, willing to abide by the order dated 06.05.2022 passed by



the Superior Court and with any other directions that this Court may pass in exercise of its jurisdiction under Article 226 of the Constitution of India.

18. In support of his submission that the child having been wrongfully removed from the jurisdiction of the competent court which has passed orders for custody of the minor, a Writ of Habeas Corpus directing the child to be taken back from where she was unlawfully removed is maintainable, he places reliance on the judgment of the Supreme Court in *Elizabeth Dinshaw (Mrs.) v. Arvand M. Dinshaw & Anr.*, (1987) 1 SCC 42, and of this Court in *Sunaina Rao Kommineni v. Abhiram Balusu*, 2025:DHC:4483-DB, as upheld by the Supreme Court *vide* order dated 22.09.2025 passed in SLP(Crl.) No. 8800/2025, titled *Sunaina Rao Kommineni v. Abhiram Balusu*.

ANALYSIS AND FINDINGS

19. We have considered the submissions made by the learned counsels for the parties.

20. Way back, in the year 1987, the Supreme Court in *Elizabeth Dinshaw* (supra) had highlighted the complexities that arise when one of the warring parents unauthorisedly removes the child from one country to another. Since then, the Supreme Court has considered this issue on a numerous occasions.

21. In *Tejaswini Gaud & Ors. v. Shekhar Jagdish Prasad Tewari & Ors.*, (2019) 7 SCC 42, examining the maintainability of a petition



if the child is in the custody of another parent. It held that when a child is removed by one parent from one country to another, especially in violation of the orders passed by a Court, the country to which the child is removed, must consider the question of custody and decide whether the Court should conduct an elaborate inquiry on the question of the child's custody or deal with the matter summarily, ordering the parent to return the custody of the child to the jurisdiction from which the child was removed and all aspects relating to the child's welfare be investigated in a Court in his/her own country. The Court reiterated that in such matters of custody of a child, the primary and paramount consideration is the welfare of the child. While deciding the welfare of the child, it is not the view of one spouse alone which has to be taken into consideration; the Court must decide the welfare of the child keeping in view a host of circumstances, like the age of the child, the nationality of the child, the facilities of education, social security, and other welfare indicators.

24. In *Nirmala* (supra), the Supreme Court reiterated that there can be no hard and fast rule laid down insofar as the maintainability of a Habeas Corpus petition in matters of custody of minor child is concerned. The Court should exercise its extra ordinary jurisdiction under Article 226 of the Constitution of India or refuse to exercise the same depending upon the facts of each case.

25. Therefore, from the above, it is evident that the jurisdiction of the Court under Article 226 of the Constitution of India being discretionary, the exercise of the same or refusal to exercise the same



is guided by the well-settled principles, wherein the Court while giving adequate importance, acknowledgment and respect to the orders passed by the Courts of competent jurisdiction *albeit* of a foreign country, at the same time, gives paramountcy to the welfare of the child. In this regard, the Court also considers whether the custody of the child with the person having it, can be termed as illegal. The jurisdiction being summary in nature, where complex question of facts need to be determined or addressed on the basis of evidence, the Court is generally restricted in entertaining a Writ Petition and is more open to leave the parties to avail of their remedies under the general law.

26. Applying the above standard to the facts of the present case, we find that act of AK bringing Ms.XXX to India having suffered the order dated 06.05.2022 passed by the Superior Court cannot be termed as *bona fide*. The order passed by the Superior Court is on appreciation of the evidence led before it. If AK had any grievance against the same, she should have availed of her remedies there-against. The Writ Petition challenging the judgment of a foreign court may even otherwise not be maintainable.

27. In normal circumstances, therefore, we would have dismissed the Writ Petition filed by AK as being not maintainable, while allowing the Writ Petition filed by PD, however, for the reason that we shall hereinafter discuss, we refrain to do so.

28. As noted hereinabove, on the Writ Petition filed by AK, this Court had passed *ad interim* order dated 13.09.2022 staying the operation of the order dated 13.07.2022 passed by the Superior Court.



It is only on or about 13.01.2024 that PD filed the application seeking vacation of the said order by way of Crl.M.A.2007/2024. Furthermore, W.P. (Crl.) 3029/2024 praying for a writ of Habeas Corpus was filed by PD only on 26.09.2024. In the meantime, the child has remained in India, undertaking her education here. She is now about 11 years old.

29. We are also informed that both parents, that is, AK and PD are Indian Citizens and have not yet acquired American citizenship. While PD has permission to work in USA, AK does not have such permission. Therefore, directing the girl child to be taken back to USA will also mean forcing AK to travel back to USA along with the child, without having any assurance as to how long she can stay there.

30. Though the Superior Court has not found merit in the allegations of sexual assault made by AK against PD, the said order can only have a persuasive effect. As far as the allegations of domestic violence by PD against AK are concerned, even the Superior Court had found against PD on this account.

31. These are only some of the circumstances which the competent Court would have to take into consideration while determining the welfare of the child.

32. Merely because the child by birth is a citizen of USA or had stayed there for a few years as her parents were there, cannot alone be the determinative factor for determining the welfare of the child. Similarly, the order of the Superior Court, though entitled to all due respect, cannot be the sole determinative factor for determining the

