



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS. OF 2026
(@ SPECIAL LEAVE PETITION (CIVIL) NOS.18701-18702 OF 2024)

[REDACTED]

...APPELLANT(S)

VERSUS

[REDACTED]

...RESPONDENT(S)

J U D G E M E N T

NONGMEIKAPAM KOTISWAR SINGH, J.

“There can be no keener revelation of a society’s soul than the way in which it treats its children”

- ***Nelson Mandela***

Leave granted

2. The present civil appeal arising out of Special Leave Petition (Civil) 18701-18702, filed by the mother of the child now about 10 years, is directed against (i) the order dated 27.04.2023, passed by the High Court of Judicature at Bombay in I.A. No. 4119/2023 in Writ Petition No. 7315/2022, modifying its earlier direction for appointment of a single independent expert by

substituting the expression “expert” with “panel of experts”; and (ii) the subsequent interim order dated 07.12.2023, passed in Writ Petition No. 7560/2023, whereby the High Court itself constituted a four-member panel of experts, including professionals suggested by the father and experts situated outside Jalgaon and even outside India, to evaluate the minor child for purposes of facilitating reconnection with the Respondent-father.

3. The controversy before this Court lies at the intersection of two competing concerns. On one hand stands the claim of a parent seeking restoration of access and reconnection with the child; on the other stands the obligation of constitutional courts to ensure that a child who is already in a fractured family because of the discord and temporary separation of the parents, is also allegedly a victim of sexual abuse by her own father, is not subjected to processes which may aggravate the trauma and compromise emotional recovery of the child. The issue, therefore, is not merely one concerning custody or visitation rights, but concerns the manner in which the justice delivery system must respond to and engage with a child victim while balancing welfare, dignity, psychological safety and procedural fairness.

BACKGROUND FACTS:

4. Before adverting to the legality and correctness of the impugned orders passed by the High Court, it would be apposite to briefly recapitulate the factual background giving rise to the present proceedings.

5. The marriage between the Appellant – wife and the Respondent – husband was solemnized on 10.02.2015 at Faridabad, Haryana according to Hindu rites and ceremonies. The marriage was thereafter registered on 30.05.2015 at Faridabad after which they moved to the United States of America. Out of the wedlock, a daughter, hereinafter referred to as “the minor child”, was born on 24.06.2016 in New Jersey, USA.

6. It is the case of the Appellant that during the period 2018–2019, while the parties were residing in the USA, the Respondent subjected the Appellant to physical abuse and the minor child to sexual abuse. It has been alleged that the minor child when she was about 2 (two) years was subjected to sexual abuse by her father -Respondent. According to the Appellant, following an incident of domestic assault which occurred on 29.12.2019, proceedings came to be initiated before the New Jersey Police

authorities against the Respondent. Apprehending danger to her life and safety, the Appellant returned to India on 30.12.2019 along with the minor child.

Thereafter, after returning to India, the Appellant served a notice to the Respondent on 18.01.2020 seeking divorce by mutual consent and seeking Rs.2.77 crores as part of the settlement.

7. Thereafter, disputes arose between the Appellant and the Respondent concerning custody and access to the minor child. On 05.06.2020, the Respondent instituted a writ petition, Writ Petition (Civil) No.479 of 2020 before this Court seeking issuance of a writ of Habeas Corpus for custody of the minor child. The said proceedings, however, came to be dismissed as withdrawn on 20.07.2020 with liberty given to the Respondent to avail appropriate remedies. Thereafter, the Respondent filed a Habeas Corpus petition, being Civil WP No.92 of 2021 before the Bombay High Court and the High Court by subsequent orders dated 03.09.2020 and 10.09.2020 directed limited access to the Respondent through video conferencing for interacting with the minor child. While filing her response to the said writ petition, the Appellant also raised the issue of sexual abuse allegedly

perpetrated by the Respondent on the child. A complaint in that regard was also filed by the Appellant against the Respondent on 24.10.2020 with the Yerwada Police Station, Pune.

8. In the meanwhile, on 07.11.2020, the Appellant instituted proceedings under Sections 12 and 17 to 23 of the Protection of Women from Domestic Violence Act, 2005 (DV Act), before the Judicial Magistrate First Class, Pune by filing Criminal M.A. No.3266 of 2020. Subsequently, on 04.12.2020, the Appellant also instituted proceedings seeking dissolution of marriage under Section 13(1)(ia)(ib) of the Hindu Marriage Act, 1955.

9. On 10.02.2021, the Family Court directed continuation of custody of the minor child with the Appellant. The Family Court further directed the Respondent to cooperate with the Appellant in obtaining the visa/OCI documentation of the minor child to facilitate the continued stay of the child in India.

10. The said Writ Petition (Crl.) 92/2021 was disposed of by the High Court, vide its order dated 08.06.2021, by granting limited video access to the Respondent for a period of three months.

11. On 12.04.2021, pursuant to the complaint lodged by the Appellant, a Zero FIR No.0210 of 2021 came to be registered at

Yerwada Police Station, Pune against the Respondent under Sections 376, 376(2)(n), 323, 504 and 506 IPC and Sections 4, 5(l), 5(n) and 6 of the POCSO Act. Thereafter, on 22.05.2021, another FIR being FIR No.315 of 2021 came to be registered at Faridabad Police Station, Haryana under the same provisions of law.

12. On 31.08.2021, the Appellant instituted a writ petition, Writ Petition (Criminal) No.375 of 2021 before this Court seeking transfer and clubbing of the aforesaid two FIRs. This Court, by order dated 21.02.2022, directed that investigation in both the FIRs be conducted at Yerwada Police Station, Pune under the supervision of a woman ACP officer.

13. In the meanwhile, on 21.06.2021, the Respondent moved an application before the Family Court, Pune seeking one-hour virtual access to the child on her birthday i.e. 24.06.2021. The Family Court, by order dated 23.06.2021, rejected the said application while granting liberty to the Respondent to apply afresh after a period of six months if circumstances so warranted.

14. Thereafter, on 24.09.2021, the Respondent again approached the learned Family Court seeking interim custody and virtual access to the child. Subsequently, on 13.12.2021,

another application under Section 151 of the Code of Civil Procedure, 1908 (CPC) came to be filed by the Respondent claiming change in circumstances and seeking visitation rights.

15. During the pendency of Writ Petition (Criminal) No.375 of 2021 before this Court, the Respondent moved an application inter alia seeking visitation rights and appointment of an expert to interact with the parties and evaluate the circumstances concerning the child. This Court, however, declined the reliefs prayed for and granted liberty to the Respondent to approach the appropriate forum.

16. Pursuant thereto, on 10.03.2022, the Respondent filed an Application (Exh.45) under Section 151 CPC before the Family Court, Pune seeking a direction to *“Appoint an independent Psychiatric expert specializing in Child Psychology to evaluate the Applicant’s daughter, her current living situation and both parents towards reestablishing connection of the Applicant with his daughter”*.

17. The Appellant filed detailed objections to the aforesaid application contending, *inter alia*, that:

- (i) the Respondent was facing serious charges under the POCSO Act involving the minor child;

(ii) the child was already undergoing therapeutic sessions with Dr. Mridula Apte, an experienced therapist and clinical psychologist;

(iii) subjecting the child to further psychiatric evaluation would adversely affect the mental well-being of the child; and

(iv) the statutory framework of the POCSO Act contemplated insulation of the child victim from further exposure to the accused.

18. The Family Court, Pune, by a detailed order dated 28.04.2022, rejected the Respondent's application seeking appointment of an independent psychiatric expert. The Family Court observed, inter alia, that:

(i) conditions have not improved between the parties, the Appellant and the Respondent and there is no indication that there is possibility of such improvement in near future.

(ii) serious allegations under the POCSO Act had been levelled against the Respondent;

(iii) exposing the child to the Respondent would be hazardous;

(iv) there was no change in circumstances warranting reconsideration of access;

(v) the child was already undergoing therapeutic treatment under Dr. Mridula Apte; and

(vi) until conclusion of the POCSO proceedings, it would not be appropriate to permit access even indirectly through the process of psychiatric evaluation.

The Family Court, accordingly, held that there is no need of an independent child psychiatrist to assess the situation of the child only for visitation at this stage.

19. Aggrieved thereby, the Respondent instituted Writ Petition No.7315 of 2022 before the High Court of Judicature at Bombay challenging the aforesaid order of the Family Court rejecting his plea for appointment of an independent child psychiatrist.

20. The High Court, by judgment and order dated 07.01.2023, while not substantially interfering with the order of the Family Court, partly allowed the writ petition and held that the adverse report of Psychologist Dr. Mridula Apte appointed by the Appellant would not denude the court of its power to appoint an independent expert to evaluate the child in the context of right of custody involved between the parties.

The High Court also observed that the apprehension expressed by the Family Court regarding exposure of the child to the Respondent accused was misplaced, since mere evaluation by an expert did not necessarily entail direct contact between the

child and the Respondent-father and the Family Court can consider the request of the Respondent for custody at an appropriate stage on consideration of relevant materials that may be placed before the Court.

21. Consequently, the High Court vide order dated 07.01.2023 directed the Family Court to appoint an independent expert specialized in child psychology at Jalgaon, preferably from the panel of experts maintained at District Court, Jalgaon, or any other independent child psychologist or medical expert in that field at the discretion of the Family Court.

It was also directed that the independent expert appointed by the Family Court would be at liberty, if considered necessary, to hold meeting with husband and wife and both of them shall cooperate with such expert.

These directions were issued in terms of the relief claimed by the Respondent before the Family Court as reproduced in para 16 above.

22. The Respondent thereafter instituted Special Leave Petition (Civil) No.2996 of 2023 before this Court challenging the aforesaid judgment dated 07.01.2023 passed by the High Court. This Court, by order dated 17.02.2023, declined to interfere with

the order passed by the High Court but granted liberty to the Respondent to move an application before the High Court regarding suggestion of experts for implementation of the directions contained in the order dated 07.01.2023 of the High Court.

23. Thereafter, in April 2023, the Respondent filed I.A. No.4119 of 2023 in Writ Petition No. 7315/2022, before the High Court, *inter alia*, contending that experts possessing the requisite specialization were unavailable at Jalgaon and further seeking appointment of a panel of experts from a list collated by the Respondent himself. The application also referred to specialists dealing with “parental alienation syndrome” and “false memory creation”.

24. Pursuant to the aforesaid application, the High Court, by the impugned order dated 27.04.2023, modified its earlier order dated 07.01.2023 and substituted the expression “expert” with the expression “panel of experts”. The High Court observed that no rights of the Appellant would be affected by such substitution and accordingly, directed that the Family Court may appoint an independent panel of experts specialized in child psychology.

25. Subsequently, on 08.05.2023, the Respondent filed another application before the Family Court seeking appointment of experts from a revised panel proposed by him, which included experts situated outside the State of Maharashtra and one expert based in the USA.

26. Thereafter, while hearing Writ Petition No.7560 of 2023 filed by the Respondent seeking virtual access to the child, the High Court, by the second impugned order dated 07.12.2023, proceeded to constitute a four-member panel comprising Dr. Anjali Chhabria, Dr. Kamala London, Dr. Yajyoti Singh and Dr. Bhooshan Shukla for evaluation of the minor girl child.

27. The aforesaid empanelment was with reference to the original relief claimed by the Respondent to appoint an independent Psychiatric expert specialising in Child Psychology to evaluate the minor child, her current living condition and both the parents towards re-establishing connect of the Respondent with the minor daughter.

28. It is the grievance of the Appellant that the impugned orders passed by the High Court would have the effect of subjecting the minor child, who is the victim in the pending proceedings under the POCSO Act, to repeated and intrusive

psychological evaluation by multiple experts at the instance of the accused parent, thereby exposing the child to avoidable re-traumatisation and psychological distress.

29. Aggrieved by the aforesaid orders dated 27.04.2023 and 07.12.2023 passed by the High Court, the Appellant has approached this Court by way of the present proceedings.

ISSUES INVOLVED:

30. Having noticed the factual backdrop which involves proceedings under the POCSO Act, and the sequence of proceedings culminating in the present appeal, the principal controversy which now falls for consideration before this Court concerns the legality and propriety of the directions issued by the High Court permitting psychological evaluation of the minor child by a panel of experts.

31. The present matter, in our considered view, however, raises issues extending beyond the confines of an ordinary custody or visitation dispute between the estranged parents. The controversy before this Court essentially centres around the permissible limits of judicially-directed psychological evaluation of a child victim in proceedings where issues of custody and parental access intersect with allegations of sexual abuse under

the POCSO Act. The question thus, is not merely confined to the simple issue whether courts may seek expert assistance while determining issues concerning welfare of a child; but a seminal issue as to whether the process directed in the present case - involving evaluation of the child by a panel of multiple experts, is in accord with the principles of minimum intrusion, psychological safety and child-centric adjudication which form the underlying foundation of the statutory framework governing child victims.

32. The grievance of the Appellant substantially proceeds on the premise that the impugned directions issued by the High Court would have the effect of subjecting the minor child to repeated and intrusive psychological scrutiny at the instance of the accused parent, thereby exposing the child to further emotional distress.

33. Accordingly, the Learned counsel appearing on behalf of the Appellant has made the following submissions:

- (i) That the impugned orders passed by the High Court are contrary to the welfare, dignity and psychological well-being of the minor child, who is allegedly a victim of an offence under the POCSO Act;

(ii) That the High Court committed a manifest error in modifying its earlier direction for appointment of an “independent expert” by substituting the same with a “panel of experts” without recording any reasons demonstrating necessity for such modification, which would expose the child to repeated and intrusive psychological evaluation by a team of experts and thus, pose a serious risk of re-traumatisation and secondary victimisation;

(iii) That the child had already undergone manifold interactions with multiple agencies, investigating authorities, counsellors, psychologists and judicial authorities in the course of the criminal proceedings and therefore, no further evaluative exercise involving multiple experts was warranted;

(iv) That the process contemplated by the impugned orders effectively converts psychological evaluation into an adversarial exercise intended to debunk the allegations of sexual abuse at the instance of the Respondent through theories such as “parental alienation syndrome” and “false memory creation”;

(v) That the panel of experts was constituted substantially from names suggested by the Respondent-father, thereby compromising the requirement of institutional neutrality and independence;

(vi) That one of the experts constituting the panel was based in the USA and another outside the local jurisdiction, rendering the interactive process cumbersome and unnecessarily burdensome upon the child;

(vii) That even assuming psychological evaluation was considered necessary, the appropriate course would have been the appointment of one independent trauma-informed child psychologist rather than a panel of multiple experts;

(viii) That the impugned orders are inconsistent with Sections 24, 33(5), 36 and 39 of the POCSO Act which mandate child-friendly procedures and protection of the child from unnecessary exposure during judicial processes; thus, failed to apply the principle of minimum intrusion and intention while dealing with a child victim;

(ix) That the High Court failed to accord due weight to the findings recorded by the Family Court in its order dated

28.04.2022 wherein the Family Court had specifically observed that exposing the child to further evaluative processes may be harmful and contrary to her welfare.

34. On the other hand, the Respondent has sought to justify the impugned directions by contending that expert evaluation of the child is necessary to facilitate possible restoration of emotional connect between the child and the Respondent and to aid adjudication of issues concerning access and visitation.

35. Learned counsel appearing on behalf of the Respondent-father has, accordingly, made the following submissions:

(i) That the allegations under the POCSO Act are false, fabricated and motivated by matrimonial discord between the parties and that the Appellant has alienated the child from the Respondent-father by making malicious allegations;

(ii) That no allegation of child sexual abuse was immediately raised either before the authorities in the USA or immediately after the Appellant returned to India in December 2019, and such allegations were raised only subsequently after initiation of access proceedings by the Respondent;

- (iii) That the Respondent has consistently sought appointment of experts only with the objective of facilitating restoration of emotional bonding and reconnect between the father and the minor child;
- (iv) That the application seeking expert evaluation was never intended to harass the child or conduct an adversarial inquiry but was motivated solely by concern for the welfare of the child;
- (v) That the Respondent merely sought evaluation by qualified professionals possessing expertise in child psychology, parental alienation and child trauma so as to assess the present psychological condition of the child and facilitate reconnection between the father and daughter;
- (vi) That the Appellant herself had participated in the process of suggesting names of experts before the Family Court and therefore, cannot now challenge the constitution of the panel;
- (vii) That the order dated 07.01.2023 of the High Court directing appointment of an independent expert was never challenged by the Appellant and had attained finality;

(viii) That the subsequent order dated 27.04.2023 modifying the expression “expert” to “panel of experts” was passed pursuant to liberty granted by this Court while disposing of Special Leave Petition (Civil) No.2996 of 2023;

(ix) That continuation of the evaluative process directed by the High Court is necessary in the best interests of the child and for restoration of the child’s relationship with her father.

36. In the aforesaid backdrop, the following questions arise for determination before this Court:

- (i) Whether the High Court was correct in modifying its earlier order dated 07.01.2023 by substituting the expression “independent expert” with the expression “panel of experts” for evaluation of the minor child?
- (ii) Whether the impugned directions satisfy the settled principle that the welfare, dignity and best interest of the child constitute the paramount consideration in all proceedings concerning minors?
- (iii) Whether repeated or multiple psychological evaluations of a child victim, particularly in the backdrop of pending criminal proceedings alleging sexual abuse,

carry the potential of causing re-traumatisation and secondary victimisation inconsistent with child-centric judicial procedures?

(iv) Whether constitution of a panel of multiple psychologists and medical professionals for evaluation of the child victim is consistent with the statutory framework and protective object underlying the POCSO Act?

(v) Whether the High Court, in constituting the panel of experts substantially from names suggested by one of the litigating parties failed to consider the requirement of institutional neutrality and independence of the evaluative process?

37. The aforesaid questions, in our considered view, cannot be examined merely from the perspective of competing parental rights. The controversy necessarily requires this Court to adopt a child-centric approach, consistent with the constitutional obligation of courts to preserve the dignity, emotional security and psychological well-being of child victims participating in judicial processes.

38. It is by now well-settled that in matters concerning custody, access, the rights and claims of litigating parents remain

subservient to the paramount consideration of the welfare and best interest of the child. The said principle acquires even greater significance where the child is an alleged victim under the POCSO Act, and the judicial process itself carries the potential of exposing the child to further trauma or emotional harm.

39. We shall, therefore, proceed to examine the aforesaid issues in the light of the statutory framework governing child victims under the POCSO Act, the principles underlying child-centric criminal jurisprudence and the law governing welfare of minors, thus recognising in the present case centrality of the best interests of the child.

ANALYSIS BY THIS COURT:

40. At the outset, it must be clarified that the controversy in the present case does not arise directly out of adjudication under the POCSO Act, nor are we presently concerned with determination of criminal culpability in the pending prosecution against the Respondent. The dispute before this Court principally arises in the context of custody, visitation and psychological evaluation of a minor child. Unfortunately, the child in question is also an alleged victim at the hands of the Respondent in connection with which there is a proceeding pending under the

POCSO Act and therefore, the statutory framework underlying the said enactment cannot be ignored while examining the legality and propriety of the impugned directions issued by the High Court.

41. The significance of the POCSO Act lies not merely in the creation of substantive offences relating to child sexual abuse, but equally in its recognition that the justice delivery process itself must remain child-sensitive, trauma-informed, child friendly and protective of the psychological well-being of the child victim. The enactment represents a conscious legislative departure from the conventional adversarial criminal procedures insofar as children are concerned. The statute proceeds on the foundational premise that a child who has allegedly suffered sexual abuse must not be exposed to processes capable of causing further emotional harm, humiliation or secondary victimisation.

42. It is, therefore, necessary before examining the correctness of the impugned orders, to advert to the broader statutory philosophy and architecture underlying the POCSO Act and the child-friendly procedural safeguards embodied therein, not for the purpose of mechanically importing provisions of the criminal

procedure into custody proceedings, but to derive doctrinal guidance concerning the manner in which courts must engage with child victims participating in judicial processes even in custodial proceedings like custody, visitation right of the parents.

43. Section 24 of the POCSO Act mandates that the statement of a child is to be recorded in a child-friendly manner by police officers specially trained for such purpose and, significantly, without exposing the child to fear, intimidation or distress.

The legislative emphasis is, therefore, not confined merely to collection of evidence, but extends equally to preservation of the emotional and psychological security of the child throughout the process especially when it involves interaction with the child.

44. Equally significant is Section 33(5) of the POCSO Act which obligates the Special Court to ensure that the child is not called repeatedly to testify in court. The principle underlying the provision is of considerable importance. The legislature, while framing the statutory scheme, consciously recognised that repeated engagement of a child victim in legal processes may itself result in re-traumatisation and emotional injury. The provision embodies what may broadly be described as the principle of minimum exposure and minimum re-traumatisation.

45. Section 36 of the POCSO Act further stipulates that the child should not be exposed to the accused at the time of recording of evidence and empowers the Court to adopt appropriate measures to ensure that the child remains comfortable and psychologically secure during proceedings.

46. Similarly, Section 39 of the POCSO Act contemplates provision of support persons, interpreters, experts and other assistance necessary to safeguard the welfare, dignity and psychological well-being of the child during the course of proceedings.

47. The statutory framework, when viewed holistically, thus reveals a consistent legislative intent to ensure that legal procedures involving child victims are child friendly and do not themselves become stressful and instruments of psychological distress. The object of the enactment is not merely punitive. Equally, and perhaps more fundamentally, the legislation seeks to preserve the dignity, emotional integrity and mental well-being of the child throughout the process of engagement with the justice system.

48. This Court has also, on multiple occasions, emphasized the need for child-sensitive judicial processes in matters involving

allegations of sexual abuse against minors. In ***Sakshi v. Union of India***¹, this Court recognised that repeated exposure of child victims to intimidating judicial procedures may itself aggravate trauma suffered by the child and issued a slew of directions to be followed while recording of statement/examining a child victim in the court to prevent any traumatization in the process.

This Court acknowledged the profound psychological impact which judicial processes themselves may have upon victims of sexual offences, particularly children. The decision is significant not merely for the procedural safeguards specifically directed therein, but for the broader doctrinal recognition that preservation of the psychological well-being and emotional security of the child and prevention of any further trauma constitute integral components of fair and child-centric adjudication.

49. The jurisprudential thread running through ***Sakshi (supra)***, as also the statutory framework of the POCSO Act, is that while the child remains at the centre of the process, she must be kept insulated from the stressful process. The justice

¹ (2004) 5 SCC 518

delivery system cannot treat the child as a mere evidentiary object subjected to repeated forensic or psychological scrutiny at the instance of contesting litigants. The psychological integrity of the child constitutes an independent and paramount consideration which courts are duty-bound to preserve.

50. Having examined the statutory framework underlying the POCSO Act and the child-sensitive procedural safeguards embodied therein, it now becomes necessary to advert to the broader principles governing child welfare and trauma-informed adjudication which have consistently informed judicial decision-making process in matters concerning minors especially dealing with custodial and visitation rights of the parents.

51. Through a series of judgments, this Court has laid down firmly that welfare of the child is the overarching and the determining factor even in matters relating to custodial and visitation rights of the parents. All other factors are subservient to the welfare of the child.

This Court in ***Gaurav Nagpal vs. Sumedha Nagpal***², after a survey of law in this country as well as in foreign

² (2009) 1 SCC 42

jurisdictions, affirmed that child welfare is the paramount consideration and also highlighted the legal proposition of *parens patriae* jurisdiction of the court for the welfare of the child. This Court even went to the extent of ignoring orders of foreign courts by keeping the welfare of the child as the paramount consideration.

In ***Yashita Sahu vs. State of Rajasthan and Others***³, and ***Rajeswari Chandrasekar Ganesh vs. State of Tamil Nadu***⁴ this Court held that though this Court will accord substantial weight to foreign custody orders, it will be like other factors which will be subordinate to the prime consideration of the welfare of the child. Comity or first strike consideration will be subordinate to the welfare of child, affirming the supremacy of the child welfare principle. We may not burden ourselves any further with the numerous decisions in this regard in reiterating the dominant principle of the welfare of the child.

52. In ***Gaurav Nagpal*** (*supra*) this Court emphasised that welfare must be understood in the widest sense, from moral and ethical perspectives keeping in mind physical, emotional and

³ (2020) 3 SCC 67

⁴ (2023) 12 SCC 472

educational needs of the child. In other words, all those factors which are conducive to the physical, moral and intellectual development of the child, and not merely confined to material aspects, must be taken into consideration by the court. In the aforesaid case, this Court also considered the conduct of the parents, psychological impact on the child which may result because of tutoring by either of the parents etc. in seeking to ascertain what would be in the best interest of the child.

This Court observed in **Gaurav Nagpal (supra)** as follows:-

*“50. When the court is confronted with conflicting demands made by the parents, each time it has to justify the demands. The court has not only to look at the issue on legalistic basis, in such matters human angles are relevant for deciding those issues. The court then does not give emphasis on what the parties say, it has to exercise a jurisdiction which is aimed at the welfare of the minor. As observed recently in **Mausami Moitra Ganguli case**⁵, the court has to give due weightage to the child’s ordinary contentment, health, education, intellectual development and favourable surroundings but over and above physical comforts, the moral and ethical values have also to be noted. They are equal if not more important than the others.*

51. The words “welfare” used in Section 13 of the Act has to be construed literally and must be taken in its widest sense. The moral and ethical welfare of the child must also weigh with the court as well as its physical well-being. Though the provisions of the special statutes which govern the rights of the parents or guardians may be taken into consideration, there is nothing which can stand in the way of the court exercising its parens patriae jurisdiction arising in such cases.”

⁵ (2008) 7 SCC 673

53. In the light of the above position we can say that emotional stability, psychological security, dignity and mental health constitute vital components of the concept of the welfare of the child. Consequently, any such factors which may impede and seen to be disruptive to the welfare of the child must be abjured while considering the welfare of the child. Any process which leads to the detriment of the welfare of the child must be avoided by the court while passing orders relating to the custody/visitation rights claimed by any of the parents. The court is required to remain responsive not merely to the legal consequences but also the impact which the judicially ordained process may have upon the welfare of the child.

54. In the present case because of the separation of the parents from an early stage of childhood, it cannot be denied that she has been deprived of the warmth of the family where both the parents would unconditionally shower their love, affection and care on the child. She must have been a witness to bitter verbal duel between her parents, if not any physical confrontation. At the same time, the child will not be in a position to understand who is responsible for the separation of the parents or the discord in the family. But she would certainly feel the void or the absence

of unqualified attention from both the parents. The child is also sometimes unable to take sides with either of the parents which puts a strain on her. Thus, irrespective of the charge of sexual abuse hurled against the father which allegedly took place when the child was about 2/3 years old, the child is already undergoing a traumatic experience for the discord between the parents, for which it appears the child is receiving therapeutic treatment from a child psychologist. Under these circumstances, the alleged sexual abuse by the father which is stated to be pending before the competent court would certainly have added additional psychological stress on the child, to which aspect also this Court has to give due consideration. We are informed that the Respondent was granted anticipatory bail by the Bombay High Court in Anticipatory Bail Application No. 1332 of 2024 on 13.06.2024 in connection with the POCSO case registered against him. We have also perused the said anticipatory bail order and the circumstances under which the Respondent was granted anticipatory bail by the High Court. This element of POCSO case against the Respondent obviously has added an unpleasant dimension to the present proceeding and placed an onerous responsibility on the Court while dealing with this

matter. Thus, where a child who is already undergoing certain trauma because of the rupture in the family and deprived of undivided love, affection and care from both the parents, and when there is also allegation of sexual abuse by her own father, if she is going to be subjected to further investigation at the hands of psychologists as proposed to be done by the impugned orders, we must seriously examine as to whether such a course of action by virtue of the judicial orders may lead to “secondary victimisation” and “re-traumatisation”, would be desirable or not. In short, will this judicially ordained process be in the best interest of the child?

55. Courts must remain alive to the distinction between therapeutic engagement intended to support healing and recovery of the child, and repeated evaluation as part of adversarial processes undertaken in aid of litigation to vindicate the claim of the rival parties, which may prove to be highly stressful causing mental and emotional strain on the child. While the former may, in appropriate cases, aid the emotional rehabilitation of the child, the latter carries the potential of converting the child into an object of continuous forensic scrutiny to satisfy the claim of the parents and an unintended casualty in

the legal tug of war between two bickering parents. The justice delivery system must, therefore, guard against any process which has the effect of prioritizing adversarial claims of litigating parties over the emotional safety and psychological integrity of the child, thus, compromising with the welfare of the child.

56. The principle that the child must not be unnecessarily exposed to repeated legal or quasi-legal processes has now become an integral component of child-centric adjudication. The doctrine of “best interest of the child” cannot be confined to determining ultimate safe custody arrangements alone; it must also address the procedural architecture through which courts engage with the child during the pendency of proceedings. Judicial procedures themselves must, therefore, conform to standards of sensitivity, minimum intrusion and psychological safety of the child.

57. This Court has repeatedly emphasized that in matters concerning minors, the child cannot be treated as a passive subject of litigation. The Court, while exercising jurisdiction in such matters, rather, exercising *parens patriae* jurisdiction, bears an independent and overriding obligation to protect the dignity and welfare of the child irrespective of the competing

positions adopted by the parties. Consequently, even where one or both parents seek evaluative or therapeutic intervention, the Court must independently assess whether the proposed process is genuinely necessary, proportionate and conducive to the welfare of the child.

58. It must also be recognised that the impact of psychological evaluation upon a child cannot be assessed merely by reference to the formal nature of the process. The number of professionals interacting with the child, the frequency of sessions, the context in which such evaluation is undertaken, and the surrounding adversarial environment may collectively influence the emotional experience of the child. A process which may appear clinically benign in abstraction may nevertheless become psychologically stressful when situated within ongoing contentious litigation involving allegations of abuse by one of the parents.

59. This Court in ***“Thrity Hoshie Dolikuka v. Hoshiam Shavaksha Dolikuka”⁶***, cautioned that repeated interviews conducted with the tender minor mind and resultant strain can adversely affect the welfare of the child. It was thus, observed as follows:

⁶ (1982) 2 SCC 544

“26. In the facts and circumstances of this case we are however, not inclined to interview the minor daughter, as we are satisfied in the present case that the minor is not fit to form an intelligent preference which may be taken into consideration in deciding her welfare. We have earlier set out in extenso the various orders passed by the various learned Judges of the Bombay High Court after interviewing the minor and the learned Judges have recorded their impressions in their judgments and orders. The impressions as recorded by the learned Judges of the Bombay High Court, go to indicate that the minor has expressed different kinds of wishes at different times under different conditions. It also appears from the report of the Social Welfare Expert that these interviews cast a gloom on the sensitive mind of the tender girl and caused a lot of strain and depression on her. Torn between her love for both her parents and the acrimonious dispute between them resulting in the minor being dragged from court to court, we can well appreciate that the sensitive mind of the minor girl is bound to be sadly affected. Though the girl is quite bright and intelligent as recorded by the learned Judges of the Bombay High Court in their orders after their interviews with the girl who is of a tender age and is placed in a very delicate and embarrassing situation because of the unfortunate relationship and litigation between her parents for both of whom she has great deal of affection, she is not in a position to express any intelligent preference which will be conducive to her interest and welfare. Mature thinking is indeed necessary in such a situation to decide as to what will ensure to her benefit and welfare. Any child who is placed in such an unfortunate position, can hardly have the capacity to express an intelligent preference which may require the court's consideration to decide what should be the course to be adopted for the child's welfare. The letters addressed by the daughter to her mother from Panchgani and also a letter addressed by her to her aunt (father's sister) also go to show that the minor cannot understand her own mind properly and cannot form any firm desire. We feel that sending for the minor and interviewing her in the present case will not only not serve any useful purpose but will have the effect of creating further depression and demoralisation in her mind.”

60. Equally important is the requirement that judicially-directed psychological processes retain institutional neutrality and welfare orientation. The moment such evaluation begins to

assume the character of an adversarial exercise intended to validate or discredit allegations made by the child, the process risks losing its therapeutic legitimacy and may undermine the confidence, comfort and psychological safety of the child participating therein.

61. Section 12 of the Family Courts Act, 1984 enables the court to secure the services of a medical expert or such person, whether related to the parties or not, including a person professionally engaged in promoting the welfare of the families as the court may think fit for the purpose of assisting the Family Court in discharging its functions. Thus, though, the Act does not prohibit seeking assistance of any person even if she is related to the parties, ultimately, it is the court which has to decide as to the steps that would be required to be taken to ascertain what is in the best interest of the child and thereafter, pass appropriate orders, more particularly in the context of custody of child where the court exercises the *parens patriae* jurisdiction. Hence, it would be desirable for the court to appoint a neutral expert/psychologist, who may, however, interact with the experts nominated by the parties if the court deems appropriate.

62. These principles, in our considered view, constitute the broader doctrinal backdrop against which the legality and propriety of the impugned directions issued by the High Court are required to be assessed.

63. The first impugned order dated 27.04.2023 passed by the High Court modified its earlier direction dated 07.01.2023 by substituting the expression “independent expert” with the expression “panel of experts”. The subsequent order dated 07.12.2023 thereafter proceeded to constitute a four-member panel comprising of multiple psychologists and professionals for evaluation of the minor child.

64. In our considered view, the approach adopted by the High Court suffers from a fundamental flaw in so far as the Court failed to sufficiently examine the effect which repeated and multi-layered evaluative processes conducted by numerous evaluators may have upon the psychological well-being of the child.

65. We are in consensus of the fact that the earlier order issued by the High Court on 07.01.2023 for appointment of an independent expert specialised in child psychology was not challenged by the Appellant, and before the High Court the Appellant also had proposed a panel of psychologists before the

High Court passed the subsequent impugned order dated 27.04.2023. However, this legal hurdle for the Appellant may not be come in the way when we are considering the welfare of the child to be the most important consideration while dealing with the impugned orders, especially when the court acts as the *parens patriae* for the child.

66. Significantly, the original order dated 07.01.2023 had directed appointment of “an independent expert specialized in child psychology”. The emphasis in the original direction was therefore, clearly on independence, neutrality and limited intervention. However, by the subsequent order dated 27.04.2023, the High Court altered the very nature of the exercise by substituting the singular expression “expert” with “panel of experts”. This modification, in our considered opinion, cannot be treated as a mere procedural or semantic alteration devoid of substantive consequences. The distinction between evaluation by one independent professional and repeated interaction with a panel of multiple experts is significant and not merely administrative in nature. The change directly bears upon the extent of psychological exposure to which the child may potentially be subjected to.

67. We find from the impugned order dated 27.04.2023 that the High Court proceeded on the premise that substitution of the word “expert” with “panel of experts” would not prejudice the rights of the Appellant. In our view, the inquiry ought not to have been confined merely to the rights of the litigating parents. The primary consideration before the Court ought to have been the likely impact such modification may have upon the child herself, thus, the High Court missed out on the centrality of the issue, the welfare of the child.

68. The High Court, while directing constitution of a panel of experts, also failed to record any reasons demonstrating:

- (i) why evaluation by one independent expert was inadequate;
- (ii) why interaction with multiple professionals would be necessary;
- (iii) how the proposed process would comport with the principle of minimum intrusion; and
- (iv) whether the possibility of re-traumatisation had been adequately considered.

69. The absence of such analysis assumes considerable significance in the facts of the present case where the child is also allegedly a victim under the POCSO Act and had admittedly

undergone interactions with multiple agencies during the course of investigation and related proceedings.

70. The principle underlying Section 33(5) of the POCSO Act, though arising in the context of criminal trial, reflects a broader recognition that repeated engagement of a child victim in legal processes may itself become a source of trauma. The said principle, though not mechanically applicable to custody proceedings, nevertheless provides important doctrinal guidance while evaluating processes involving repeated psychological interaction with a child victim.

71. In our considered view, the High Court failed to adequately appreciate that the process of psychological evaluation cannot be viewed in sterile abstraction divorced from the surrounding adversarial context in which such evaluation is sought. The present proceedings arise out of intensely contested litigation between two bitterly opposed parties coupled with pending criminal prosecution alleging sexual abuse by the father against the child.

72. We are also unable to overlook that the request for constitution of a panel was substantially founded upon lists of experts proposed by the Respondent-father himself. While parties

may undoubtedly assist the Court by suggesting names of professionals, as there is no legal bar to do so, the Court must remain vigilant to preserve both actual and perceived institutional neutrality of the evaluative process, particularly where allegations of child sexual abuse are pending against the proposer.

73. The requirement of neutrality in such cases is not a matter of mere procedural formality. The child must not be placed in a position where the evaluative process assumes the appearance of an adversarial inquiry intended to validate or discredit allegations made against either parent. The legitimacy of the process itself depends upon the confidence that it remains strictly welfare-oriented and independent of adversarial objectives.

74. We thus, find merit in the grievance of the Appellant that the High Court, while constituting the four-member panel vide order dated 07.12.2023, failed to record any reasons justifying:

- (i) the necessity of constituting four separate experts;
- (ii) the specific role to be performed by each expert;
- (iii) the manner in which interaction with multiple experts would serve the welfare of the child; or
- (iv) the lack of safeguards necessary to prevent repetitive psychological exposure.

75. The impugned order dated 07.12.2023 also reveals that one of the experts is based in the USA while another is situated outside the local jurisdiction which will necessarily involve hybrid mode of evaluation. The order does not reflect any consideration as to whether such a dispersed and multi-layered evaluative structure involving hybrid mode would itself become emotionally burdensome for the child.

76. The Family Court, while rejecting the Respondent's application by order dated 28.04.2022, had specifically recorded concerns regarding the grave nature of allegations levelled against the Respondent, the possibility of harm to the child, the fact that the child was already under therapeutic care, and the absence of change in circumstances warranting reconsideration of access. While the High Court was undoubtedly entitled to independently examine the correctness of the aforesaid findings, the impugned orders do not indicate any meaningful consideration of the psychological consequences which may flow from repeated evaluative exposure of the child.

77. We have already noted the important distinction between therapeutic intervention intended for emotional support of the child and evaluative exercises undertaken within an adversarial

litigation framework. The former is child-centric and recovery-oriented; the latter, if insufficiently regulated, risks converting the child into a subject of continuing forensic scrutiny, merely to satisfy the self-righteous claims of two wrangling couple.

78. At the same time, we are unable to accept the broad proposition advanced on behalf of the Appellant that courts exercising jurisdiction in custody or visitation matters are altogether precluded from seeking expert psychological assistance wherever allegations under the POCSO Act are pending. Such an absolute rule may unduly restrict the ability of courts to secure informed assistance in appropriate cases involving welfare of children.

79. However, where such assistance is considered necessary, the process adopted by the Court must satisfy the requirements of demonstrable necessity, minimum intrusion, institutional neutrality, proportionality, and paramount consideration of the psychological well-being of the child.

80. In the facts of the present case, we find that the impugned directions issued by the High Court fall short of the aforesaid requirements.

81. We are, therefore, of the considered opinion that the impugned orders dated 27.04.2023 and 07.12.2023 passed by the High Court cannot be invoked qua the child and hence, we are inclined to modify the orders with certain conditions.

82. We are also of the view that the Court must not focus its attention solely on the psychological assessment of the child but must also bestow attention to the psychological assessment of the parents. While it is important to make an assessment as to how the child will respond to either of the parents, it is equally important to ascertain the mental and psychological conditions of the parents themselves to deal with the need of the growing child. Thus, assessment of the psychological condition of both the parents assumes importance before subjecting the child to any further psychological assessment. Therefore, we deem it desirable that psychological assessment of both the parents without involving the child be also conducted. Such assessment report on the parents in our view, will provide very pertinent material inputs before the Family Court, while considering any claim for access or visitation.

83. The child is stated to be presently staying with her mother and also undergoing therapeutic treatment through a Child

Psychologist. The Respondent has sought visitation right and also access through video conferencing which had been denied by the Family Court, perhaps on account of charges pending against him under the POCSO Act. However, on the other hand, the Respondent had expressed apprehension of the child being tutored by the mother, thus, fearing that the child may be developing “parental alienation syndrome” and ultimately become a victim of “false memory creation”.

84. We are cognizant of the fact that “parental alienation syndrome” is a plea normally invoked by a parent who does not have custody of the child as has been noted by this Court in ***Vivek Singh Vs. Romani Singh***⁷, wherein this Court discussed the syndrome as follows:

“18..... This Court cannot turn a blind eye to the fact that there have been strong feelings of bitterness, betrayal, anger and distress between the appellant and the respondent, where each party feels that they are “right” in many of their views on issues which led to separation. The intensity of negative feeling of the appellant towards the respondent would have obvious effect on the psyche of Saesha, who has remained in the company of her father, to the exclusion of her mother. The possibility of appellant's effort to get the child to give up her own positive perceptions of the other parent i.e. the mother and change her to agree with the appellant's viewpoint cannot be ruled out thereby diminishing the affection of Saesha towards her mother. Obviously, the appellant, during all this period, would not have said anything about the positive traits of the respondent. Even the matrimonial discord between the two parties would have been understood by Saesha, as

⁷ (2017) 3 SCC 231

perceived by the appellant. Psychologists term it as “The Parental Alienation Syndrome” [The Parental Alienation Syndrome was originally described by Dr Richard Gardner in “Recent Developments in Child Custody Litigation”, The Academy Forum, Vol. 29, No. 2: The American Academy of Psychoanalysis, 1985]. It has at least two psychological destructive effects:

(i) First, it puts the child squarely in the middle of a contest of loyalty, a contest which cannot possibly be won. The child is asked to choose who is the preferred parent. No matter whatever is the choice, the child is very likely to end up feeling painfully guilty and confused. This is because in the overwhelming majority of cases, what the child wants and needs is to continue a relationship with each parent, as independent as possible from their own conflicts.

(ii) Second, the child is required to make a shift in assessing reality. One parent is presented as being totally to blame for all problems, and as someone who is devoid of any positive characteristics. Both of these assertions represent one parent's distortions of reality.”

85. However, this Court also cautioned that courts ought not prematurely and without identification of individual instances of “alienating behaviour” label any parent as propagator and/or potential promoter of such behaviour and as such, it cannot attribute to any parent without proper identified materials as discussed in **Col. Ramneesh Pal Singh Vs. Sugandhi Aggarwal**⁸:

“20. PAS is a thoroughly convoluted and intricate phenomenon that requires serious consideration and deliberation. In our considered opinion, recognising and appreciating the repercussions of PAS certainly shed light on the realities of long-drawn and bitter custody and divorce litigation(s) on a certain identified sect of families, however, it is equally important for us to remember that there can no

⁸ (2024) SCC online 847

straitjacket formula to invoke the principle laid down by this Court in Vivek Singh (Supra).

21. *The role of a Court vis-à-vis allegation(s) of PAS came to be considered recently by an English Court i.e., the High Court of Justice Family Division in Re C ('parental alienation'; instruction of expert), [2023] EWHC 345 (Fam). Pertinently, the Court reflected on the changing narrative in relation to PAS - placed before the Court therein, by an expert body i.e., the Association of Clinical Psychologists - UK ("ACP") and thereafter observed as under:*

"103. Before leaving this part of the appeal, one particular paragraph in the ACP skeleton argument deserves to be widely understood and, I would strongly urge, accepted:

'Much like an allegation of domestic abuse; the decision about whether or not a parent has alienated a child is a question of fact for the Court to resolve and not a diagnosis that can or should be offered by a psychologist. For these purposes, the ACP-UK wishes to emphasise that "parental alienation" is not a syndrome capable of being diagnosed, but a process of manipulation of children perpetrated by one parent against the other through, what are termed as, "alienating behaviours". It is, fundamentally, a question of fact.'

It is not the purpose of this judgment to go further into the topic of alienation. Most Family judges have, for some time, regarded the label of 'parental alienation', and the suggestion that there may be a diagnosable syndrome of that name, as being unhelpful. What is important, as with domestic abuse, is the particular behaviour that is found to have taken place within the individual family before the court, and the impact that that behaviour may have had on the relationship of a child with either or both of his/her parents. In this regard, the identification of 'alienating behaviour' should be the court's focus, rather than any quest to determine whether the label 'parental alienation' can be applied."

22. *We find ourselves in agreement with the aforesaid position. Courts ought not to prematurely and without identification of individual instances of 'alienating behaviour', label any parent as propagator and/or potential promoter of such behaviour. The aforesaid label has far-reaching implications which must not be imputed or attributed to an individual parent routinely.*

23. *Accordingly, it is our considered opinion that Courts must endeavour to identify individual instances of 'alienating behaviour' in order to invoke the principle of*

parental alienation so as to overcome the preference indicated by the minor children.”

86. While there have been many studies conducted abroad on the mental health of the children in custody disputes, very little studies have been done in India. This Court has come across a study conducted by a team of psychologists from the Department of Psychiatric Social Work, National Institute of Mental Health and Neurosciences (NIMHANS), Bengaluru and Department of Child and Adolescent Psychiatry (NIMHANS), which was published in the Indian Journal of Psychological Medicines in 2025⁹. As per the aforesaid study, the team of psychologists identified seven themes of issues which afflict the children and parents, namely:¹⁰

1) Parent-child relationship and interaction.

This theme highlights the intricate dynamics of parent-child relationships. When children form alliances with one parent, it suggests a preference or stronger bond with that parent. Simultaneously, the rejection towards the other parent may stem from perceived differences, conflicts, or negative experiences within the relationship. Hostility could manifest as anger, criticism, or aggression, while coercion may involve manipulation, control, or imposing one's will onto the child.

2) Parental dynamics.

This theme shows the dysfunctional aspects of parental dynamics. The themes of non-cooperative behaviour suggest a lack of

⁹ Nambiar PP, Jangam KV and Seshadri SP, Psychosocial Perspectives on Child Mental Health in Custody Disputes: A Qualitative Study from India. Indian J Psychol Med. 2025;47(4):371-380.

¹⁰ Some of the relevant portions of the study are reproduced.

collaboration or teamwork between parents, which can lead to increased conflict and instability in the parent subsystem. The conflicts in the child's presence may result in confusion and uncertainty for the child, as they may struggle to understand boundaries and expectations.

3) Parental mental health issues.

This theme shows the emotional turmoil experienced by the parents in custody disputes. Mood swings and anger outbursts can create a tense and unstable atmosphere within the parent-child interaction. It also reflects the impact of parental mental illness on trust and communication within the parental interactions. The lack of trust between parents can lead to restrictive behaviours and a sense of confinement for both the parent and child. It shows how mental illness can exacerbate existing relationship challenges, fostering an environment of doubt and vigilance that further strains familial bonds.

4) Malicious acts by parents.

This theme underscores the manipulation and coaching of children by one parent against the other. Children are coerced into delivering messages or adopting negative behaviours toward a parent, often at the behest of the manipulating parent or other relatives. It highlights the emotional manipulation and psychological pressure imposed on children, disrupting their sense of trust and security within the family unit. This theme explores the damaging effects of parental bad-mouthing and false accusations on children's emotional health. Parents engage in disparaging remarks and false allegations against each other in front of the child, creating a toxic environment filled with hostility and mistrust.

5) Adjustment to changes in child's life.

This theme discusses the impact of extended family members on the family dynamic. It underscores the potential for extended family involvement to exacerbate conflicts and contribute to emotional distress within the family unit. This theme explores the complexities that arise from parents' remarriage or forming new partnerships. This dynamic adds to the child's emotional turmoil, as they navigate their changing family structure and relationships. Additionally, financial struggles pose a significant theme, impacting parental decision-making and family dynamics. The parent's desperate financial situation forces them to make compromises, such as agreeing to arrangements that may not be in the best interest of their children, in exchange for financial support. Overall, these thematic elements highlight the multifaceted nature of child custody disputes, involving not only legal and logistical challenges but also emotional, familial, and financial factors that profoundly impact the well-being of the child and the dynamics between the parents.

6) Issues in school context.

The recurring theme of declining academic performance highlights the detrimental effects of parental discord on the child's ability to focus and succeed in school. It underscores how custody disputes can manifest in tangible academic consequences for the child, as their grades suffer amid the turmoil at home. Additionally, change of school during parental separation reflects the upheaval and instability experienced by the child as a result of parental decisions made within the custody dispute. The child's resistance to the change and the subsequent legal intervention required to redirect their schooling indicate the distress and disruption caused by parental conflict and unilateral decisions regarding the child's education. This theme underscores the child's loss of stability and familiarity, further complicating their adjustment and well-being during the custody dispute. Lastly, parental discord displayed in school premises exposes the child to public embarrassment and social discomfort. Witnessing parental conflict in front of peers and school staff can deeply impact the child's sense of security and social standing. This highlights how parental behaviour in public settings can directly affect the child's emotional resilience and social integration within the school environment.

7) Child mental health Issues.

This theme shows how parental behaviours significantly influence a child's upbringing and development. The reference to previous dysfunctional themes suggests that the parental behaviours are not conducive to healthy parent-child relationships or optimal child development. The child becomes a pawn in the parents' conflict, exposed to harmful communication and negative perceptions about their caregivers, which can deeply impact their self-esteem and sense of stability. Overall, it sheds light on the multifaceted impact of custody disputes on child mental health, encompassing emotional distress, behavioural issues, and psychosomatic symptoms. The child becomes a vulnerable bystander caught amidst parental conflict, experiencing tangible consequences in their psychological and physical well-being as a result.

87. We have referred to the aforesaid report merely to highlight that the study is reflective of the mental health of the child caught in the whirlpool of parental disputes and the psychological condition of the disputing parents themselves which will provide

the background for passing appropriate orders by the court. It also highlighted the potential risk factors in the familial context that adversely influence the child's well-being and mental health in custody disputes. The report also suggested interventions at the family level in the legal setting to mitigate these risks. The study also highlighted the importance in child custody case for proper coordination and liaison of child mental health professionals with the judicial system, keeping in mind the child-centric and child friendly provisions in the legal system to enhance child participation. The study also deals with various acts by the parents as mentioned above by examining manipulation and coaching of children by the parent having custody and also the bad mouthing and making false allegations against the parent.

88. This Court has referred to the said study essentially to emphasise the sensitivity with which the courts have to deal with such matter where human emotions play significant role for which legal parameters have to be suitably applied for proper adjudication. Necessarily, therefore, though the courts are the ultimate decision makers, the courts have to rely on the expert opinions regarding the psychological condition of not only to the

children, but also the parents before passing any appropriate order in that regard. Reference to the said report is also made to highlight that in matters involving custodial rights of the children in the context of bitterly contested disputes between the parents, the court have to adopt a very cautious approach before passing orders which may have the potential of aggravating the trauma of an already disturbed child.

Each of the above themes considered in the report highlighted the highly complex psychological factors at play, sometimes in solo or collectively requiring deft management of these emotional behaviours by the court.

89. We have also noted that the present proceedings arise primarily in the context of the Respondent, who is in the USA is seeking to have access visitation right over the child, who is presently staying with the mother in India. The divorce proceedings are still pending, and both the parents remain separated. The issue of having custody of the child has not arisen at this stage. Therefore, the limited issue before this Court is of allowing the Respondent who has been accused of sexual abuse of the child, to have access to the child or have visiting rights which had been denied by the Family Court, and to have

psychological assessment of the child at the instance of the Respondent.

90. Keeping in mind the overall welfare of the child, even if the child is with the mother, it cannot be denied that she is presently under the partial/temporary guardianship of the mother only, thus, depriving her of full love and affection which normally a child would receive under the care of both the parents. There can be no doubt that under normal circumstances, both the parents would shower their wholesome love on their child which unfortunately the child does not enjoy presently. At the same time, it may be difficult for a child to determine on her own to have any particular preference for either of the parents.

91. This is also an unfortunate case where a child who is already living in a disintegrated family without receiving the full and undivided love, attention and care of both the parents, sadly has been subjected to alleged sexual abuse by her own father, though the father has vehemently denied the same, of which we do not wish to make any observation as it is the subject matter pending before another forum.

92. During the pendency of the present proceedings, this Court, by order dated 06.08.2024, directed the concerned Family Court

to appoint an expert child psychologist. After interacting with the child, the psychologist submitted the report to the concerned Family Court, with a copy to this Court, in sealed envelope. By order dated 03.01.2025, the report was opened and seen and, thereafter, directed to be re-sealed and kept on record with the concerned Registrar (Judicial).

We have considered the said report only for the limited purpose of assessing the nature of the processes to which the child may be subjected to in the present proceedings. It appears from the report that the child appeared to be doing well. Without advertent in detail to the report, in the best interest and welfare of the child, we are of the view that psychological assessment of both the parents would be beneficial.

93. Under the such circumstances, we deemed it appropriate to issue the following directions:

(A) The Family Court will appoint a Psychologist to interact with both the parents to make an assessment of their present mental/psychological conditions, more particularly of the mother under whom the child is presently in custody.

- (B) The Psychologist, thereafter, will interact with the Child Psychologist who is currently providing therapeutic treatment to the child, and then ascertain the current psychological status and condition of the child.
- (C) The said court appointed Psychologist after interacting with the Child Psychologist, shall submit a report to the Family Court.
- (D) The Family Court, after considering the report submitted by the court appointed Psychologist relating to the psychological condition of the parents and also about the child based on interaction with the Child Psychologist treating the child, will pass appropriate order as regards the desirability of conducting any psychological assessment of the child at this stage. If the Family Court is of the opinion, on the basis of such report, that the psychological assessment the child is not desirable or necessary at this stage, there shall not be any psychological assessment of the child. However, if the Family Court feels that such assessment of the child is necessary, it should be done by an independent child psychologist in consultation with the child psychologist

presently treating to child, with utmost care and with the minimum interactions possible, so as not to unduly disturb the mental condition of the child.

- (E) However, it is also to be remembered that we are dealing with a growing child, whose psychological needs also will vary as she grows up and expands her social circle, and accordingly, her psychological need would require to be assessed from time to time. Thus, the Family Court has to review such an order for psychological assessment of the child from time to time as may be deemed necessary after having obtained a report from the Child Psychologist treating the child.

This is also imperative, as the court acts as the *parens patriae* of the child. The court must remain alive to the changing needs of the child for which periodic assessment of the psychology of the child would be desirable which can be carried out by the child psychologist as mentioned above.

- (F) At the same time, to ensure the welfare of the child, the Family Court has to ascertain as to whether there has been any adverse influence a parent may have on the

child as regards “parental alienation syndrome” and “false memory creation” as against the other parent as also apprehended by the Respondent. In the present case even though the child is in the safe custody of the mother who is taking care of the child, the child must not be exposed to any influence which may foster the development of the aforesaid syndrome in the mind of the child against her father. This can be done by soliciting reports from the psychologist treating the child without necessarily interacting with the child on this issue.

94. We clarify that the aforesaid directions passed by us, however, has to be necessarily temporary in nature as matters relating to visitation rights/child custody claim in respect of a growing child would be dynamic and would operate as a continuing cause of action. Consequently, the parents would be at liberty to approach the Family Court for necessary modification of the orders that may be passed from time to time and for passing such appropriate orders as may be necessary, till the proceedings reach a logical conclusion.

95. In view of the related proceeding before the POCSO Court, we also direct both the parties to apprise the status of the

proceedings pending against the Respondent under the POCSO Act, as it would have a significant bearing on any order that may be passed by the Family Court including concerning visitation or custodial right of the parties over the child.

96. With the above observations, the impugned orders dated 27.04.2023 and 07.12.2023 are modified and the matter is remitted to the Family Court for passing appropriate orders in the light of the directions and observations made by us as above.

97. Before we part with the case, we deem it appropriate to make certain observations in dealing with cases involving psychological or psychiatric evaluation of minor children in proceedings arising out of custody, visitation or parental access disputes:

(i) In all proceedings, more particularly, involving a minor child alleged to be a victim under the POCSO Act, the paramount consideration shall always remain the welfare, emotional security, dignity and psychological well-being of the child;

(ii) Psychological or psychiatric evaluation of a child victim shall not be directed as a matter of routine merely

because issues of custody, visitation or parental access arise between litigating parents/relatives;

(iii) Before directing any such evaluative process concerning the child, the court shall record specific reasons demonstrating the necessity of such evaluation, the purpose sought to be achieved, the relevance of the proposed exercise, and the reasons why less intrusive alternatives would not sufficiently subserve the interests of the child;

(iv) Courts shall adopt the principle of minimum intrusion and minimum exposure while directing psychological interaction with child victims;

(v) Repeated, overlapping or multi-layered psychological evaluations of a child victim should ordinarily be avoided unless compelling circumstances exist and reasons are specifically recorded in writing;

(vi) Where psychological evaluation is considered necessary, ordinarily the same should be conducted by one independent and court-appointed child psychologist, psychiatrist or similarly qualified professional possessing expertise in child psychology and child trauma;

(vii) Constitution of a panel of experts should remain an exceptional course to be adopted only where the court is satisfied that the peculiar facts of the case render such course indispensable;

(viii) The expert appointed by the court must remain demonstrably independent and neutral and should ordinarily not have any prior engagement with either litigating party, except purely on professional basis;

(ix) The evaluative process shall remain child-centric and welfare-oriented and shall not assume the character of an adversarial, investigative or evidence-gathering exercise intended to advance the case of either party in pending criminal or custody proceedings;

(x) Courts shall remain cognizant of the possibility of re-traumatisation arising from repeated narration of traumatic events by child victims and shall regulate the number of sessions, duration of interaction, number of professionals interacting with the child, and overall manner of evaluation.

(xi) Any process of psychological evaluation directed by a court shall remain consistent with the child-friendly

framework contemplated under Sections 24, 33(5), 36 and 39 of the POCSO Act and the principles underlying trauma-informed adjudication;

(xii) The identity of the child, disclosures made during evaluation, therapeutic records and evaluative reports shall remain strictly confidential and shall not ordinarily be disclosed beyond what is necessary for adjudication;

(xiii) Audio or video recordings, session notes and therapeutic material generated during evaluation shall not ordinarily be made directly accessible to parties except upon specific judicial determination of necessity;

(xiv) Evaluative reports prepared pursuant to orders of the court shall remain confined strictly to the purpose for which evaluation was directed and shall not contain findings concerning criminal culpability;

(xv) Where the child is already under the care of a qualified therapist, counsellor or support professional and the court is satisfied regarding the competence and neutrality of such professional, substitution of the existing therapeutic environment should ordinarily be avoided;

(xvi) In cases involving virtual or hybrid interaction with experts, courts shall ensure adequate safeguards concerning privacy, emotional safety, absence of external influence and overall suitability of such mode considering the age and psychological condition of the child; and

(xvii) The court directing evaluation shall retain continuing supervisory jurisdiction over the process and may modify, regulate or discontinue the same if continuation thereof appears likely to adversely affect the welfare or psychological well-being of the child.

(xviii) The court must ensure that psychological assessment of the child is conducted from time to time, as the child grows, as the court may consider appropriate, if required in consultation with the concerned child psychologist, so as to assuage itself that the best interest and welfare of the child are being safeguarded.

(xix) Since the psychological growth and welfare of the child is closely intertwined with the psychological condition of the parents, it would be desirable for the courts to call for psychological assessment reports of both the parents as it will aid in passing appropriate orders in respect of the

welfare of the child, since the courts also exercises the jurisdiction of *parens patriae* over the child and thus has an onerous responsibility for the welfare of the child.

(xx) Since the courts are dealing with proceedings permeated with highly emotionally charged parents, it would be desirable to have the assistance of the experts/child psychologists/psychologists about the mental health of the child as well as the parents as an additional tool to fashion the judicial orders, for judges are ordinarily not skilled in dealing with emotions but trained essentially in application of legal principles.

98. We deem it necessary to clarify that the observations made hereinabove are not intended to be understood as exhaustive or inflexible guidelines to be applied mechanically in every case. Matters involving the psychological condition, emotional responses and welfare needs of a child, particularly in the backdrop of estranged parental relationships and allegations of abuse, do not admit of rigid formulae or uniform standards of application. Human emotions, particularly those of a child, are inherently dynamic in at least two distinct respects. First, the emotional response of one child may materially differ from

another child placed in apparently similar circumstances. Secondly, even in the case of the same child, emotional responses and needs may not remain static, but may change with the passage of time, advancing age, therapeutic progress, family environment, schooling, social exposure and other circumstances, some of which may appear minor in isolation but may nevertheless bear upon the child's emotional state ultimately. In other words, the surrounding circumstances will always be in a flux because human emotions and inter-personal relationships will not remain static, but always remain dynamic.

Also, it would be neither possible nor appropriate for this Court to define with exactitude the intervals or circumstances in which a psychological assessment and counselling may be undertaken "from time to time". Such determination must necessarily be left to the sound discretion of the court concerned, to be exercised on a case-to-case basis, preferably with the assistance of the treating child psychologist, counsellor or an independent expert, as the facts may warrant. While doing so, the court must ensure that the child is not subjected to avoidable intrusion, repeated exposure or unnecessary psychological burden. The controlling consideration, at every stage, must

remain the best interest, dignity, emotional security and psychological welfare of the child.

Therefore, the aforesaid observations are merely intended to ensure that judicial processes concerning child victims remain trauma-informed, child-centric so that procedures ostensibly adopted in aid of welfare do not themselves become instruments of psychological distress or secondary victimisation to the child and the court acting as *parens patriae* in such cases, has to remain constantly alive to the welfare of the child. Certainly, the courts would have the discretion to devise appropriate methodologies and pass appropriate orders as the court may deem fit by keeping in mind the peculiar facts of the case.

99. For the reasons discussed above, the impugned orders dated 27.04.2023 and 07.12.2023 passed by the High Court of Judicature at Bombay are modified to the extend indicated above.

100. We are also conscious of the fact that one of the impugned orders i.e. order dated 07.12.2023 passed in Writ Petition No. 7560 of 2023 is interim in nature. However, considering the peculiar facts of the case, we have felt it appropriate to modify the impugned orders and remit the matter to the Family Court which shall pass appropriate orders in terms of the directions and

observations made above. Accordingly, the Writ Petition No. 7560 of 2023 shall stand disposed of as far as this issue is concerned.

101. The appeals are, accordingly, partly allowed in the aforesaid terms.

Pending application(s), if any, shall stand disposed of in accordance with the judgment above. There shall be no order as to costs.

.....**J.**
(SANJAY KAROL)

.....**J.**
(NONGMEIKAPAM KOTISWAR SINGH)

NEW DELHI;
JUNE 11, 2026