

PETITIONER:
SMT. SURINDAR KAUR SANDHU

Vs.

RESPONDENT:
HARBAX SINGH SANDHU & ANR.

DATE OF JUDGMENT 11/04/1984

BENCH:
CHANDRACHUD, Y.V. ((CJ)
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CHANDRACHUD, Y.V. ((CJ)
MUKHARJI, SABYASACHI (J)

CITATION:
1984 AIR 1224 1984 SCR (3) 422
1984 SCC (3) 698 1984 SCALE (1) 616

ACT:

Hindu Minority and Guardianship Act, 1956 Section 6- Interpretation of- Custody of the child. Conflict of Laws- Jurisdiction of the Court to decide the question of custody of a minor child who is a British citizen while the parents are Indian citizens.

HEADNOTE:

Appellant and Respondent No.1 were married in 1975 at Bodni Kalan District Faridkot, Punjab according to Sikh rites. Soon after the marriage, they left for England, where a boy named Pritpal Singh was born to them on October 24, 1976. Soon thereafter, their relationship came under a strain with the result Respondent 1 was trying to negotiate with a hitman to have the appellant run over by a car. The Berkshire Police got scent of it resulting in the Respondent's conviction and sentence for a period of three years. Ironically the appellant wife intervened and succeeded in obtaining a probation order for the man who had attempted to procure her murder. The husband was released on probation on February 4, 1982. The period of probation expired on December 24, 1982. On January 31, 1983, while the wife was away at work, Respondent No. 1 removed the boy from England and brought him to India. On the same date, the appellant-wife obtained an order under section 41 of the Supreme Court Act, 1981 under which the boy became the ward of the Court with effect from that date. This order was confirmed on July 22, 1983.

In the meantime the appellant came to India in April, 1983 and on 5.5.1983 filed a petition under section 97 of the Code of Criminal Procedure in the Court of the learned Judicial Magistrate first class Jagraon praying for the custody of the child. The Respondent No. 1 contested and took an objection that under section 6 of the Hindu Minority and Guardianship Act, 1956 he was the natural guardian of the minor boy. The contention was accepted and the petition was dismissed. The appellant went back to England to resume her work and obtained the confirmation order dated 22.7.1983 referred to above. Armed with the said order she returned to India and filed a writ Petition in the High Court of Punjab and Haryana. The Writ Petition was dismissed on the grounds inter alia that her status in England is that of a

foreigner, factory worker and a wife living separately from the husband and having no relatives and as such the child would have to live in lonely and dismal surroundings in England, while it would grow in an atmosphere of self confidence and self respect, if it was permitted to live with its father and grand parents:

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Hence the appeal after obtaining special leave of the Court.

Allowing the appeal, the Court,

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HELD: 1. Section 6 of the Hindu Minority and Guardianship Act, 1956 constitutes the father as the natural guardian of a minor son. But that provision cannot supersede the paramount consideration as to what is conducive to the welfare of the minor. As the matters are presented to the Court the boy, from his own point of view, ought to be in the custody of the mother. [427A-B]

2:1 The modern theory of conflict of laws recognises and, in any event, prefers the jurisdiction of the State which has the most intimate contact with the issues arising in the case. Jurisdiction is not attracted by the operation or creation of fortuitous circumstances such as the circumstance as to where the child, whose custody is in issue, is brought or for the time being lodged. To allow the assumption of jurisdiction by another State in such circumstances will only result in encouraging forum-shopping. Ordinarily, jurisdiction must follow upon functional lines. That is to say, for example, that in matters relating to matrimony and custody, the law of that place must govern which has the closest concern with the well-being of the spouses and the welfare of the offsprings of marriage. The spouses in this case, had made England their home where this boy was born to them. The father cannot deprive the English Court of its jurisdiction to decide upon his custody by removing him to India, not in the normal movement of the matrimonial home but, by an act which was gravely detrimental to the place of that home. The fact that the matrimonial home of the spouses was in England, establishes sufficient contacts or ties with that State in order to make it reasonable and just for the Courts of that State to assume jurisdiction to enforce obligations which were incurred therein by the spouses. [427-CG]

2:2 The spouses had set up their matrimonial home in England where the wife was working as a clerk and the husband as a bus driver. The boy is a British citizen, having been born in England, and he holds a British passport. It cannot be controverted that, in these circumstances the England Court had jurisdiction to decide the question of his custody. [427B-C]

International Shoe Company v. State of Washington, 90 L.ED 95 [1945] quoted with approval.

3:1 In the instance case; (i) The welfare of the boy does not require that he should live with his father or with the grand parents; (ii) the "traumatic experience of a conviction on a criminal charge" is not a factor in favour of the father especially when his conduct following immediately upon his release on probation shows that the experience has not chastened him, and (iii) The father is a man without a character who offered solicitation to the commission of his wife's murder. The wife obtained an order of probation for him but, he abused her magnanimity by running away with the boy soon after the probationary period was over. Even in that act, he displayed a singular lack of respect for law by obtaining a duplicate passport for the

boy on an untrue representation that the original passport was lost. The original passport was, to his knowledge, in the keeping of his wife. In this background, the

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affluence of the husband's parents cannot be regarded as a circumstance of such overwhelming importance as to tilt the balance in favour of the father on the question of what is truly for the welfare of the minor. At any rate it will not be less for the welfare of the minor if he lived with his mother. He was whisked away from her and it cannot be said that there are any circumstance to support the view that the new environment in which he is wrongfully brought is more conducive to his welfare. He is about 8 years of age and the loving care of the mother ought not to be denied to him. The father is made of coarse stuff. The mother earns an income of \$100 a week, which is certainly not large by English standards, but is not so low as not to enable her to take reasonable care of the boy. [426E-H]

3:2 It is the duty and function of the court to protect the wife against the burden of litigating in an inconvenient forum which she and her husband had left voluntarily in order to make their living in England, where they gave birth to this unfortunate boy. [427H]

(The court directed the custody of the child to the mother forthwith and awarded cost of Rs. 3000) [428B]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 183 of 1984.

Appeal by Special leave from the Judgment and order dated the 26th August, 1983 of the Punjab and Haryana High Court in Cr. Writ Petition No. 392 of 1983.

C.M. Nayar and Vijay Jhoni for the Appellant.

Puran Chand, Mrs. Naresh Bakshi and Miss Kailash Mehta for the Respondents

The Judgment of the Court was delivered by

CHANDRACHUD C. J.: The appellant, Surinder kaur Sandhu, is the wife of respondent 1, Harbax Singh Sandhu. Respondent 2 is the father of respondent 1. Appellant and respondent 1 were married in 1975 at Bodni-Kalan, District Faridkot, Punjab, according to Sikh rites. Soon after the marriage they left for England, where a boy named Pritpal Singh was born to them on October 24, 1976.

Within a short period after the birth of the boy, the relationship between the spouses came under a strain resulting in a serious episode. The husband was trapped by the Berkshire Police who got the scent that he was negotiating with a hitman to have the wife run over by a car. The husband was convicted and sentenced

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to a term of three years for that offence. Ironically, it was the wife who intervened and succeeded in obtaining a probation order for the man who had attempted to procure her murder. The husband was released on probation on February 4, 1982. The period of probation expired on December 24, 1982.

On January 31, 1983, while the wife was away at work, the husband removed the boy from England and brought him to India. On the same date, the wife obtained an order under section 41 of the Supreme Court Act, 1981 under which the boy became the Ward of the Court with effect from that date. That order was confirmed on July 22, 1983 by Mrs. Justice Booth of the High Court of Justice (Family Division). By the said order, the husband was directed to hand over the

custody of the minor boy to the wife or her agent forthwith.

The wife came to India in April 1983. On May 5, 1983 she filed a petition under section 97 of the Code of Criminal Procedure in the Court of the learned Judicial Magistrate, First Class, Jagraon. She asked for the custody of her son, contending that he was in the illegal custody of the respondents. Section 97 authorises the Magistrate to direct a search to be made for persons wrongfully confined and, on their being found, to be produced in the Court in order to facilitate the passing of such order as the circumstances of the case may require. The respondents relied upon section 6 of the Hindu Minority and Guardianship Act, 1956, and opposed the petition on the ground that Respondent 1 was the natural guardian of the minor boy. Accepting that contention, the learned Magistrate dismissed the petition, leaving the question of the custody of the child to be decided in an appropriate proceeding.

The wife then went back to England to resume her work and obtained the order dated July 22, 1983 to which we have already referred. She came back to India once again, this time armed with the aforesaid order of the English High Court. She then filed the present writ petition in the High Court of Punjab and Haryana, asking for the production and custody of her minor son.

The learned single Judge of the High Court who dealt with the petition made an excellent effort to bring about rapprochement between the spouses but, he did not succeed. He questioned the boy more than once and he even presided the spouses to live together for a couple of days in the house of the Inspector General of Prisons, Haryana. The spouses reported back to him that they

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were unable to resolve their differences.

The learned Judge dismissed the wife's petition on the grounds, inter alia, that her status in England is that of a foreigner, a factory worker and a wife living separately from the husband that she had no relatives in England; and that, the child would have to live in lonely and dismal surroundings in England. On the other hand, according to the learned Judge, the father had gone through a traumatic experience of a conviction on a criminal charge; that he was back home in an atmosphere which welcomed him; that his parents were in affluent circumstances; and that, the child would grow in an atmosphere of self-confidence and self-respect if he was permitted to live with them.

Some of these circumstances mentioned by the learned Judge are not beside the point but, their comparative assessment is difficult to accept as made. For example, the 'traumatic experience of a conviction on a criminal charge' is not a factor in favour of the father, especially when his conduct following immediately upon his release on probation shows that the experience has not chastened him. On the whole, we are unable to agree that the welfare of the boy requires that he should live with his father or with the grand-parents. The father is a man without a character who offered solicitation to the commission of his wife's murder. The wife obtained an order of probation for him but, he abused her magnanimity by running away with the boy soon after the probationary period was over. Even in that act, he displayed a singular lack of respect for law by obtaining a duplicate passport for the boy on an untrue representation that the original passport was lost. The original passport was, to his knowledge, in the keeping, of his wife. In this background, we do not regard the affluence of the husband's parents to be a circumstance of such overwhelming importance

as to tilt the balance in favour of the father on the question of what is truly for the welfare of the minor. At any rate, we are unable to agree that it will be less for the welfare of the minor if he lived with his mother. He was whisked away from her and the question is whether, there are any circumstances to support the view that the new environment in which he is wrongfully brought is more conducive to his welfare. He is about 8 years of age and the loving care of the mother ought not to be denied to him. The father is made of coarse stuff. The mother earns an income of \$100 a week, which is certainly not large by English standards, but is not so low as not to enable her

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to take reasonable care of the boy.

Section 6 of the Hindu Minority and Guardianship Act, 1956 constitutes the father as the natural guardian of a minor son. But that provision cannot supersede the paramount consideration as to what is conducive to the welfare of the minor. As the matters are presented to us to-day, the boy, from his own point of view, ought to be in the custody of the mother.

We may add that the spouses had set up their matrimonial home in England where the wife was working as a clerk and the husband as a bus driver. The boy is a British citizen, having been born in England, and he holds a British passport. It cannot be controverted that, in these circumstances, the English Court had jurisdiction to decide the question of his custody. The modern theory of Conflict of Laws recognises and, in any event, prefers the jurisdiction of the State which has the most intimate contact with the issues arising in the case. Jurisdiction is not attracted by the operation or creation of fortuitous circumstances such as the circumstance as to where the child, whose custody is in issue, is brought or for the time being lodged. To allow the assumption of jurisdiction by another State in such circumstances will only result in encouraging forum-shopping. Ordinarily, jurisdiction must follow upon functional lines. That is to say, for example, that in matters relating to matrimony and custody, the law of that place must govern which has the closest concern with the well-being of the spouses and the welfare of the offsprings of marriage. The spouses in this case had made England their home where this boy was born to them. The father cannot deprive the English Court of its jurisdiction to decide upon his custody by removing him to India, not in the normal movement of the matrimonial home but, by an act which was gravely detrimental to the peace of that home. The fact that the matrimonial home of the spouses was in England, establishes sufficient contacts or ties with that State in order to make it reasonable and just for the Courts of that state to assume jurisdiction to enforce obligations which were incurred therein by the spouses. (See *International Shoe Company v. State of Washington* (1) which was not a matrimonial case but which is regarded as the fountainhead of the subsequent developments of jurisdictional issues like the one involved in the instant case) It is our duty and function to protect the wife against the burden of litigating in an inconvenient forum which she and her husband had left voluntarily in order to make their living in England, where they gave birth to this unfortunate boy.

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For these reasons, we set aside the judgment of the High Court and direct that the custody of the child shall be handed over to the appellant-mother. that shall be done

during the course of this day.

The High Court has referred to the evidence showing that the annual income of the father's family is in the range of Rs. 90,000. That would justify an order directing the respondents to pay a sum of Rs. 3,000 (three thousand) to the appellant for her costs of this appeal.

order accordingly,

S.R.
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Appeal allowed.

JUDIS