

has been passed not in pursuance to the police report or the complaint which attracted the offence carried out by the applicant whereas the same has been passed in pursuance to the statement record by the victim under Section 183 BNSS, 2023.

9. Impugned order dated 07.10.2024 is set aside. Matter is remitted back to learned Special Judge, POCSO Act/Additional Sessions Judge, Bareilly for passing fresh order in pursuance to strict consonance of the Section 33 of Protection of Children From Sexual Offences Act, 2012.

10. The instant application stands **allowed** accordingly.

(2025) 5 ILRA 1837

**ORIGINAL JURISDICTION
CRIMINAL SIDE**

DATED: LUCKNOW 30.05.2025

BEFORE

THE HON'BLE VINOD DIWAKAR, J.

Application U/S 482 No. 41453 of 2024

Saumya Sajiv Kumar Sharma & Anr.
...Applicants
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Applicants:
Mahendra Bahadur Singh, Vijeta Singh

Counsel for the Opposite Parties:
G.A.

Family Law — Protection of Women from Domestic Violence Act, 2005, Sections 12, 21 & 23 — Hindu Minority and Guardianship Act, 1956, Section 6 — Guardians and Wards Act, 1890 — Custody of minor female child —

Welfare of child — Paramount consideration — Female child entering puberty — Custody to mother preferred — Father deceitfully taking custody through manipulation — Digital evidence (SMS, WhatsApp chats, Google Maps timeline) corroborating mother's case — Custody directed to be handed to mother within three days — Child's welfare not subservient to patriarchal presumption under Section 6 of Hindu Minority and Guardianship Act — Visitation rights to father reserved. (Paras 15, 18, 19, 20, 21, 23, 24, 26 and 28)

HELD:

The principle that the father is the natural guardian of the minor child-boy or unmarried girl, and after him, the mother is primarily derived from section 6 of the Hindu Minority and Guardianship Act, 1956, though seminal at its time. Now it smacks patriarchal bias, therefore, become obsolete in the progressive realities of 21st-century in India. The judicial interpretation has commendably filled the legislative void, especially in recognizing the preferential custodial rights of mothers of girl children. However, true progress demands that the legislature codify these evolving norms to ensure a consistent and gender-neutral approach across the country. (Para 15)

In child custody proceedings, especially involving a minor girl entering puberty, the role of the family court judge is not merely adjudicative but deeply protective and facilitative. The transition into adolescence is a sensitive period marked by profound emotional and physical changes, and the law recognises the need for careful, child centric engagement by the judiciary. The judge is tasked with upholding not just statutory rights but also the child's dignity, safety, emotional well-being, and evolving autonomy. (Para 19)

When deciding custody of a girl who has just entered puberty, courts shall consider: (i) who the primary caregiver has been, (ii) the girl's schooling, community ties, and stability, (iii) allegations of abuse, neglect, or inappropriate behaviour, and (iv) demeanour and conduct of the parties to the litigation. The judicial role in

custody matters involving minor girls entering puberty is far more than a procedural function- it is a constitutional, moral, and empathetic responsibility. A judge must rise above adversarial structures and act as a trustee of the child's welfare. This calls for a gender-sensitive, emotionally intelligent, and child-centred judicial approach, ensuring that the dignity, safety, and well-being of the child remain the unwavering focus of custody decisions. (Para 20)

The mother has a unique position in the case of the custody of the female child. In most cases, the mother is naturally better positioned to understand and support a daughter going through puberty because of shared biological experience. The mother has personally experienced menstruation, other female-specific changes, and comfort in discussing such issues. The girls often feel more comfortable talking to their mothers about body changes, menstrual hygiene, etc. The mother often plays the more effective role in emotional attunement, being a natural caregiver, and is more likely to notice subtle psychological shifts. The society and family dynamics often encourage closer emotional bonding between mother and daughter, especially during adolescence. (Para 21)

Application allowed. (E-14)

List of Cases cited:

1. Rajnesh Vs Neha & anr., (2021) 2 SCC 324
2. Devnath Ratre Vs Malti Ratre, (2022) SCC OnLine Chh 2721
3. Vivek Singh Vs Romani Singh, (2017) 3 SCC 231
4. Rohith Thammana Gowda Vs St. of Kar., (2022) 20 SCC 550
5. Vedabai alias Vijayanatabai Baburao Patil Vs Shantaram Baburao Patil & ors., (2001) 9 SCC 106
6. Arun Ganguli Vs Amresh Ganguli, 2015 SCC OnLine Del 13012
7. Dr. Parijat Vinod Kanetkar & ors. Vs Mrs. Malika Parijat Kanetkar, Criminal Writ Petition No.750 of 2016 Hon'ble Bombay High Court
8. Kumar Vs Jahgirdar Vs Chethara Ramtheertha, (2004) 2 SCC 688
9. Balram Vs Sushma, Chhattisgarh, Bilaspur FAM No.9 of 2014
10. Tejaswini Gaud & ors. Vs Shekhar Jagdish Prasad Tewari & ors., (2019) 7 SCC 42
11. Nil Ratan Kundu & Anr. Vs. Abhijit Kundu, (2008) 9 SCC 413
12. Goverdhan Lal Vs Gajendra Kumar 17; Saraswatibai Shripad Vad Vs Shripad VasANJI Vad, 1940 SCC Online Bom 77
13. Rosy Jacob Vs Jacob A. Chakramakkal 1973 1 SCC 840; X v. Y, Writ Petition No. 2048 of 2023
14. Ramneesh Pal Singh Vs Sugandhi Aggarwal, 2024 (259) AIC 34
15. Selvaraj Vs Revathi, 2023 SCC OnLine SC 1644
16. Mausami Moitra Ganguli Vs Jayant Ganguli, (2008) 7 SCC 673
17. Shazia Aman Khan & anr. Vs St. of Orissa & ors., (2024) 7 SCC 564
18. Supreme Court in the ABC Vs St. (NCT of Delhi), (2015) 10 SCC 1
19. Rajesh Babu Saxena Vs St. of U.P. & anr., (2024) SCC OnLine All 2260
20. Smt. Parul Tyagi Vs Gaurav Tyagi, (2023) SCC OnLine All 2684

(Delivered by Hon'ble Vinod Diwakar, J.)

1. Heard Ms. Vijeta Singh, learned counsel for the applicant no.1, Mr. Chandan Sharma assisted by Mr. Shubham Tripathi, learned counsel for the opposite

party no.2, learned A.G.A. for the State-respondent, and perused the record.

2. The present application has been preferred for quashing the orders dated 28.08.2023 and 09.10.2023 passed by the learned Additional Civil Judge (Junior Division)/Judicial Magistrate, Court, Allahabad, as well as the order dated 10.09.2024 passed by the learned Additional Sessions Judge/Special Judge (MP/MLA), Prayagraj, in Criminal Appeal No.107 of 2024, titled as *Saumya Sajiv Kumar Sharma and another v. Sumit Vats*, arising out of proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005, District Prayagraj.

3. In brief, the facts giving rise to the present proceedings are that the marriage between applicant no.11 and respondent no.22 was solemnized on 18.01.2013. At the time of marriage, a substantial dowry comprising jewellery, cash, and other valuable articles was given by the wife's parents. Despite this, the in-laws of the wife expressed dissatisfaction with the dowry and persistently demanded additional amounts, subjecting her to continuous physical harassment and mental cruelty. From this wedlock, a girl child named Samriddhi was born, who has been arrayed as applicant no.23. She is currently studying in Class-VI at Loreto Convent Intermediate College, Lucknow.

4. After their marriage, the husband and wife resided at various locations, including Delhi, Patna, and Lucknow, in accordance with the postings of the husband. The husband is presently employed as a Deputy Chief Engineer with the Indian Railways. However, due to irreconcilable differences, their matrimonial relationship deteriorated,

culminating in filing of an application under Section 12 of the Act⁴. This application was filed by the wife before the learned Additional Civil Judge (Junior Division)/Judicial Magistrate, Allahabad, on 02.11.2022. In the said proceedings, the wife- being the mother of the minor child- also filed an application seeking interim custody of the minor child.

5. Upon due consideration of the report submitted by the District Probation Officer and the statement of the minor child recorded by the learned Additional Chief Judicial Magistrate, the prayer for interim custody was rejected by order dated 28.08.2023. However, the learned trial court had granted liberty to the mother to meet her minor child twice a week, specifically on every Saturday and Sunday. Thereafter, by a subsequent order dated 09.10.2023, the conditions governing visitation were modified. The modified order permitted the mother to meet the child in a conducive and healthy environment, either at a nearby park or at the residence of the husband, between 04:00 p.m. to 06:00 p.m. on every Saturday and Sunday.

6. Aggrieved by the aforesaid orders, the wife preferred Criminal Appeal No.107 of 2024 before the learned Additional Sessions Judge/Special Judge (MP/MLA), Prayagraj. However, the said appeal was dismissed vide order dated 10.09.2024. While rejecting the appeal, the appellate court recorded a finding that the primary consideration in matters of custody is the welfare of the minor child, which, in the present case, was found to be better secured with the father. It was particularly noted that the minor child had expressed a clear desire to reside with her father, and therefore, it was held that custody with the

father would be in the child's best interest. Additionally, the appellate court observed that the child's paternal grandparents were residing with the father, thereby contributing to a stable and nurturing environment at the father's residence.

7. The impugned order dated 10.09.2024 has been challenged by way of the present application, wherein the wife seeks custody of the minor female child.

8. During the course of the hearing, Ms. Vijeta Singh, learned counsel for the wife, and Mr. Chandan Sharma along with Mr. Shubham Tripathi, learned counsel for the husband, were heard at length. The husband appeared in person before the Court, whereas the wife participated through video conferencing, having been summoned on short notice.

9. Upon interacting with the parties, the Court found it appropriate to direct both parties to file their respective affidavits of assets and liabilities, in accordance with the guidelines laid down by the Supreme Court in *Rajnish v. Neha and Another*⁵. This direction was necessitated by the emergence of the issue of maintenance during the course of arguments, particularly in the context of determining which parent would be better suited to financially support the minor child. In compliance with the Court's direction, both parties submitted their respective affidavits along with written arguments. Additionally, a rejoinder affidavit was filed by the learned counsel for the wife, bringing certain additional facts on record in response to the averments made in the counter-affidavit submitted by the husband.

10. Ms. Vijeta Singh, learned counsel for the wife, submitted that the impugned orders have been passed without

due consideration of the object and spirit of the Act⁴, which is enacted to ensure adequate protection of the rights of women guaranteed under the Constitution, particularly those who are victims of any form of violence occurring within the family, and to provide for matters connected therewith or incidental thereto. It was further contended that the orders were passed while ignoring material facts and evidence placed on record. In brief, the arguments addressed by learned counsel for the wife have been outlined herein:

10.1 She next argued that the statutory provisions with respect to custody of the minor child in the Act⁶ and directive principles enshrined in the Constitution, besides the U.N. Convention on the Rights of the Child (UNCRC) ratified by India in 1992, have not been considered objectively by the learned trial court.

10.2 The Constitutional Courts have consistently prioritized the child's personal care, emotional support, and overall well-being, irrespective of the statutory provisions of the Act⁶, as has been reiterated in a catena of judgments.

10.3 A minor girl entering puberty undergoes a critical phase of development, marked by significant physical changes and emotional transformation. In light of these factors, the learned trial court has failed to adequately consider: (i) the safety, privacy, and emotional well-being of the female child; (ii) the mother's vital role as caregiver and confidante; (iii) the child's comfort in discussing sensitive and personal matters; and (iv) the potential risk of trauma arising from an unsupportive or inappropriate environment.

10.4 Leading and intrusive questions were put forth by the learned judge, thereby placing an undue burden on

the child to choose between her parents. The learned judge failed to appreciate that the primary objective was to ascertain the best interests of the child, rather than to determine fault or adjudicate a contest of blame between parents whose matrimonial relationship had already suffered significant personal hardships leading to their separation. The role of the judge in such matters is inquisitorial rather than adversarial. In addition to assessing the willingness of the parents to support the child's education and financial needs, the learned judge ought also to evaluate their moral and psychological influence on the child's upbringing.

10.5 The observation made in the impugned order dated 28.08.2023, stating that the child has not been subjected to domestic violence and that the child's statement indicates no essential requirement to transfer custody to the mother, is erroneous.

10.6 The findings recorded by the learned trial court are contrary to the legislative intent and objectives of the Act. Furthermore, the learned appellate court erred in holding that the husband's employment with the All India Railway Services, which entails frequent transfers and lack of permanent stationing at Lucknow, does not impact the child's welfare. There exists a significant possibility that the husband may be posted to remote or interior locations in India, which could adversely affect the welfare and stability of the minor child.

10.7 The learned Magistrate as well as the learned appellate court erred in failing to adequately appreciate that the child's grandmother is a patient of hypertension and diabetes, and is a stage-3 cancer survivor who requires regular medical follow-ups and continuous medication. Additionally, the child's

grandfather suffers from hypertension and type-2 diabetes and has experienced three episodes of cerebral haemorrhage. Consequently, household chores are managed by three male servants- Mr. Munna, Mr. Khepan, and Mr. Nitesh- provided by the Railways.

10.8 A factually incorrect finding has been recorded by the learned appellate court in observing that wife voluntarily left the matrimonial home. In truth, the husband deceitfully persuaded his wife to vacate the government accommodation, having gained her confidence. The custody of the minor child was then removed in a pre-planned manner under the guise of taking the child to a nearby mall, but instead, she was taken to the husband's ancestral home in Gorakhpur. The learned trial court further erred in failing to consider a crucial piece of evidence- an SMS text message dated 26.10.2022, sent by the wife to the husband at 01:23 p.m., which clearly reads: *"As you are insisting me, I am vacating this house at a very heavy heart as you are telling that you would be shifting to some other house. I will be carry[ing] my belongings i.e. clothes, books, and few daily need items. I would request you to physically present today, when I hand over the house to you. It would be highly appreciated if you reach here by 02:15 p.m."* This message evidences the fact that the wife vacated the premises under the husband's insistence and not of her own volition.

10.9 The husband failed to reach at the government accommodation where both parties last resided together, despite the wife's prior request. Thereafter, the wife sent another SMS at 02:34 p.m. on the same day, stating: *"Sumit, as it is already 2:30 p.m., since I have to leave on urgent basis and there is no response from your*

side, I am leaving and giving the keys upstairs. Take care. Goodbye.”

10.10 This communication clearly demonstrates that the wife vacated the premises under compelling circumstances due to the husband’s insistence. Furthermore, the learned trial court failed to take into account another significant SMS sent by the wife on 11th November 2022, which reads: *“I am constantly ringing on maa’s phone but she is not letting me talk to Kusha since 7–8 days and I am also messaging her but no response from her side. Kindly see so that I can talk to Kusha.”*

10.11 This message underscores the mother’s continued efforts to stay in contact with the minor child and reflects the obstruction in communication imposed by the husband’s family. The trial court’s failure to consider these communications amounts to a serious oversight.

10.12 The Google Maps timeline records dated 04.10.2022, 05.10.2022, 07.10.2022, and 25.10.2022 clearly establish that the wife was present in Lucknow during the relevant period. Furthermore, on 26.10.2022 at 02:34 p.m., she left for Delhi after vacating the government accommodation under compelled and distressing circumstances. Contrary to this factual position, the husband has made incorrect and misleading averments in his counter-affidavit, alleging that the wife voluntarily left the matrimonial home on 22.10.2022, abandoning the minor girl child without any cause or provocation and on 6.8.2022 the divorce petition filed under section 13-B of the Hindu Marriage Act, 1955. These false assertions made by the husband are clearly rebutted by objective digital evidence and contemporaneous communication.

10.13 The birth certificate of the minor child, issued by the Government of National Capital Territory of Delhi, establishes that the child was born at Artemis Hospital, Dwarka, New Delhi. Furthermore, the credit card statement of Shri Sajiv Kumar Sharma, the father of the wife, reflects that the entire medical expenses related to the childbirth were borne by him. Reliance is placed on the statement of account of the said credit card to substantiate this claim.

10.14 There is no female member in the husband’s household, except for the wife’s elderly and ailing mother-in-law, who herself is dependent on domestic help to manage her day-to-day activities. In such circumstances, she is not in a position to adequately care for a child who is at a tender and sensitive stage of puberty. At this crucial developmental phase, the child requires the care, guidance, and emotional support of a mother. It is a well-settled principle that the welfare of the child is of paramount importance in custody matters. While determining custody, due consideration must be given to the child’s overall well-being, including her comfort, emotional contentment, physical and mental health, education, intellectual development, and personal hygiene.

10.15 The husband has filed a divorce petition based on false averments stating that both parties have mutually agreed for mutual divorce under section 13-B of the Hindu Marriage Act, 1955, where the wife could only know about the divorce petition on receipt of the court notice. She next submits that the respondent- husband is a resourceful person and has been using his resources to frustrate the cause of justice.

10.16 Learned judge erroneously overlooked and misapplied the ratio decidendi established in; *Devnath Ratre v.*

*Malti Ratre*⁷, *Vivek Singh v. Romani Singh*⁸, *Rohith Thammana Gowda v. State of Karnataka*⁹. It is submitted that the learned trial court erred in distinguishing the judgments cited by the applicant on the ground that they pertain to the *Guardians and Wards Act, 1890* and the *Hindu Minority and Guardianship Act, 1956*, and therefore, are not directly applicable to the issue of interim custody under Section 21 of the *Protection of Women from Domestic Violence Act, 2005*. This distinction is misplaced, as the central and overriding principle across all such statutes remains the same- **the paramount consideration is the welfare and best interests of the child**. Regardless of the specific legislation invoked, the consistent judicial approach has been to prioritize the child's overall well-being while adjudicating custody matters.

10.17 The learned appellate court has erroneously overlooked the legal principles laid down in the judgments outlined herein; *Vedabai alias Vaijayanatabai Baburao Patil v. Shantaram Baburao Patil and others*¹⁰, *Arun Ganguli v. Amresh Ganguli*¹¹, *Dr. Parijat Vinod Kanetkar and others v. Mrs. Malika Parijat Kanetkar*¹², *Kumar V. Jahgirdar v. Chethara Ramtheertha*¹³, *Balram v. Sushma*¹⁴.

10.18 It is further emphasised that, while adjudicating the issue of interim custody, the paramount consideration must be the welfare of the child. The concept of welfare is comprehensive and must encompass the child's physical, mental, emotional, psychological, and medical needs. However, the learned trial court failed to appropriately apply this principle to the facts and circumstances of the present case. Instead, it erroneously took a contrary view and concluded- without sufficient basis- that the child's best

interests would be best served in the custody of the father. This conclusion reflects a patriarchal bias, which is inconsistent with the progressive constitutional values of gender equality and the evolving child-centric jurisprudence upheld by the Constitutional Courts.

10.19 The wife is a well-qualified professional, currently employed as an Assistant Professor in the Department of Hospital Administration at Santosh Deemed to be University, with a gross monthly salary of Rs.50,000/-. She is financially capable of shouldering the responsibilities associated with the upbringing of the minor child. This, however, is without prejudice to her legal entitlement to claim maintenance, as recognised under the applicable provisions of law.

11. Ms. Vijeta Singh, learned counsel for the wife has further relied upon the law laid down in *Tejaswini Gaud and Others v. Shekhar Jagdish Prasad Tewari and Others*¹⁵; *Nil Ratan Kundu and Another v. Abhijit Kundu*¹⁶; *Goverdhan Lal v. Gajendra Kumar*¹⁷; *Saraswatibai Shripad Vad v. Shripad VasANJI Vad*¹⁸; *Rosy Jacob v. Jacob A. Chakramakkal* ^{1973 1 SCC 840}; *X v. Y*¹⁹.

12. Relying on the aforementioned judgments, learned counsel concluded her submissions by emphasising that the minor female child, presently around twelve years of age, is entering a critical stage of physiological and hormonal development associated with puberty. This sensitive phase necessitates enhanced emotional, psychological, and physical care- support that is most appropriately and effectively provided by the biological mother. In the present case, the mother, being a qualified medical professional, is uniquely equipped

to offer the specialised care and guidance required. It is respectfully submitted that neither the paternal grandmother nor the paternal aunt can adequately fulfil or substitute the maternal role, particularly given the nuanced and intimate nature of support essential during this developmental period.

12.1 It is further argued that due consideration must be accorded to the significant biological and developmental factors associated with puberty, including the child's privacy and overall well-being, which typically arise between the ages of 10 and 15 years. During this crucial and formative stage, the presence and active involvement of the mother are indispensable to appropriately address the unique physical and emotional changes experienced by the female child. Moreover, it is contended that the father, by reason of both biological and practical limitations, is not suitably positioned to provide the specialized care, understanding, and support that the mother is inherently better equipped to offer during this sensitive period of transition.

13. *Per contra*, learned counsel for husband respectfully submitted that the contentions raised by the wife are misplaced and untenable in law. It was argued that the statutory framework, as well as the judicial precedents relied upon by the wife, are not applicable to the facts of the present case. Learned counsel further contended that the learned trial court has acted strictly within the bounds of law, and that no violation of legal or procedural rights of wife has occurred. In support of this contention, reliance was placed on *Ramneesh Pal Singh v. Sugandhi Aggarwal*²⁰; *Selvaraj v. Revathi*²¹; *Mausami Moitra Ganguli v. Jayant*

*Ganguli*²²; *Shazia Aman Khan and another v. State of Orissa and Ors.*²³ and argued that the child is capable of forming an opinion as to whom she wanted to reside with. The child has categorically stated that she is happy with her father and would reside with him. It was also emphasized that the wife has failed to demonstrate any substantial prejudice or miscarriage of justice that would warrant interference by this Court.

13.1 At the time of solemnization of the marriage, neither were any demands made for dowry in the form of jewellery, cash, or other valuables, nor were such items voluntarily given by the wife's family. The allegations of cruelty made by the wife are baseless, unsubstantiated, and contrary to the actual facts of the case. On the contrary, it was the wife who consistently subjected the husband and his family members to mental and emotional harassment, thereby disrupting the peace and harmony of the matrimonial household. Furthermore, it is submitted that even the minor daughter, for whose custody the wife now seeks judicial intervention, was not spared from repeated episodes of psychological distress allegedly caused by the wife. These facts, taken cumulatively, demonstrate a pattern of conduct on the part of the wife that is incompatible with the welfare and best interests of the child, which must remain paramount in any custody determination

13.2 The application under Section 12 of the Protection of Women from Domestic Violence Act has been filed on fabricated and fictitious grounds, unsupported by any incriminating material. Accordingly, both the trial and appellate courts have rightly rejected the prayer for interim custody of the girl child.

13.3 The wife has falsely alleged that her husband coerced her into signing divorce documents and threatened to deprive her of access to her daughter.

13.4 It is submitted that the wife voluntarily left her daughter in the custody of her husband on 22.08.2024 and went to her parental home of her own volition.

13.5 The wife has lodged a false FIR bearing no. Case No. 0608 of 2022, under Sections 498-A, 323, 504, 506, 354 IPC, read with Section 3/4 of the Dowry Prohibition Act, at Police Station Civil Lines, Prayagraj, against her husband and other family members.

13.6 On 01.07.2023, the daughter's statement was recorded before the learned trial court, wherein she stated that she enjoys living with her father and family. She expressed comfort and a preference for residing with her father and grandparents, and confirmed that she had not lived with her mother since October 2022.

13.7 The wife has filed multiple petitions based on incorrect facts, falsely implicating the husband. Application No.1132 of 2022 under Section 125 Cr.P.C. is pending before the learned Judge, Family Court, Allahabad, alongwith a complaint under Section 12 of the Protection of Women from Domestic Violence Act, from which the impugned order arises.

13.8 The husband has been solely caring for his daughter, fulfilling both parental roles, with the support of the child's grandparents. The child is also enrolled in a reputed school in Lucknow.

13.9 It was further submitted that, in today's digital age, the child has access to necessary information and, as she matures, will understand her own emotional and physical development. She resides in a healthy and nurturing

environment and shares an open and communicative relationship with her father.

13.10 The wife voluntarily abandoned the matrimonial home and her responsibilities towards the child. Therefore, she cannot claim custody based on unsubstantiated and unsupported assertions.

13.11 As per the impugned order dated 28.08.2023, wife never visited Lucknow to meet her daughter. This raises a presumption of her lack of emotional attachment or affection. Notably, she has only visited Lucknow once to celebrate her daughter's birthday in the last two years.

13.12 The affidavit of assets and liabilities reveals that the child's grandfather suffers from hypertension, type-2 diabetes, and has experienced three cerebral haemorrhages, while the grandmother is a patient of hypertension, diabetes, and stage-three cancer. The answering respondent earns Rs.1,53,000/- per month and resides in government accommodation. The other details of liabilities are irrelevant for the purpose of the present application.

13.13 It is further disclosed that the wife is a highly qualified professional, having completed her B.D.S. degree and a Master's in Hospital Administration from King George's Medical University (KGMU). She has been employed as a dentist and hospital manager from 1st March 2012 until October 2022, serving in several reputed institutions including Anand Niketan Society Health Care, Ideal Dental Clinic (Patna), Ortho Dental Clinic (Patna), Indian Railways, Heritage Hospital (Lucknow), Divine Heart Hospital (Lucknow), and K.K. Hospital (Lucknow). Given her extensive professional commitments during this period, it is submitted that she would have limited time

to personally care for the child if custody were to be awarded to her.

13.14 It is argued that the wife possesses a highly suspicious disposition and has engaged in superstitious and occult practices, including black magic, in the presence of the child. Such conduct allegedly involved the use of the child's personal belongings, such as toys, books, and clothing, for these practices. The minor, having observed these activities, is said to have developed severe emotional distress and apprehension in the presence of the mother. These experiences, it is submitted, have resulted in psychological trauma and instability whenever the child is compelled to be with the mother.

14. The Guardians and Wards Act, 1890 is a colonial- era legislation that governs the appointment and regulation of minors in India. While the Act was a foundational step in formalising the legal structure concerning minor's guardianship, it was drafted at a time when patriarchal norms heavily influenced social and legal thinking. Over time, judicial interpretations and social changes have significantly progressed, particularly in recognising the preferential custody rights of the mother, especially in the case of a female child.

15. The principle that the father is the natural guardian of the minor child-boy or unmarried girl, and after him, the mother is primarily derived from section 6 of the Hindu Minority and Guardianship Act, 1956, though seminal at its time. Now it smacks patriarchal bias, therefore, become obsolete in the progressive realities of 21st-century in India. The judicial interpretation has commendably filled the legislative void, especially in recognizing the preferential custodial rights of mothers of girl children. However, true progress

demands that the legislature codify these evolving norms to ensure a consistent and gender-neutral approach across the country.

16. The Supreme Court in *Nil Ratan Kundu case (supra)* has held that the child is not a "property" or "commodity". Issues relating to custody of minors and tender-aged children should be handled with love, affection, sentiments and applying a human touch to the problem.

17. It is further delineated by the Supreme Court in the *ABC v. State (NCT of Delhi)*²⁴, that a child, as has been ubiquitously articulated in different legal forums, is not a chattel or a ball to be shuttled or shunted from one parent to the other. Court exercises *parens patriae* jurisdiction in custody or guardianship wrangles; it steps in to secure welfare of hapless child of two adults whose personal differences and animosity has taken precedence over future of their child, and further stretched that an unwed mother is the sole guardian of her child and does not need the father's consent to be declared as such.

18. Again, the Supreme Court in *Kumar V. Jahgirdar case (supra)*, case enumerated that the mother cannot always claim superior custody rights of her daughter. However, a female child at the advent of puberty requires a mother's care and attention, which cannot be gained in the absence of female company in the father's house. Thus, to safeguard the interest of the child, her exclusive custody may be given to the mother and visitation rights to the natural father.

19. In child custody proceedings, especially involving a minor girl entering puberty, the role of the family court judge

is not merely adjudicative but deeply protective and facilitative. The transition into adolescence is a sensitive period marked by profound emotional and physical changes, and the law recognises the need for careful, child-centric engagement by the judiciary. The judge is tasked with upholding not just statutory rights but also the child's dignity, safety, emotional well-being, and evolving autonomy.

20. When deciding custody of a girl who has just entered puberty, courts shall consider: (i) who the primary caregiver has been, (ii) the girl's schooling, community ties, and stability, (iii) allegations of abuse, neglect, or inappropriate behaviour, and (iv) demeanour and conduct of the parties to the litigation. The judicial role in custody matters involving minor girls entering puberty is far more than a procedural function- it is a constitutional, moral, and empathetic responsibility. A judge must rise above adversarial structures and act as a trustee of the child's welfare. This calls for a gender-sensitive, emotionally intelligent, and child-centred judicial approach, ensuring that the dignity, safety, and well-being of the child remain the unwavering focus of custody decisions.

21. The mother has a unique position in the case of the custody of the female child. In most cases, the mother is naturally better positioned to understand and support a daughter going through puberty because of shared biological experience. The mother has personally experienced menstruation, other female-specific changes, and comfort in discussing such issues. The girls often feel more comfortable talking to their mothers about body changes, menstrual hygiene, etc. The

mother often plays the more effective role in emotional attunement, being a natural caregiver, and is more likely to notice subtle psychological shifts. The society and family dynamics often encourage closer emotional bonding between mother and daughter, especially during adolescence.

22. While the father's role is equally essential in emotional support and reinforcing gender equality, he may face limitations in understanding issues related to shared biological experience and other female-specific changes and providing physical assistance with hygiene-related matters unless he is exceptionally sensitive and trained.

23. Now, reverting to the facts of the present case, it is observed that the husband has opposed the interim custody of the child based on incorrect and misleading facts. A careful examination of the SMS communications sent by the wife to the husband on 26.10.2022 and 11.11.2022 clearly demonstrates that it was the husband who insisted the wife to vacate the government accommodation under the pretext of relocating to a new residence. Furthermore, the husband, in a premeditated manner, removed the custody of the minor girl from her mother by deceitfully taking the child to a nearby mall and subsequently keeping her at his ancestral home in Ghazipur for an extended period, despite the fact that the child ordinarily resided and pursued her studies in Lucknow.

24. Upon examination of the documents submitted by learned counsel for the wife, it is evident that the minor girl was born in Delhi at the wife's parental home, and all related medical expenses were borne by Shri Sajiv Kumar Sharma,

the wife's father. Additionally, screenshots of WhatsApp conversations reveal exchanges between the husband and wife regarding the purchase of a property valued at Rs. 3.5 crore, consisting of fully furnished apartments featuring a drawing room, two lobbies, six spacious bedrooms, seven bathrooms, a fully modular kitchen, and a terrace garden. This Court discerns indications of a deceitful scheme orchestrated by the husband- a qualified engineer- against his wife, a medical doctor, wherein he gained her trust to induce her to vacate the government flat.

25. It also transpires from the petition filed under Section 13(1) of the Hindu Marriage Act, 1955, that the wife allegedly deserted the husband on 6.8.2022 following a quarrel, taking with her the entire *stridhan*, including clothes and jewellery. The husband claims to have made sincere efforts to reconcile the matrimonial dispute. However, these averments are contradicted by the contents of the WhatsApp chat dated 26.10.2022, which clearly indicate that the wife left the matrimonial home only on 26.10.2022. This is further supported by the screenshots of the Google Maps timeline, reflecting the wife's presence at Mall Road, Bandariya Bagh Railway Colony, Lucknow, throughout the day on 4.10.2022, similarly on 5.10.2022, and 7.10.2022, with specific time stamps at 08:58 p.m. and 9:16 p.m., respectively (pages 99 to 103 of the rejoinder affidavit filed by the wife). The Google Maps timeline of 26.10.2022 shows the wife at Bandariya Bagh Railway Colony, Lucknow, at 3:34 p.m., and subsequently at Batohi Resort, Rae Bareli, on Lucknow Road, at 4:15 p.m.

26. The aforementioned WhatsApp chat screenshots and Google Maps timeline

conclusively demonstrate that the wife resided at Bandariya Bagh Railway Colony until 3:34 p.m. on 26.10.2022, after which she proceeded towards Delhi. These details directly contradict the averments made by the husband in his responses to the application filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005, as well as the application under Section 23 of the said Act seeking interim custody of the female child.

27. In essence, to retain custody of the girl, the husband first orchestrated a fabricated story to remove her from the mother's care. Subsequently, by deceitfully gaining his wife's trust, he compelled her to vacate the government accommodation under the pretext of purchasing a private flat. Through this scheme, he effectively separated the wife from the child's company and has maintained custody of the child for nearly two years. Although, at that particular time, the husband acted more as a schemer and conniver than as a prudent person, genuinely striving to preserve the marriage.

28. Based on the foregoing deliberations, the scheme of the relevant statutes, the conduct and demeanour of the husband, and the mother's unique and pivotal role in the custody of a female child- being naturally better positioned to understand and support a daughter undergoing puberty due to their shared biological experience, including menstruation and other female-specific changes, as well as providing comfort in discussing such sensitive matters- this Court hereby directs that the custody of Ms. Samriddhi be entrusted to the applicant no.1- the mother, in accordance with following manner:

(i) Within three days of receiving a copy of this order, the father-opposite

party no. 2- shall peacefully and cordially hand over the custody of the minor girl, Samridhhi, to the applicant no.1- wife at her residence in Delhi.

(ii) In the event of non-compliance, the applicant- wife shall approach the Chairman, Child Welfare Committee, Lucknow. Upon such request, the Chairman shall, with the assistance of a lady police officer and a qualified child counsellor, ensure the safe retrieval and transfer of the child to the mother.

(iii) *Prima-facie*, it seems that the husband is a conniver may misuse his official position to influence the proceedings and obstruct the applicant-wife's lawful right, therefore, the Commissioner of Police, Lucknow shall ensure that the opposite party no.2- husband shall be under watch till the compliance of this order, so that he could not frustrate the terms of this order.

29. So far as the visitation rights of the father is concerned, the opposite party no.2 shall be at liberty to take recourse as available under law.

29.1 The issue of maintenance has also raised during the argument, the applicant-wife shall be at liberty to raise all her claims in accordance with law, before the competent court. Needless to say, it shall be dealt with in accordance with *Rajnish v. Neha and another case (supra); para-38 of Rajesh Babu Saxena v. State of U.P. and another25; Smt. Parul Tyagi v. Gaurav Tyagi26.*

30. A copy of this order shall be transmitted to Chairman, Child Welfare Committee, Lucknow for intimation and compliance, if need arises, and the Commissioner of Police, Lucknow for information and compliance.

31. The observations and findings recorded above shall not prejudice either the merits of the case or the adjudication of any pending matters between the applicant-wife and respondent-husband.

32. Accordingly, the instant application stands allowed with the aforesaid terms.

(2025) 5 ILRA 1849
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 27.05.2025

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Application U/S 482 No. 12048 of 2023

Sri Sushant Gupta & Ors. ...Applicants
Versus
Central Bureau Of Investigation S.C.B. Lko
...Opposite Party

Counsel for the Applicants:

Rishad Murtaza, Aishwarya Mishra, Arnav Prakash Tikku, Syed, Ali Jafar Rizvi

Counsel for the Opposite Party:

Anurag Kumar Singh

Criminal Procedure Code, 1973 — Section 482 — Prevention of Corruption Act, 1988, Section 19 — Sanction for prosecution — Validity — Bank officials accused of conspiracy and defalcation — Sanction granted under Section 19 PC Act also purporting to cover offences under Indian Penal Code — Competence and application of mind — Held, sanction under Section 19 PC Act cannot extend to IPC offences — Authority not competent to sanction prosecution for offences beyond PC Act — Sanction "for the said offences and for any other offences under any other law" shows total non-application of mind — Vitiates sanction and cognizance order —