



2025:DHC:9599



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 29.10.2025

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W.P.(C) 4448/2025 and CM APPLs.20522/2025, 63388/2025,
66907/2025

MS. X THROUGH HER FATHER

.....Petitioner

Through: Mr. K. Rajat and Mr. Chandan
Kumar, Advs.

versus

STATE (NCT) OF DELHI

.....Respondent

Through: Mr. Amit Tiwari, CGSC, Ms. Ayushi
Srivastva, Mr. Ayush Tanwar, Mr.
Kushagra Malik and Mr. Arpan
Narwal, Advs. for Delhi Police.
SI Anuj Man, PS Khyala.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (ORAL)

1. The present petition has been filed by a minor child through her father. The petition highlights a complain of sexual abuse of the petitioner at the hands of her uncle. The prayers made in the petition are as under:

"(a) Issue a Writ of Mandamus and/or any other writ, order or direction for protection of rights of the Petitioner that have been granted to victim child under the POCSO Act; and

(b) Issue a Writ of Certiorari and/or any other writ, order or direction restraining the Ld. Family Court from passing any orders qua the Petitioner that are in conflict with the provisions of the POCSO Act or infringe the rights of the Petitioner as conferred on her by the POCSO Act ; and/or

(c) Grant any other relief in favour of the petitioner herein in the interest of justice."

2. In the above context, *vide* order dated 08.04.2025, it was directed as under:



“11. In the meantime, the concerned Family Court is directed to scrupulously comply with the substantive and procedural requirements set out in the POCSO Act and the Rules framed there-under.”

3. During the course of hearing, it transpires that there is a chequered history of matrimonial proceedings between the parents of the petitioner.

4. *Vide* order dated 15.02.2024, passed by the Supreme Court in SLP (C) No.14915/2023, it was *inter-alia* directed as under:

“We are of the view that the Family Court would be the appropriate forum for taking a final decision on the question of custody in the pending petition made under Sections 7 and 25 of the 1890 Act. This matter has been heard on several occasions by this Court and attempt was made to find a resolution, but no solution could be worked out by and between the parties.

We are apprised that hearing in the main case for custody has reached an advanced stage before the Family Court. We, accordingly, dispose of this petition with a request to the Family Court to conclude hearing of the matter as expeditiously as possible.

Till final decision is taken by the Family Court, the custody of the child shall remain with the father. We are not expressing any opinion on merits in this order lest it influences the Family Court while taking a decision in the proceedings pending before it. We are also refraining from making any comment as to whether the present custody of the child with the father is legal or not. During pendency of the proceedings before the Family Court, the question of respondent’s visitation right shall be determined by the Family Court itself and for this purpose, the respondent shall be at liberty to make appropriate prayer.”

5. Attention is also drawn to an order dated 04.09.2025, passed by the Division Bench of this Court in MAT. APP. (F.C.) 62/2021, whereby it was directed as under:

“3. The present Appeal was dismissed as not pressed on 14.03.2023, keeping in view the likely conclusion of the trial of the case pending before the Family Court.

4. In substance, the dispute pertains to visitation rights and shared parenting with respect to the minor daughter born in February, 2013.



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From March 2023, the matter is stated to be pending for final disposal before the Family Court. Nearly a period of one and a half years has elapsed.

5. In view of the aforesaid position, the Family Court is requested to make sincere endeavours for disposal of the main case on the next date of hearing or within 15 days thereafter.

6. The application is accordingly disposed of.”

6. Subsequently, on an application seeking recall of the aforesaid order dated 04.04.2025, the following order dated 10.09.2025 came to be passed by a Division Bench of this Court:

“CM APPL. 56878/2025 (Seeking recalling of order dt. 04.09.2025)

1. This Court, on 14.03.2023, had passed the following order:

“1. Appellant-husband in MAT.APP.(F.C.) 62/2021 impugn order dated 19.04.2021 and seeks certain directions towards shared parenting.

2. Petitioner-wife in CM(M) 376/2021 impugns order dated 19.04.2021 whereby her application seeking cancellation of visitation to the husband has been dismissed. She further in CM(M)399/2021 impugns order dated 28.05.2021 whereby directions were issued to her to comply with order dated 19.04.2021.

3. Learned counsel for the parties submit that since there is an order for conclusion of the trial by 31.07.2023, they would not like to press their respective petitions without prejudice to their stands before the concerned Family Court.

4. We may also notice that in the impugned order dated 19.04.2021, the Family Court has itself recorded that it would be open to the parties to make appropriate submissions at the time of final disposal of the substantive petition.

5. We are informed that the trial is progressing on an expeditious basis and the examination and cross-examination of the appellant- husband has already been concluded and endeavour is being made by parties to expedite their evidence.

6. Learned counsel for the parties, under instructions, submit that let the status with regard to interim visitation as obtaining today be continued till the final disposal of the appeal. This, however, is subject to the pending application with regard to the



change of school of the child, which is pending consideration before the Family Court.

7. Learned counsel for the appellant-husband further reiterates the assurance given to this Court on 29.07.2021. The statement is taken on record.

8. The appeals are, accordingly, disposed of with a direction to the Family Court to endeavour to conclude the proceedings expeditiously as already directed in CONT.CAS(C) 392/2021. The observation, on merits in the impugned order dated 19.04.2021 and 28.05.2021 shall be treated as only prima facie and the Family Court would be at liberty to take a fresh view of the matter after the trial of the parties is concluded without being influenced by anything stated in the said order.

9. Order dasti under signatures of Court Master.”

2. Subsequently, a Miscellaneous Application was filed seeking issuance of directions by the Respondent. This Court disposed of the said application vide order dated 04.09.2025, wherein the learned Family Court was requested to make an endeavour for disposal of the main case on the next date of hearing or within 15 days thereafter.

3. The Appellant seeks recall of the aforesaid order.

4. We have heard the Appellant, who appears in person.

5. This Court has failed to comprehend the grievance of the Appellant, particularly when the learned Family Court has only been requested to dispose of the main case. However, he insists on making submissions.

6. This Bench has heard the Appellant for 10 minutes.

7. The Appellant contends that the application filed by the Respondent was not maintainable under Order XXIII Rule 1(4) and Order II Rule 2 of the Code of Civil Procedure, 1908.

8. It is pertinent to mention herein that this Court has not decided the case. It has only requested the learned Family Court to make sincere endeavours for the disposal of the main case. Hence, there is no substance in the application, which is dismissed, with a cost of Rs. 25,000/-, which shall be deposited within a period of a month from today in the Poor Patient Fund at All India Institute of Medical Science, Ansari Nagar, New Delhi-110029.

9. The present application shall stand disposed of in the aforesaid terms.”

7. It also transpires that after filing of the present petition and pursuant



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to the aforesaid directions of the Division Bench, a judgment and decree dated 26.09.2025 has been passed by the Family Court in GP No.54/2018. A perusal of the same reveals that the petitioner's contention regarding lack of jurisdiction in the Family Court has also been taken note of and dealt with. The relevant paragraphs of the said judgment are as under:

"71. There was order passed on 04.09.2025 by Hon'ble High Court of Delhi in case No.MAT.APP.(F.C) 62/2021 tilted as "Pankaj Jain Vs. Parul Jain" wherein it has been observed that The Family Court is requested to make sincere endeavours for disposal of the main case on the next date of hearing or within 15 days thereafter. The case was fixed on 18.09.2025 before this court and it was the first date subsequent to order dated 04.09.2025 of Hon'ble High Court. On 18.09.2025 final arguments were heard and both the parties make their respective submissions which were heard from 2.00 PM to 4.45 PM on that day. From the proceedings sheets it is crystal clear that the now respondent-father is in the habit of moving one application after other and number of adjournments applications have been moved by him just one or two days before the dates which were fixed in this matter. The now respondent-father also submitted that since the subject child is the victim and one POCSO matter is pending before the concerned court, therefore, this court has no jurisdiction to proceed with the case as Section 42A of POCSO Act has overriding effect on other laws. In my considered opinion Section 42A has the overriding effect on the provisions of any other law only in case of any inconsistency with the provisions of POCSO Act. Section 42A of the said act reads as under:

"42A. Act not in derogation of any other law.

The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency.]"

72. This court being Family Court is fully empowered to look after the welfare & interest of the child, therefore, the contention raised by now respondent-father is having no force. Moreover, the custody of the subject child came with the now respondent-father during the pendency of this petition and since the now respondent-father initially was claiming the custody of subject child, therefore, now after transposition of the parties, the respondent-father cannot take altogether u-turn. It is



relevant to note that the custody of the child with respondent-father has not come permanently with him by virtue of any order. The Ld. Counsel for petitioner-mother submitted that during visitation, the father took the custody of child and thereafter never returned the child back to mother. It is relevant to note that the order dated 21.11.2023 passed in this case also reflects as under:

“At this stage, it is relevant to note that at the time, the order dated 22.03.2023 was passed by this Court, the temporary custody of the child was with the petitioner pursuant to order dated 19.04.2021, therefore, in the order dated 22.03.2023, petitioner-father was also directed to hand over the custody of the child to the mother on 23.03.2023 at 10.00 AM. The order dated 22.03.2023 was challenged by the petitioner before the Hon’ble Delhi High Court but no stay was given to the petitioner-father on the order dated 22.03.2023 and vide order dated 24.03.2023, he was directed by the Hon’ble Delhi High Court to hand over the custody of the child to the mother on 25.03.2023 but he in defiance of order dated 25.03.2023 did not hand over the custody of the child to the mother. Thereafter, the matter was taken up by the petitioner upto the Hon’ble Apex Court where also vide order dated 11.04.2023, he was directed to hand over custody of the child to the mother but again in violation of the directions issued to him, he did not hand over the child to the mother on the pretext that child is under mental stress due to the decision of the mother to change her school and is not ready to go with respondent. Since March-2023 till now, from this Court upto Hon’ble Apex Court, the petitioner has been directed several times to hand over the custody of the child to the mother but in defiance of all the orders, he is still retaining the custody of the child with him,”

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80. It is also relevant to note that as per judgment dated 09.09.2024 of Hon’ble High Court passed in the present matter titled as Pankaj Jain Vs. Parul Jain, it has been observed in para no.54 of the said judgment that it is quite evident that he seems to be making an attempt to ensure that the aforesaid guardianship petition does not reach its logical end. In para no.65, the Hon’ble Court held that evidently there is no merit in request seeking return or rejection of plaint or for that matter, in insisting upon amendment. It is further important to note that the father Sh. Pankaj Jain has even not left the Ld. Predecessor of the court as he



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also dragged the Ld. Predecessor as is evident from order dated 26.05.2025 passed by Hon'ble High Court of Delhi in case titled as Pankaj Jain Vs. Charu Aggarwal in case bearing CONT. CAS (C) 831/2025 CM APPL.32379/2025. The said order dated 26.05.2025 was passed on the basis of petition filed by petitioner Sh. Pankaj Jain thereby alleging wilful disobedience of order dated 26.04.2024. The Hon'ble High Court held in para no.5 of the aid order that in the opinion of this Court, the Family Court has taken into account the orders of this Court dated 26.04.2024, considered the orders passed by the Supreme Court on 15.02.2024. The Hon'ble Court held that the Court does not find any infraction of any order of this Court and accordingly the petition was disposed of. It is also relevant to note that the divorce petition bearing HMA No.1089/2018 filed by Smt. Parul Jain i.e. mother of the subject child against Sh. Pankaj Jain i.e. father of the child, was disposed off vide judgment dated 29.03.2025 passed by Ld. Predecessor of this court. The said divorce petition was U/s 13(1) (ia) of Hindu Marriage Act, 1955 on the ground of cruelty. As per said judgment dated 29.03.2025 the said petition was allowed and the marriage between Ms. Parul Jain and Mr. Pankaj Jain was dissolved on the ground of cruelty U/s 13 (1) (ia) of Hindu Marriage Act, 1955. The said judgment also reflects cruelty on the part of Sh. Pankaj Jain. It is also relevant to note that on 18.09.2025 when the final arguments were head then on the said date this court asked the father Sh. Pankaj Jain as to whether the subject child can be connected through video conferencing today i.e. on that day with the court, and, said Sh. Pankaj Jain submitted that due to examination of the child, the child cannot be connected through video conferencing. During the course of submissions, both the parties submitted that a case under POCSO Act is also pending where both the parties i.e. petitioner and respondent and Mama Ji of the subject child are the accused persons. It was submitted by Ld. Counsel for petitioner-mother that one order regarding interim custody/visitation rights passed on 07.06.2024 is also there wherein the relevant details are reflected. Same has been perused. The subject child is girl child who is 12 years old now. The age of puberty of the child is also approaching. The various visits of the mother of the child, either domestic or international were generally the official visits. Both the parents of child are well qualified and rather highly qualified. They have to keep the balance between professional and personal lives. In modern times, it cannot be said that the mother who is highly qualified ought to leave the job with the sole purpose of



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*looking after the child. The respondent-father is also the accused in POCSO case as was submitted. The father of the child has retained the custody of the child and not returned the same to the mother of the child. During the pendency of the case only the father took the child and never returned and flouted all the orders of the Courts including Hon'ble Superior Courts. The order dated 22.11.2024 passed by Ld. Principal Judge, Family Court, West Distt., Tis Hazari Court, Delhi on transfer petition has already been highlighted above which clearly reflects the conduct of the now respondent-father. It is not out of place to mention here there on 25.07.225 this Court requested both the parties to try to settle the matter in Mediation as there was "**Special Mediation Drive**" i.e. "**Mediation For Nation**" which was going on in the country but both the parties flatly refused to participate in mediation proceedings.*

In view of the above detailed facts & circumstances and various orders of Hon'ble Superior Courts as highlighted above and considering the material on record and also the conduct of the parties and also in view of the reasons given hereinabove, it is clear from the record that the erstwhile petitioner-father Sh. Pankaj Jain who is not the respondent-father is not entitled to permanent custody of minor daughter namely Ms. "P" Jain. Hence, issue no.1 is decided against Sh. Pankaj Jain/father of the child and in favour of Ms. Parul Jain/mother of the child."

8. In these proceedings, this Court cannot exercise appellate jurisdiction over the orders passed by the Family Court. Given the above background, it would also be inapposite for this Court to pass direction/s of the kind sought by the petitioner, in the teeth of the elaborate findings rendered by the Family Court. In case the petitioner is aggrieved with the orders passed by the Family Court, it is at liberty to take appropriate legal remedies under law. Needless to say, the petitioner would also be at liberty to urge its contentions *vis-a-vis* jurisdiction of the Family Court, in such proceedings.

9. The present petition is, accordingly, dismissed.

OCTOBER 29, 2025/cl

SACHIN DATTA, J