

IN THE HIGH COURT OF KERALAAT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937

OP (FC).No. 280 of 2015 (R)

AGAINST THE JUDGMENT IN I.A.NOS.527/15, 596/15 & 567/15 IN OPGW 1179/2010 of
FAMILY COURT, THIRUVALLA DATED 22.6.2015

PETITIONERS/PETITIONERS IN IA NO.527/2015:

1. SANUMOL C C, AGED 39 YEARS
D/O.P.T.CHANDY, CHANGALIPALLATHU MALAYIL HOUSE
KUTTOOT PO, THIRUVALLA TALUK
REPRESENTED BY HER POWER OF ATTORNEY HOLDER P.T.CHANDY
CHANGALIPALLATHU MALAYIL HOUSE
KUTTOOR PO, THIRUVALLA TALUK.
2. LISSY CHANDY
W/O.P.T.CHANDY, CHANGALIPALLATHU MALAYIL HOUSE
KUTTOOR PO, THIRUVALLA TALUK.
3. P.T.CHANDY, CHANGALIPALLATHU MALAYIL HOUSE
KUTTOOR P.O., THIRUVALLA TALUK.

BY ADVS.SRI.K.N.RADHAKRISHNAN(THIRUVALLA)
SRI.CIRIL.T.EAPEN

RESPONDENT/RESPONDENT:

SUNNY P C
S/O.P.T.CHACKO, POROTHUKUNNEL HOUSE, MALOOSSEERRY PO
PERUMBAYIKKAD VILLAGE
KOTTAYAM DISTRICT PIN 686 041.

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
26-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS

- P1- TRUE COPY OF THE POWER OF ATTORNEY EXECUTED BY 1ST
PETITIONER DATED 5.6.2009
- P2- TRUE COPY OF THE COMPROMISE DATED 4.4.2012
- P3- TRUE COPY FO THE REPORT OF THE CHILD WELFARE COMMITTEE DATED
25/5/2015
- P4- TRUE COPY OF THE IA NO.528/2015 IN OP NO.1179/2010 FILED BY THE
PETITIONER
- P5- TRUE COPY OF THE IA NO.527 OF 2015 IN OP NO.1179/2010 FILED BY THE
1ST PETITIONER
- P6- TRUE COPY OF THE STATEMENT OF THE ELDER SON RECORDED BY THE
FAMILY COURT DATED 9.6.2015
- P7- TRUE COPY OF THE IA NO. 596/2015 GW(OP)1179/2010 FILED BY THE
RESPONDENT DATED 15.6.2015
- P8- TRUE COPY OF THE COMMON ORDER DATED 22.7.2015 IN I.A. NO. 427/2015,
467/2015, 496/2015 IN OP NO.1179/2010 OF THE FAMILY COURT, THIRUVALLA
DT.22.6.15

RESPONDENT(S)' EXHIBITS: NIL

TRUE COPY

P.S.TO JUDGE

dsn

C.K.ABDUL REHIM & ANIL K.NARENDRA, JJ.

O.P.(FC)No.280 OF 2015

DATED THIS THE 26TH DAY OF JUNE, 2015

JUDGMENT

ANIL K.NARENDRA, J.

The petitioners have filed this O.P.(FC) seeking an order to set aside Ext.P8 common order of the Family Court, Thiruvalla, dated 22.6.2015 in I.A.Nos.527 of 2015 and 596 of 2015 in O.P.(G&W) No.1179 of 2010.

2. The marriage between the 1st petitioner and the respondent was solemnised on 6.1.2001 at St.Catholic Church, Maloosserry, as per Christian religious rites and rituals. Out of the said wedlock, two male children were born to them, who are now aged 14 years and 10 years respectively. The 2nd and 3rd petitioners are their maternal grandparents. Due to difference of opinion, the 1st petitioner and the respondent are living separately. The 1st petitioner is working as a Staff Nurse in Saudi Arabia. The respondent is working as Peon in a Travel Agency at his native place.

3. The respondent filed O.P.(G&W)No.702 of 2010 before

the Family Court, Kottayam, seeking an order to appoint him as the guardian of the minor children and for their custody. On the formation of the Family Court, Thiruvalla, the above original petition was transferred to that Court and renumbered as O.P. (G&W) No.1179 of 2010. The said original petition was compromised between the parties, in terms of the compromise recorded in I.A.No.526 of 2012. Ext.P2 is the compromise decree passed by the Family Court on 4.4.2012, in terms of the compromise so recorded.

4. In terms of Ext.P2, the permanent custody of the two children till they attain majority was given to the respondent. The 1st petitioner was given liberty to get temporary custody of the children for a period of 20 days in every year, during the period when she comes on leave from her workplace abroad. The 2nd and 3rd petitioners, the maternal grandparents, were given liberty to visit the children once in a month at the residence of the respondent. The 1st petitioner was also given liberty to visit the children at their parental home as and when she likes, after due notice to the respondent through her parents. Based on Ext.P2

compromise decree, the custody of the children was handed over to the respondent, on 4.4.2012.

5. On 11.4.2015, the 1st petitioner came on leave from Saudi Arabia. In terms of Ext.P2 compromise decree, the custody of the children was handed over to her on 19.4.2015, for a period of 20 days. On 10.5.2015 the 2nd and 3rd petitioners, the maternal grandparents, took the children to their paternal home, in order to handover their custody to the respondent. At that time the children requested the respondent to allow them to stay at their maternal home for four 4 more days and accordingly, he allowed the children to stay in their maternal home for 4 more days and thereafter, the respondent brought them back to their paternal home.

6. On 19.5.2015, the 'CHILD LINE', Kottayam submitted an urgent report before the Child Welfare Committee, Kottayam, stating that a 'SAVE CALL' was received on 'CHILD HELPLINE 1098' about the pathetic condition of the children of the 1st petitioner and the respondent, and the need for their emergency rescue. The Committee issued a 'rescue order' to the Child Line

Co-ordinator and an 'assistance order' to the Sub Inspector of Police, Gandhinagar. After rescuing the children, a member of the Child Welfare Committee interacted with them and recorded their statement. Since the children declined to go with the respondent, they were accommodated in the Emmanuel Children Home, Parthumpara, and the 1st petitioner and the respondent were given notice to appear before the Committee on 20.5.2015. On that date, the Committee interacted with the children and their parents. The children expressed their desire to go with the 1st petitioner. Then the respondent produced copy of Ext.P2 compromise decree in O.P.(G&W)No.1179 of 2010. In such circumstances, the Child Welfare Committee submitted Ext.P3 report dated 25.5.2015, before the Family Court, Thiruvalla, in O.P.(G&W)No. 1179 of 2010.

7. The 1st petitioner-mother, along with her parents, filed I.A.No.527 of 2015 in O.P.(G&W)No.1179 of 2010 before the Family Court, an application under Section 12 of the Guardians and Wards Act, 1890, seeking interim custody of the children, stating that, pursuant to Ext.P2 compromise decree the children

started residing with the respondent from 4.4.2012 at their paternal home. But life was not happy for them in the custody of the respondent. The children, who were till then studying in a very reputed school, were admitted in an ordinary school. The respondent failed to look after them properly. The respondent, after the death of his mother, comes home drunk in the dead of night, leaving the children at home alone. The children were subjected to abuse and were physically manhandled. The children are now very afraid of him and they do not want to live with him. The children revealed the untold miseries faced by them, during their 20 days stay with the 1st petitioner. They were also reluctant to go with the respondent. However, on 10.5.2015, the 2nd and 3rd petitioners took the children to their paternal home. As the children were crying, they took the children back to their maternal home, for residing there for 4 more days. On 14.5.2015, the respondent came there and took them back to their paternal home. After reaching Kottayam, the children contacted the Child Welfare Helpline, which culminated in the Child Welfare Committee, Kottayam filing Ext.P3 report before

the Family Court, Thiruvalla. The statement given by the children before the Child Welfare Committee was also produced along with I.A.No.527 of 2015. Therefore, according to the petitioners, the atmosphere in the paternal home is not congenial for the welfare of the children and it will only hamper their growth. In such circumstances, the petitioners filed I.A.No.528 of 2015 seeking an order to remove the respondent from the guardianship of the children and to appoint the 1st petitioner as their guardian and also to grant the petitioners their custody. It was along with the aforesaid application, the petitioners filed I.A.No.527 of 2015, under Section 12 of the Guardians and Wards Act, 1890, seeking an order to give them interim custody of the children.

8. The respondent-father filed I.A.No.596 of 2015, under Section 12 of the Guardians and Wards Act, 1890, seeking an order to take evidence in I.A.Nos.527 of 2015 and 528 of 2015 before making any alterations to the terms of compromise contained in Ext.P2 compromise decree dated 4.4.2012 and also seeking an order to give him interim custody of the children till the aforesaid applications are finally decided. The respondent

has also stated that, he was looking after the children with love and affection and maintaining them in a proper manner and the allegations regarding harassment at his hands are false. The children are pursuing their studies in CMS Higher Secondary School, Kottayam, which is a famous school in Kottayam town, and there is no circumstances warranting a change in their schooling. The respondent has also stated that, the 1st petitioner-mother is leaving India to join her duty abroad and that the maternal grandparents are also not intending to look after the children. Therefore, the best person to look after the children is the respondent-father.

9. The Family Court considered the rival contentions and passed Ext.P8 order dated 22.6.2015 by which I.A.No.596 of 2015 was allowed and the interim custody of the children were given to the respondent-father till the disposal of I.A.No.528 of 2015 filed by the petitioners seeking an order to remove him from the guardianship of the children and to appoint the 1st petitioner-mother as their guardian. The 2nd and 3rd petitioners, the maternal grandparents, who were in the custody of the

children as per the orders of the Family Court were directed to handover their custody to the respondent-father. I.A.No.527 of 2015 filed by the 1st petitioner-mother along with her parents, seeking interim custody of the children was dismissed. It is aggrieved by Ext.P8 order, the petitioners are before this Court in this O.P.(FC).

10. We heard the arguments of the learned counsel for the petitioners.

11. The learned counsel for the petitioners would contend that, when the materials on record indicate that, the children are not safe in the hands of the respondent-father and that, they are not getting proper education, the Family Court ought to have entrusted their interim custody to the petitioners, especially when the 1st petitioner-mother, who is employed abroad, has the capacity to provide better life and education to her children. The learned counsel would contend further that, when the Child Welfare Committee in Ext.P3 report found that the children were subjected to physical and mental torture by the respondent-father, the Family Court ought not to have given their interim

custody to him. The elder son gave Ext.P6 statement before the Family Court against the respondent-father, which was also brushed aside without any valid reasons. Moreover, the Family Court ought not to have passed Ext.P8 order, without considering the pendency of I.A.No.528 of 2015 filed by the petitioners seeking an order to remove the respondent-father from the guardianship of the children and to appoint the 1st petitioner-mother as their guardian.

12. A reading of Ext.P8 order would make it explicitly clear that, the only question that has been considered by the Family Court in the said order is as to whether the interim custody of the children is to be given to the 1st petitioner-mother or to the respondent-father till the disposal of I.A.No.528 of 2015 filed by the petitioners seeking an order to remove the respondent-father from the guardianship of the children and to appoint the 1st petitioner-mother as their guardian.

13. At the outset, it is made clear that, we do not propose to delve deep into the merits of the allegations and counter-allegations raised before the Family Court, as reflected in Ext.P8

order as well as in the interlocutory applications filed before that Court, since I.A.No.528 of 2015 filed by the petitioners seeking an order to remove the respondent-father from the guardianship of the children and for other consequential relief is pending consideration before that Court.

14. As we have already noticed, the 1st petitioner-mother and the respondent-father are at loggerheads with each other and living separately for quite long. The issue regarding custody of their minor children is governed by Ext.P2 compromise decree passed by the Family Court on 4.4.2012 in O.P.(G&W) No.1179 of 2010. In terms of the compromise, the permanent custody of the children till they attain majority is given to the respondent-father and the 1st petitioner-mother is entitled to have their temporary custody for a period of 20 days every year, during the period when she comes on leave from her workplace abroad. The 2nd and 3rd petitioners, the maternal grandparents are entitled to visit the children once in every month, at their paternal home. The 1st petitioner-mother is also given liberty to visit the children, at their paternal home, as and when she likes, after due notice to

the respondent-father.

15. It is not in dispute that, in terms of Ext.P2 compromise decree, the custody of the minor children were handed over to the respondent-father on 4.4.2012 and they were residing in their paternal home till 19.4.2015, the date on which the 1st petitioner-mother was given interim custody of the children, and they were pursuing their studies in CMS Higher Secondary School, Kottayam. On 11.4.2015, the 1st petitioner-mother came on leave from Saudi Arabia and in terms of Ext.P2 compromise decree, the custody of the children were handed over to her on 19.4.2015, for a period of 20 days. According to the 1st petitioner-mother, the children, during their stay with her, revealed the untold miseries they faced at the hands of the respondent-father, at their paternal home. On 10.5.2015, the children were reluctant to go back to their parental home and since they were crying, the respondent-father permitted them to stay in their maternal home for 4 more days and thereafter, he took them back to their paternal home. While staying in their parental home, the children made a 'SAVE CALL' to 'CHILD

HELPLINE 1098', stating that they were being harassed, ill-treated and put to starvation by the respondent-father, which culminated in the Child Welfare Committee, Kottayam, filing Ext.P3 report before the Family Court.

16. In Ext.P8 order, the Family Court noticed that, though the children were in the custody of the respondent-father from 4.4.2012 onwards, prior to 15.5.2015 they never made any complaint against their father to any of their relatives or authorities that, they were being ill-treated or harassed by their father. The elder child aged 14 years was studying in the 8th standard and the younger child aged 10 years was studying in the 5th standard in the CMS Higher Secondary School, Kottayam. The elder son gave a statement before the Child Welfare Committee, Kottayam that, the respondent-father used to manhandle him and his brother. The Family Court noticed that, in the statement recorded by the court, the elder son has stated that the respondent-father used to manhandle him and his brother and that, he is not interested in staying with his father. But, the elder son has categorically stated that, while living with

the respondent-father, he was looking after their entire affairs properly. The Family Court has also noticed that, the younger child was very happy with the father and he was even ready to go along with the father. Therefore, the Family Court in Ext.P8 order concluded that, the children were unduly influenced by the 1st petitioner-mother, while she was having their interim custody, and it was due to such undue influence the children conveyed false information to the 'CHILD HELPLINE' on the next day of leaving the custody of their mother. The finding of the Family Court that, the children conveyed false information to the 'CHILD HELPLINE' on the next day of leaving the custody of the respondent-mother, cannot be termed as a finding which could not have been arrived at reasonably based on the evidence already on record. The aforesaid finding of the Family Court, after interacting with the children and recording the statement of the elder child, cannot be termed as a finding without any legal evidence, warranting any interference of this Court in exercise of the supervisory jurisdiction under Article 227 of the Constitution of India.

17. The learned counsel for the petitioners would contend that, when the Child Welfare Committee in Ext.P3 report found that the children were subjected to physical and mental torture by the respondent-father, the Family Court ought not to have given their interim custody to the respondent-father. Further, the Family Court brushed aside without any valid reasons, Ext.P6 statement given by the elder son before the Court, against the respondent-father.

18. Before the Family Court, the respondent-father contended that, he was looking after the children with love and affection and maintaining them in a proper manner. The children were pursuing their studies in CMS Higher Secondary School, Kottayam, which is a famous school in Kottayam town. As borne out from Ext.P8 order, the definite case of the respondent-father before the Family Court was that, the complaint made by the children and the statement given before the Child Welfare Committee, etc., are part of a drama played by the 1st petitioner-mother and her former advocate, who is presently a member of the Child Welfare Committee, Kottayam. As noticed by the Family

Court, Ext.P3 report dated 25.5.2015 of the Child Welfare Committee would show that, the aforesaid person is a member of that Committee and that, he has also attested the copy of the statement alleged to have been made by the elder son to the Chairperson of that Committee. The Family Court has also noticed that, the 1st petitioner-mother has not disputed the fact that, her former advocate is a member of the Child Welfare Committee, Kottayam. It was in such circumstances, the Family Court in Ext.P8 order concluded that, it is obvious that the children were unduly influenced by the 1st petitioner-mother while they were in her interim custody, by giving whatever things they wanted, and due to such influence the children contacted the 'CHILD HELPLINE' immediately on the next day of leaving the custody of their mother and conveyed false information to the 'CHILD HELPLINE' and accordingly they were taken into custody by the Committee with the help of police. We also notice that, the finding in Ext.P8 order that, the former advocate of the 1st petitioner-mother is a member of the Child Welfare Committee, Kottayam, who has also attested the copy of the statement

alleged to have been made by the elder son to the Chairperson of that Committee, is neither disputed nor challenged in this O.P. (FC). Further, the learned counsel for the petitioners has also not advanced any arguments on the correctness of the said finding in Ext.P8 order of the Family Court.

19. Sections 29 to 33 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as 'the Act') deal with constitution of Child Welfare Committee, the procedure to be followed by the Committee, the powers of the Committee, the procedure for production of a 'child in need of care and protection' before the Committee and also inquiry by that Committee. Similarly, Rules 10 and 11 of the Kerala Juvenile Justice (Care and Protection of Children) Rules, 2003 (hereinafter referred to as 'the Rules') deal with production of such a child before the Child Welfare Committee, the procedure for production of child and also the procedure for inquiry.

20. The Child Welfare Committees are constituted under Section 29 of the Act, for exercising the powers conferred on it under Section 31 of the Act and for discharging the duties in

relation to a 'child in need of care and protection' as defined in Clause (d) of Section 2 of the Act. While exercising such powers and discharging the duties in relation to a 'child in need of care and protection' the paramount consideration of the Committee should be the welfare of that child. Bearing in mind the objectives of the Act, namely, to provide proper care, protection, etc., to the juveniles, the Committee constituted under Section 29 of the Act has to act as a true guardian of a 'child in need of care and protection', while exercising its powers under Section 31 of the Act and discharging the duties in relation to such a child. It is pertinent to note that, going by Clause (i) of Sub-section (4) of Section 29 of the Act, the appointment of any member of the Child Welfare Committee may be terminated, after holding inquiry, by the State Government, if he has been found guilty of misuse of power vested under the Act.

21. Going by Clause (j) of Section 2 of the Act, 'guardian', in relation to a child, means his natural guardian or any other person having the actual charge or control over the child and recognised by the competent authority as a guardian in course of

proceedings before that authority. A child residing with his or her guardian would fall within the sweep of a 'child in need of care and protection', in cases covered by Clauses (ii), (iv) and (v) of Section 2 of the Act. But, the Child Welfare Committee should deal with such cases with utmost care and caution and the Committee should not allow itself to be swayed away by the statement made by a child, without trying to test its veracity, especially in a case in which his or her parents are at loggerheads with each other, either on matrimonial issues or for custody of their minor children.

22. In **Biju K.V. v. Neethu Roy (ILR 2015 (2) Kerala 772)**, a decision relied on by the Family Court in Ext.P8 order, a Division Bench of this Court in which one among us [AKN(J)] was a party, has held as follows;

“It is well settled that in a case for custody of a minor child, the paramount consideration shall be the welfare of the child. The Supreme Court has in Nil Ratan Kundu Vs. Abhijit Kundu (2008 (9) SCC 413) dealing with the principles governing the custody of children, held that a court while dealing with custody cases, is neither bound

by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting a proper guardian for a minor, the paramount consideration should be the welfare and well being of the child. The Apex Court held further that, a child is not "property" or "commodity" and that the issues relating to custody of minors and tender aged children have to be handled with love, affection, sentiments and by applying human touch to the problem."

23. In **Mausami Moitra Ganguli v. Jayant Ganguli (2008 (7) SCC 673)**, a decision relied on by this Court in Biju's case (supra), the Apex Court has held that, it is the welfare and interest of the child and not the rights of the parents which is the determining factor for deciding the question of custody.

24. In **Nil Ratan Kundu Vs. Abhijit Kundu (2008 (9) SCC 413)**, another decision relied on by this Court in Biju's case (supra), the Apex Court has held that, a Court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and well-being of the child. In selecting a guardian, the

Court is exercising *parens patriae* jurisdiction and is expected, nay bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored. They are equally, or even more important, essential and indispensable considerations.

25. Therefore, the paramount consideration of the Family Court exercising *parens patriae* jurisdiction while deciding the question of custody is the welfare and well-being of the minor children and not the rights of their parents who are at loggerheads with each other. While dealing with such matters, the Family Court is not expected to blindly accept the report of the Child Welfare Committee or the statement of the children recorded by the Committee. Therefore, when the Family Court, after interacting with the children and recording their statement, came to the conclusion that, Ext.P3 report of the Child Welfare Committee and also Ext.P6 statement given by the elder son before court cannot be acted upon, the petitioners cannot contend that, in view of the finding in Ext.P3 report of the Child

Welfare Committee that the children were subjected to physical and mental torture by the respondent-father, the Family Court ought not to have given their interim custody to the respondent-father.

26. The learned counsel for the petitioners would contend further that, the Family Court ought not to have passed Ext.P8 order, without considering the pendency of I.A.No.528 of 2015 filed by the petitioners seeking an order to remove the respondent-father from the guardianship of the children and other consequential relief. The learned counsel would also submit that, if this Court is not inclined to interfere with Ext.P8 order, the Family Court may be directed to dispose of I.A.No.528 of 2015 filed by the petitioners, untrammelled by any of the observations contained in Ext.P8 order.

27. In **Rosy Jacob v. Jacob A. Chakramakkal (1973 (1) SCC 840)** the Apex Court has held that, all orders relating to the custody of the minor wards from their very nature must be considered to be temporary orders made in the existing circumstances. With the changed conditions and circumstances,

including the passage of time, the Court is entitled to vary such orders if such variation is considered to be in the interest of the welfare of the wards. Orders relating to custody of wards even when based on consent are liable to be varied by the Court, if the welfare of the wards demands variation. The three-Judge Bench of the Apex Court, in a rather curt language observed that, 'the children are not mere chattels; nor are they mere play-things for their parents'.

28. Later, in **Jai Prakash Khadria v. Shyam Sunder Agarwalla (2000 (6) SCC 598)** the Apex Court has reiterated that, the orders relating to custody of children are by the very nature not final but are interlocutory in nature and subject to modification at any future time upon proof of change of circumstances requiring change of custody but such change in custody must be proved to be in the paramount interest of the child.

29. In the case on hand, in terms of Ext.P2 compromise decree dated 4.4.2012 in O.P.(G&W) No.1179 of 2010 the permanent custody of the two children, till they attain majority,

was granted to the respondent-father. The petitioners have filed I.A.No.528 of 2015, seeking an order to remove the respondent-father from their guardianship and to appoint the 1st petitioner-mother as their guardian and for other consequential relief. The aforesaid application was filed on the ground that, the atmosphere in the paternal home is not congenial for the welfare of the children and it will only hamper their growth. In order to succeed in an application seeking an order to remove the respondent-father from the guardianship of the children, the 1st petitioner-mother has to establish a change in circumstances by passage of time and that, the variation sought for would be in the best interest of the welfare of the minor children. This is because, the Family Court exercising *parens patriae* jurisdiction for deciding the question of custody of minor children, is not expected to modify or vary an order relating to custody unless it is satisfied that the welfare of the children demands such variation.

30. Therefore, in an application seeking an order to modify or vary an order relating to custody, the welfare and well-

being of the minor children should be the paramount consideration of the Family Court, and not the rights of their parents who are at loggerheads with each other. The Family Court exercising *parens patriae* jurisdiction has to strike a just and proper balance between the requirements of welfare of the minor children and the rights of their respective parents over them, keeping in mind the observation made by a three-Judge Bench of the Apex Court in Rosy Jacob's case (*supra*), in a rather curt language that, 'the children are not mere chattels; nor are they mere play-things for their parents'.

31. As we have already noticed, a reading of Ext.P8 order would make it explicitly clear that, the only question that has been considered by the Family Court in that order is as to whether the interim custody of the children is to be given to the 1st petitioner-mother or to the respondent-father, till the disposal of I.A.No.528 of 2015 filed by the petitioners seeking an order to remove the respondent-father from their guardianship. The Family Court brushed aside Ext.P3 report of the Child Welfare Committee and also Ext.P6 statement given by the elder son in

Court, on a specific finding that, the children were unduly influenced by the 1st petitioner-mother while they were in her interim custody, and due to such influence the children contacted the 'CHILD HELPLINE' immediately on the next day of leaving the custody of their mother and conveyed false information to the 'CHILD HELPLINE' and accordingly they were taken into custody by the Committee with the help of police. As we have already noticed, the finding in Ext.P8 order that, the former advocate of the 1st petitioner-mother is a member of the Child Welfare Committee, Kottayam, who has also attested the copy of the statement alleged to have been made by the elder son to the Chairperson of that Committee, is neither disputed nor challenged in this O.P.(FC). Further, the learned counsel for the petitioners has also not advanced any arguments on the correctness of the aforesaid finding of the Family Court. In such circumstances, the petitioners are not entitled for a disposal of I.A.No.528 of 2015 by the Family Court, untrammelled by the above observation made by the Court in Ext.P8 order, which were made, with particular reference to Ext.P3 report of the Child

Welfare Committee and Ext.P6 statement of the elder son. But, it would be open to the 1st petitioner-mother to establish before the Family Court, independent of Ext.P3 report of the Child Welfare Committee and Ext.P6 statement given by the elder son, that the atmosphere in the parental home of the children is not congenial for their welfare or well-being.

32. The Family Court granted interim custody of the children to the respondent-father, till the disposal of I.A.No.528 of 2015, taking note of the fact that the children are pursuing their studies in CMS Higher Secondary School, Kottayam, and any shifting of children after commencement of the academic year to their maternal home at Thiruvalla will affect their education. The Family Court has also noticed that, the 1st petitioner-mother had already returned to her workplace abroad and will come on leave only after one year. The above findings in Ext.P8 order are only preliminary findings made by the Family Court, for the limited purpose of granting interim custody of the children to the respondent-father, till the disposal of I.A.No. 528 of 2015 filed by the petitioners. The petitioners have

filed the said application, seeking an order to remove the respondent-father from the guardianship of the children and to appoint the 1st petitioner-mother as their guardian on the ground that, the atmosphere in the paternal home is not congenial for the welfare of the children and it will only hamper their growth. In order to succeed in that application, the 1st petitioner-mother has to establish before the Family Court, independent of Ext.P3 report of the Child Welfare Committee and Ext.P6 statement given by the elder son before Court, that such variation would be in the best interest of the welfare of the children.

For these reasons, we find absolutely no grounds to interfere with Ext.P8 order passed by the Family Court, Thiruvalla. In the result, this O.P.(FC) fails and the same is dismissed.

Sd/-

C.K.ABDUL REHIM, JUDGE

Sd/-

ANIL K.NARENDRAN, JUDGE

dsn