



A.Nos.3226 of 2019 & 3175, 3176, 1986 & 1987 of 2020
in O.P.No.335 of 2019
and Cont.P.D.60739 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 26.10.2021	Orders Pronounced on: 28.01.2022
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CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Application Nos.3226 of 2019 and 3175, 3176, 1986 and 1987 of 2020
in O.P.No.335 of 2019
and
Cont.P.D.No.60739 of 2020

C.Yazhini, D/o A.S.Chandran
2019

.. Petitioner in O.P.335 of

Vs.

K.Vijay Rajesh Kumar, S/o P.Kaliappan .. Respondent in O.P.335 of 2019

Original Petition (O.P.).No.335 of 2019 filed under Sections 3 and 7 to 10 and 25 of the Guardians and Wards Act, read with Order XXI Rules 2 and 3 of the Original Side Rules of this Court, praying to grant permanent custody of the petitioner's minor children, namely Arumantha and Prithyanka, currently aged 4 years and that the petitioner be appointed as the guardian of the person of the minor children, namely Arumantha and Prithyanka, currently ated 4 years.

For petitioner : Mrs.G.Thilakavathi, Senior Counsel for
M./s.D.Kamachi

For respondent: Mr.V.Vijay Shankar

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C.Yazhini

.. Applicant in A.No.3226 of 2019

Vs.

K.Vijay Rajesh Kumar

.. Respondent in A.No.3226 of 2019

Judge's Summons under Order XIV Rule 8 of the Madras High Court Original Side Rules read with Section 25 of the Guardians and Wards Act, 1890 and Application No.3226 of 2019 in O.P.No.335 of 2019 is filed praying to grant interim custody of the applicant's minor twin children, named Arumantha and Prithyanka (i) on every week-end from Friday evening 4 p.m. to Sunday 6 p.m., (ii) from 3 p.m. to 7 p.m during birth-days and other auspicious days and (iii) ten continuous days during school vacations.

For applicant : Mrs.G.Thilakavathi, Senior Counsel for
M./s.D.Kamachi

For respondent: Mr.V.Vijay Shankar

K.Vijay Rajesh Kumar
2020

.. Applicant in A.No.3175 of

Vs.

1. C.Yazhini

2. Union of India,
Ministry of External Affairs,
Rep. by Foreign Secretary to Government,
68, College Road, EVK Sampath Maalgai,
7th Floor, Nungambakkam,
Chennai, Tamil Nadu-600 006.

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3. Union of India,
Ministry of Home Affairs,
Rep. by Secretary to Government,
Internal Security II Division and Legal Cell,
2nd Floor, Major Dhyan Chand National Stadium,
India Gate, New Delhi-110 001.

4. The Joint Director and Head of Zone,
Central Bureau of Investigating,
III Floor, EVK Sampath Building,
College Road, Chennai-600 006.

5. Regional Passport Officer,
Royala Towers No.2 and 3, IV Floor,
Old No.785, New No.158, Anna Salai,
Chennai Tamil Nadu-2.

.. Respondents in A.No.3175 of 2020

Judge's Summons under Order XIV Rule 8 of the Original Side Rules of this Court read with Order 9 Rule 7 of the Civil Procedure Code (CPC) and Application No.3175 of 2020 in A.No.1986 of 2020 in O.P.No.335 of 2019 filed praying to set aside the order dated 20.11.2020 passed in A.No.1986 of 2020 in O.P.No.335 of 2019.

For applicant : Mr.V.Vijay Shankar

For respondents: Mrs.Mrs.G.Thilakavathi, Senior Counsel for
M./s.D.Kamachi for R-1

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K.Vijay Rajesh Kumar
2020

.. Applicant in A.No.3176 of

Vs.

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A.Nos.3226 of 2019 & 3175, 3176, 1986 & 1987 of 2020

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2. Union of India,
Ministry of External Affairs,
Rep. by Foreign Secretary to Government,
68, College Road, EVK Sampath Maalgai,
7th Floor, Nungambakkam,
Chennai, Tamil Nadu-600 006.
3. Union of India,
Ministry of Home Affairs,
Rep. by Secretary to Government,
Internal Security II Division and Legal Cell,
2nd Floor, Major Dhyan Chand National Stadium,
India Gate, New Delhi-110 001.
4. The Joint Director and Head of Zone,
Central Bureau of Investigating,
III Floor, EVK Sampath Building,
College Road, Chennai-600 006.
5. Regional Passport Officer,
Royala Towers No.2 and 3, IV Floor,
Old No.785, New No.158, Anna Salai,
Chennai Tamil Nadu-2. .. Respondents in A.No.3176 of 2020

Judge's Summons under Order XIV Rule 8 of the Original Side Rules of this Court read with Order 9 Rule 7 of the Civil Procedure Code (CPC) and Application No.3176 of 2020 in A.No.1987 of 2020 in O.P.No.335 of 2019 filed praying to set aside the order dated 20.11.2020 passed in A.No.1987 of 2020 in O.P.No.335 of 2019.



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in O.P.No.335 of 2019
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For applicant : Mr.V.Vijay Shankar

For respondents: Mrs.Mrs.G.Thilakavathi, Senior Counsel for
M./s.D.Kamachi for R-1

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C.Yazhini

.. Applicant in A.No.1986 of 2020

Vs.

1. K.Vijay Rajesh Kumar,
2. Union of India,
Ministry of External Affairs,
Rep. by Foreign Secretary to Government,
68, College Road, EVK Sampath Maalgai,
7th Floor, Nungambakkam,
Chennai, Tamil Nadu-600 006.
3. Union of India,
Ministry of Home Affairs,
Rep. by Secretary to Government,
Internal Security II Division and Legal Cell,
2nd Floor, Major Dhyan Chand National Stadium,
India Gate, New Delhi-110 001.
4. The Joint Director and Head of Zone,
Central Bureau of Investigating,
III Floor, EVK Sampath Building,
College Road, Chennai-600 006.
5. Regional Passport Officer,
Royala Towers No.2 and 3, IV Floor,
Old No.785, New No.158, Anna Salai,



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Chennai Tamil Nadu-600 002.

.. Respondents in A.No.1986 of 2020

Judge's summons issued under Order XIV Rule 8 of the Original Side Rules of this Court read with Section 151 of the CPC and A.No.1986 of 2020 filed praying to direct the respondents 2 to 4 to register a criminal case against the first respondent K.Vijay Rajesh Kumar and mother Susila and father Kaliappan for kidnapping the Twin children Baby Arumantha and Baby Prithyanka, aged about 6 years, by flouting several orders of this Court.

For applicant : Mrs.G.Thilakavathi, Senior Counsel for

M./s.D.Kamachi

For respondents: Mr.V.Vijay Shankar for R-1

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C.Yazhini

.. Applicant in A.No.1987 of 2020

Vs.

1. K.Vijay Rajesh Kumar,
2. Union of India,
Ministry of External Affairs,
Rep. by Foreign Secretary to Government,
68, College Road, EVK Sampath Maalgai,
7th Floor, Nungambakkam,
Chennai, Tamil Nadu-600 006.

3. Union of India,

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Ministry of Home Affairs,
Rep. by Secretary to Government,
Internal Security II Division and Legal Cell,
2nd Floor, Major Dhyan Chand National Stadium,
India Gate, New Delhi-110 001.

4. The Joint Director and Head of Zone,
Central Bureau of Investigating,
III Floor, EVK Sampath Building,
College Road, Chennai-600 006.

5. Regional Passport Officer,
Royala Towers No.2 and 3, IV Floor,
Old No.785, New No.158, Anna Salai,
Chennai Tamil Nadu-600 002.

.. Respondents in A.No.1987 of 2020

Judge's summons issued under Order XIV Rule 8 of the Original Side Rules of this Court read with Section 151 of the CPC and A.No.1987 of 2020 filed praying to direct the fifth respondent to recall the Indian Passport bearing No.L3435325 issued to the first respondent K.Vijay Rajesh Kumar and to impound the same except to travel once from USA to India.

For applicant : Mrs.G.Thilakavathi, Senior Counsel for
M./s.D.Kamachi

For respondents: Mr.V.Vijay Shankar for R-1

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in O.P.No.335 of 2019
and Cont.P.D.60739 of 2020

C.Yazhini

.. Petitioner in Cont.P.D.No.60739 of 2020

Vs.

K.Vijay Rajesh Kumar

.. Respondent in Cont.P.D.No.60739 of 2020

Contempt Petition Diary No.60739 of 2020 filed under Section 10 of the Contempt of Courts Act, 1971 praying to pass appropriate orders against K.Vijay Rajesh Kumar/respondent, for wilful disobedience of the order dated 19.06.2019 passed by this Court in H.C.P.No.1019 of 2019 based on Memo of Compromise dated 17.06.2019 in File No.10/2019 arrived before the Mediation and Conciliation Centre of High Court.

For petitioner : Mrs.G.Thilakavathi, Senior Counsel for

M/s.D.Kamachi

For respondent : Mr.V.Vijay Shankar

ORDER

The petitioner in O.P.No.335 of 2019 is the mother and the respondent in O.P.No.335 of 2019 is the father of the twin minor children, namely Arumantha and Prithyanka.



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2. The mother has filed the said O.P. seeking permanent custody of her minor twin children and to appoint herself as the guardian of the person of the twin minor children.

3. Pending the said O.P., the mother has filed A.No.3226 of 2019 seeking grant of interim custody of the twin minor children.

4. The raging dispute between the husband and wife has witnessed several litigations/applications before this Court, primarily at the instance of the tenacious petitioner-mother.

5. It is a classic case as how the husband (father of the twin minor children) has become a helpless victim of witch-hunt unleashed at the instance of the mother/wife whose unrelenting animosity towards her husband, led to the filing of several applications before this Court, lodging Police complaint, Habeas Corpus Petitions (HCPs), Contempt Petition, etc., ceaselessly with a wanton view to cause maximum harassment to him, who



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is residing in the USA along with his twin minor daughters. Under the pretext of seeking custody of her minor daughters, the petitioner/mother has embarked on a vicious attritional litigations with the fixated mindset to hound her husband (respondent herein) behind the facade of seeking custody of the minor children. This precursory observation would find justification in the factual narrative unfolding hereinbelow.

6. For the sake of clarity, the parties herein are described as petitioner (wife) and respondent (husband) as ranked in the O.P.No.335 of 2019.

7. The marriage between the petitioner and the respondent took place at Thanjaur on 03.07.2011. Both of them thereafter went to the USA in the year 2013. The respondent had then already been working in the USA since 2008 and returned to India in 2011 and was married to the petitioner.

8. According to the respondent, after moving to the USA, he got his wife, the petitioner, admitted to the Master's programme in Information



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Technology at State University, Minnesota, USA in 2013. From their wedding, twin children (daughters) were born to them in 2013 in the US and being born there, they became the US Citizens. The daughters are now aged 7 years.

9. Both the petitioner and the respondent, with their twin daughters, returned to India in 2015, as according to the respondent, the petitioner expressed her wish to pursue a Law Degree and eventually, she was admitted to a three-year Law Course in the School of Excellence in Chennai in 2016.

10. The problem between them originated after wife's admission to the Law Course. It appeared that the petitioner had developed an illicit relationship with one J.Rathish, who was stated to be a politically well-connected and influential person, being the son of an important ruling party functionary at the relevant point of time. The said J.Rathish happened to be a student of the same institution where the petitioner-C.Yazhini was



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admitted and studying.

11. According to the respondent, he had come to know of the relationship of the petitioner with the said J.Rathish after a period of time. It appeared that the respondent had tracked several of audio recordings to establish the fact of illicit intimacy of the petitioner with the said J.Rathish. He warned her several times not to continue with her illicit relationship with the said J.Rathish, but there was no proper response from her side. But she continued with the relationship unconcerned that such devious conduct would have adverse impact on the family, particularly on their minor daughters.

12. According to the respondent, in order to pre-empt any action from his side, the petitioner lodged a Police complaint before the Velacherry Police Station on 05.07.2018 complaining of ill-treatment by him and his parents. After lodging the complaint, the petitioner left the matrimonial home on the very same day and started living with her paramour J.Rathish



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in an adulterous relationship.

13. The respondent tried his best to get back the petitioner from her illicit confinement with the said J.Rathish, but all his efforts did not materialise and he was therefore constrained to lodge a Police complaint, which was taken on file in F.I.R.No.8 of 2018, dated 18.09.2018 before the Thanjavur All Women Police Station. As there was no proper investigation by the Police, the respondent moved the Madurai Bench of this Court by filing Habeas Corpus Petition in H.C.P.(MD).No.1399 of 2018, in which, the said J.Rathish was also made a party.

14. The above said H.C.P. was heard by a Division Bench of this Court in Madurai on various dates during October 2018. The Division Bench, in order to find an amicable solution and settlement, qua, parties, called both the petitioner-wife and the respondent-husband and also her paramour J.Rathish. During the interaction, the petitioner appeared to have asserted that she was a major and was not under anyone's illegal custody.

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15. Despite the efforts by the Division Bench of this Court (Madurai Bench), calling for discussions on several occasions, of not only the petitioner and the respondent, but also the minor children and the parents of the petitioner-wife and the said J.Rathish, no rapprochement was forthcoming in the matter. The Division Bench, finding the relationship of the petitioner with J.Rathish consensual, ultimately was constrained to hold that no action could be taken under Section 497 Indian Penal Code (IPC) against the said J.Rathish. However, before closing the H.C.P., in regard to the children, the Division Bench permitted the respondent to have the custody. At the same time, it had given further direction that the parents of the petitioner herein can spend time with the minor children in the ensuing Christmas holidays. This interim direction was issued, vide order dated 31.10.2018. In fact, the H.C.P. was kept pending for some time in order to facilitate amicable settlement between the parties, but finding that no settlement was forthcoming, eventually, the H.C.P. had to be dismissed as withdrawn on 08.01.2019.



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16. As the situation was not improving and finding no meeting point, the respondent was constrained to file H.M.O.P.No.24 of 2019 before the Principal District Court, Thanjavur, for divorce on the ground of adultery against the petitioner herein. The said J.Rathish was also made a party to the said H.M.O.P. Apart from pleading of adultery, cruelty was also raised as one of the grounds in the said H.M.O.P.

17. It also appeared that, simultaneously, the petitioner herein also filed H.M.O.P.No.1286 of 2019 before the IV Additional Family Court, Chennai, seeking divorce on the ground of cruelty.

18. As there were two matrimonial H.M.O.Ps., one in Thanjavur and the other in Chennai, the petitioner filed a petition before this Court in Tr.C.M.P.No.338 of 2019 seeking transfer of the proceedings to one Court, i.e. from Thanjavur to Chennai. The said Tr.C.M.P. was allowed on 05.07.2019 by this Court.

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19. In the meanwhile, the petitioner filed the present guardian O.P. before this Court and pending the same, she also filed Application No.3226 of 2019 seeking interim custody of the twin minor children.

20. According to the respondent, during the above said period, he and his family members were subjected to constant harassment and threat, as the said Rathish happened to the son of a very influential political functionary. The minor children (daughters) were studying in Velacherry, Chennai, at A.G.R.Global School and their pursuit of education was also being disturbed by the petitioner, who used to visit the minor children in their school along with the said J.Rathish.

21. According to the respondent, fearing from being constantly hounded and threatened, he was forced to re-locate himself along with his parents and children. In the meanwhile, it transpired that notice was ordered by this Court in the application for interim custody (Appln.No.3226 of



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2019), but unfortunately, it appeared to have been returned "unclaimed" forcing a learned Judge of this Court to pass an order on 16.05.2019 granting interim custody of the minor children for a period of 15 days. The Jurisdictional Police was also directed to facilitate the implementation of the interim direction. In view of the constant threat and intimidation and also the fact that the respondent and his parents were on the run, the respondent was not aware of the interim order passed by this Court on 16.05.2019 in A.No.3226 of 2019 in the O.P. However, after coming to know of the interim order passed by this Court on 16.05.2019, he appeared before this Court on 17.06.2019 along with the two minor daughters.

22. Simultaneously, the petitioner also filed H.C.P.No.1019 of 2019 before this Court alleging that the respondent had kidnapped the minor daughters and confining them in illegal custody. The respondent appeared before the Division Bench of this Court on 17.06.2019 along with the two minor children. It so happened that one of the learned Judges who presided over the Division Bench which earlier dealt with H.C.P.(MD).No.1399 of



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2018, sitting in Madurai, was the very same learned Judge who heard the second H.C.P.

23. The Bench, which heard the second H.C.P., once again was of the view that the matter could be settled amicably between the parties, and therefore, referred the parties before the Mediation Centre of this Court for exploring possibility of solution to the vexed conflict. According to the respondent, his return to the U.S.A. was also being delayed, in view of the cases being filed one after the other by the petitioner and the children's Passports were also expiring and needed to be renewed. The Division Bench which was to hear H.C.P.No.1019 of 2019, felt that all the issues connected with the renewal of the Passport, etc., could be sorted out in the mediation. On 17.06.2019, discussions took place in the Mediation Centre and it was agreed that the minor daughters will be in the custody of the father, but a condition was incorporated in the settlement that the children shall not be taken abroad without the written consent of the mother.



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24. The above said H.C.P.No.1019 of 2019 was thereafter called for hearing on 19.06.2019 and taking note of the settlement reached between the parties before the Mediation Centre on 17.06.2019, H.C.P.No.1019 of 2019 was disposed of accordingly on 19.06.2019. Although, according to the respondent, at the time when H.C.P.No.1019 of 2019 was taken up for hearing on 19.06.2019, it was brought to the notice of the Division Bench in regard to the condition that the children cannot be taken abroad without the consent of the mother, the same was not factually agreed to, but however, the Division Bench felt that the respondent could work out his remedy elsewhere. The final order of the Division Bench, dated 19.06.2019, is extracted hereunder:

"The mother of the detenues namely, (1)Arumantha and (2) Prithyanka has filed this petition seeking production of detenues before this Court.

2. Pursuant to the orders passed by this court on 17.06.2019, the dispute has been resolved between the parties amicably before the Mediation Centre.

3. The learned counsel for the 3rd respondent has submitted that there is a hitch in respect of one of the clauses though agreed upon with regard to taking his children abroad which



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requires consent from the petitioner.

4. We do not propose to say anything on this. If the parties are of the view that the agreed terms would require modification, the remedy lies elsewhere. Suffice it to state that there is no illegal detention of children involved and, at least, insofar as the petitioner is concerned, she has agreed to let the custody of the children with the 3rd respondent. This Habeas Corpus Petition is closed accordingly with the above observations."

25. According to the respondent, amidst the litigations, he came under the pressure from his employer to return to the U.S. for resumption of his work. The respondent felt that any further delay or postponement of his return would have invited irreparable consequences affecting his career and more particularly, affecting his minor daughters who were the citizens of the US. In the said compelling circumstances, the respondent had to return to the U.S. with his two minor daughters. After renewal of the Passports of the minor children, the respondent left to the USA with his two minor children in July 2019.



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26. According to the respondent, in the circumstances, he felt that his two minor daughters would be safe under his custody, and to leave them in the custody of the petitioner, who was living with a stranger, was against their interest and welfare. Even otherwise, the minor daughters being Citizens of the U.S, their future was secured in that country, coupled with the fact that the respondent being securely employed in the same country. The respondent's paramount consideration, was in respect of the safety of the minor children, the family's sustenance and the retention of the hard-earned job in the U.S.A.

27. In the meanwhile, it also transpired that the main O.P. was listed for hearing on a few occasions and there was no effective representation on behalf of the respondent due to lack of communication with the erstwhile Advocate engaged by him. On his return to the U.S. with his minor daughters, the respondent had to settle down and was unable to pay required attention to his matrimonial dispute pending in India more relevantly present Guardian O.P. before this Court. As there was no



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representation from the respondent's side, on a few occasions, in response to the repeated attempts by the petitioner, seeking interim custody of the minor children, this Court requested the learned Assistant Solicitor General of India to verify with the Indian Embassy in the U.S. for contact details of the respondent and impress upon him to comply with the terms of the agreement on his part, dated 17.06.2019. The report of the the Assistant Solicitor General of India was also ordered to be obtained, vide order of this Court, dated 06.08.2020 in the O.P. and posted the matter for further hearing on 12.08.2020.

28. In the meantime, the petitioner appeared to have filed two applications before this Court in A.Nos.1986 and 1987 of 2020 in the O.P. to direct the Passport authority to recall the Indian Passport possessed of by the respondent and impound the same and also to direct the authorities of the Union Government and the Central Bureau of Investigation (CBI) to register a criminal case against the respondent and his parents for kidnapping the twin daughters by flouting the orders of this Court.



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29. The petitioner has also simultaneously filed Contempt Petition D.No.60739 of 2020 before this Court against the respondent for not complying with the direction of this Court, dated 19.06.2019 passed in H.C.P.No.1019 of 2019. The Contempt Petition was also posted for hearing along with the O.P., as the H.C.P.No.1019 of 2019 was already disposed of on 19.06.2019. This Court, while hearing A.Nos.1986 and 1987 of 2020 and also the connected Contempt Petition, and taking into account the counter affidavit filed by the respondent, in the proceedings by order dated 30.09.2020, has directed the respondent to facilitate meetings of the petitioner and her minor daughters, at 8.30 p.m on Saturdays and Sundays (Indian Standard Time), beginning from 03.10.2020. The Court thereafter posted the matter for reporting compliance on 20.11.2020.

30. In pursuance of the above direction of this Court, the respondent had been facilitating the Video Conferencing as between the minor children and the petitioner from 03.10.2020 onwards. According to the respondent,



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the minor children were not at all comfortable in their weekly interaction with their mother. In order to remedy the state of discomfiture overwhelming the children, the respondent has taken out an application for modification of the order dated 30.09.2020, but the same has still not been numbered and yet to come up for hearing before this Court.

31. Subsequently, on 20.11.2020, when A.Nos.1986 and 1987 of 2020 along with un-numbered Contempt Petition D.No.60739 of 2020, were taken up for hearing. According to the respondent, his counsel's name was not printed in the cause list, and therefore, there was no appearance on his behalf on 20.11.2020. On that day, on behalf of the petitioner, a representation appeared to have been made that the respondent had not obeyed the order of this Court by facilitating the virtual meeting between the minor daughters and the mother, in terms of the earlier direction of this Court, dated 30.09.2020. This Court, taking exception to the recalcitrant attitude of the respondent, directed the Passport official to issue a show cause notice to the respondent as to why his Passport should not be



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impounded for breaching the order of this Court. In pursuance of the direction of this Court, dated 20.11.2020, show cause notice was issued and received by the respondent on 11.12.2020 in the U.S. and only then, he had come to know that an order was passed by this Court on 20.11.2020 in the absence of any representation from his side.

32. According to the respondent, earlier to 20.11.2020, whenever A.Nos.1986 and 1987 of 2020 in O.P.No.335 of 2019 were listed for hearing on a few occasions, the learned counsel representing him, was present and made submissions on his behalf, and therefore, the absence of representation on 20.11.2020, was unintentional. This fact was brought to the notice of this Court subsequently by filing two applications in A.Nos.3175 and 3176 of 2020 in O.P.No.335 of 2019, seeking to set aside the order dated 20.11.2020 passed in A.Nos.1986 and 1987 of 2020. When the applications came up for hearing, the same learned Judge, being convinced of the reasons for non-appearance on 20.11.2020, vide order dated 21.12.2020, directed the Passport authorities not to take any coercive



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action against the respondent, pursuant to the show cause notice issued by them earlier. The matter was ordered to be posted on 18.01.2021. On that day, the learned counsel for the respondent appeared and undertook to comply with the direction of this Court, dated 30.09.2020 scrupulously. Thereafter, the matter stood adjourned from time to time. In the meanwhile, arrangement which has been put in place, vide order dated 30.09.2020, has been adhered to.

33. In the above factual back-drop, two applications presently filed (Application Nos.3175 and 3176 of 2020) by the respondent, are taken up for hearing today. On behalf of the respondent, Mr.V.Vijay Shankar, learned counsel appeared and reiterated the above facts with due emphasis on certain events/facts, which according to him, are crucial and relevant for adjudication of these applications and the un-numbered Contempt Petition. In the course of his arguments, the learned counsel drew the attention of this Court to various averments contained in the detailed counter affidavit filed by the respondent in A.No.3226 of 2019 filed by the petitioner seeking



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interim custody of the minor children. The averments relate to the illicit relationship that the petitioner has been having with the said J.Rathish. According to the learned counsel, the respondent has recorded intimate conversation between the petitioner and Mr.J.Rathish on a regular basis for a fairly long time. The averments also speak about the sexual intimacy as between the petitioner and the said Rathish. According to the learned counsel, as a matter of fact, the said Rathish was made a party to the H.C.P. proceedings filed by the respondent before the Madurai Bench of this Court in H.C.P.(MD).No.1399 of 2018. He is also a party in the matrimonial O.P. filed by the respondent herein in H.M.O.P.No.24 of 2019.

34. The learned counsel therefore would submit that this is not a case where the respondent/husband has come up with a motivated, mindless and reckless allegations of adultery against his wife for the purpose of defiling her character. The very fact that the Division Bench of this Court has called all the parties including the said Mr.Rathish to the discussion for the purpose of finding a solution to the vexed issue, would indisputably



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demonstrate the illicit conduct of the petitioner, which led to the estrangement.

35. The learned counsel also drew the attention of this Court to the initial order dated 31.10.2018 passed by the Madurai Bench of this Court in H.C.P.(MD).No.1399 of 2018, which is extracted hereunder:

"We have spent extensive time with the parties. Both the petitioner and detinue are emotional. We also spent considerable time with respondent No.3. It appears that as against respondent No.3 a case in Crime No.8 of 2018 has been registered by the All Women Police Station, Thanjavur for the offence under Sections 366 and 497 I.P.C. Section 366 I.P.C. was subsequently deleted in view of the statement given by the detinue that she went out of the wedlock on her own volition. Therefore, what remains is Section 497 I.P.C., which also gets extinguished in view of decision of the Hon'ble Apex Court declaring the aforesaid Section as unconstitutional. Even otherwise, the aforesaid Section has no credence before the respondent police, as for that private complaint alone will lie. Therefore, we direct respondent No.2 to close the F.I.R. in Crime No.8 of 2018 within two weeks from the date of receipt of a copy of this order.

2. The only other thing is custody of the 4 year old twin minor girl children. The girls are at



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present with the petitioner. There is no consistency between the parties qua the custody of the children. However, it is agreed that the petitioner would leave the minor children in the custody of the parents of the detinue in the ensuing Christmas Holidays.

3. Though we do not find any illegal detention involved, considering the facts of the case and on the hope of amicable settlement between the parties in the future, we are not closing this petition.

4. At this juncture, the detinue has informed us that complaints have been sent by the petitioner to the college. She apprehends action from the college authorities. Since it is purely a matrimonial dispute between the petitioner and detinue the authorities of the School of Excellence in Law, Dr.Ambedkar University, Tharamani, Chennai are hereby directed not to initiate action against the detinue on the complaint sent by the petitioner.

5. Post the matter on 08.01.2019."

36. Thereafter, the learned counsel referred to the settlement agreement before the Mediation Centre of this Court, dated 17.06.2019. The crucial portion of the settlement arrived at between the parties in the Mediation, as recorded in Clause-A of paragraph 6, is extracted hereunder:

"A. The 3rd Respondent/father gave social



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security number, passport copy and application submitted to the US Embassy in respect of twin daughters. Hence, the petitioner/mother gave consent and signed in the consent form for renewal and signed in the consent form for the renewal of the passport of the twin daughters. The father/3rd respondent will not take away the children out of India or to any foreign countries without the written consent of the mother/petitioner."

37. According to the learned counsel, in the above extracted Clause 6-A, without the knowledge of the respondent, a condition was included, namely that he will not take away the children out of India without the written consent of the petitioner. The learned counsel however admitted that, immediately thereafter, in July 2019, the respondent had taken away both the minor daughters along with him to the U.S.A. Subsequently, H.C.P.(MD).No.1399 of 2018, which was kept pending for some time for the purpose of facilitating settlement qua parties, was dismissed as withdrawn on 08.01.2019.



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38. The learned counsel then referred to the second H.C.P. (H.C.P.No.1019 of 2019) and this time, it was filed by the petitioner in May 2019 before the respondent and the minor children moved to the U.S., complaining that the minor children were confined under illegal custody of the respondent. When the said H.C.P. was taken up for hearing, it was mentioned on behalf of the respondent that a condition was included in the settlement agreement without his express agreement that the children cannot be taken abroad without the written consent of the mother. However, the Division Bench was not inclined to take up the plea into consideration, and eventually, H.C.P.No..1019 of 2019 was closed on 19.06.2019 observing as under:

"The mother of the detenues namely, (1)Arumantha and (2) Prithyanka has filed this petition seeking production of detenues before this Court.

2. Pursuant to the orders passed by this Court on 17.06.2019, the dispute has been resolved between the parties amicably before the Mediation Centre.

3. The learned counsel for the 3rd respondent has submitted that there is a hitch in respect of one of the clauses though agreed upon with regard to taking his children abroad which



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requires consent from the petitioner.

4. We do not propose to say anything on this. If the parties are of the view that the agreed terms would require modification, the remedy lies elsewhere. Suffice it to state that there is no illegal detention of children involved and, at least, insofar as the petitioner is concerned, she has agreed to let the custody of the children with the 3rd respondent. This Habeas Corpus Petition is closed accordingly with the above observations."

39. The learned counsel further referred to the observations of a learned Judge, dated 14.08.2019 passed in A.No.3226 of 2019 in the O.P. in one of the hearings. The observations of the learned Judge therein, were in response to the objections raised by the petitioner that she had never agreed for the custody of the children with the respondent-husband. This was a sequel to the observations made by the Division Bench in paragraph 4 in H.C.P.No.1019 of 2019 extracted supra, while disposing of the same on 19.06.2019. In the order dated 14.08.219, the learned Judge has made the following observations:

"The complaint of the petitioner is that the respondent in violation of the agreement reached



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before the Mediation Centre has taken the children abroad. The learned counsel for the respondent would submit that he is unable to contact the respondent. A perusal of the agreement reached before the Mediation Centre shows that the respondent had agreed for visitation rights of the petitioner/mother either on Saturday or Sunday from 11 a.m. to 5 p.m. with prior intimation to the father and the petitioner/mother was also permitted to visit the daughters during weekdays after school hours once in a week with 1 day prior intimation to the father. However, the allegation is that the respondent had in violation of this agreement has gone to America along with the children.

2. Though, this agreement is dated 17.06.2019. It is seen from the order of the Division Bench dated 19.06.2019 that the respondent had expressed his intention not to comply with the agreement entered into before the Mediation Centre on 17.06.2019. However, the Division Bench has not pronounced the conduct and observed that the remedy to seek modification of the agreement terms lies else where. The Division Bench has observed that the petitioner herein has agreed to let the custody of the children with the 3rd respondent. Now, it is the turn of the petitioner herein to dispute the observations made by the Division Bench.

3. It is now stated by the learned counsel for the petitioner that she never agreed for the custody of the Children with the respondent herein. If the learned counsel wants to dispute the observations made by the Division Bench she has to seek proper clarification from the Division Bench. Leaving it



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open to the counsel for the petitioner to seek required clarification from the Division Bench this proceeding is adjourned to 03.09.2019."

40. Thereafter, the matter was listed before this Court from time to time and on the crucial date of hearing on 20.11.2020, there was no representation on behalf of the respondent, as the counsel's name was not printed in the cause list. In consideration of the applications in A.Nos.1986 and 1987 of 2020 in the O.P. and coupled with the fact of the absence of the counsel for the respondent, directions were issued to the Passport Authority to issue a show cause notice to the respondent as to why his Passport should not be impounded for repeatedly flouting the orders/directions of this Court.

41. The learned counsel has also drawn the attention of this Court that the petitioner has preferred a complaint to U.S. Consulate Office here in Chennai, which led to the visit of the local county Police to the residence of the respondent in the U.S. for verifying his whereabouts and the safety of the



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minor children.

42. The learned counsel further submitted that not to be out-done by all her malicious efforts with a obsessive design to cause extreme torment to the respondent, and their minor daughters, the petitioner has filed another H.C.P.No.721 of 2021 seeking production of two minor children. The said H.C.P. was contested and a Division Bench of this Court, vide reasoned/recent order, dated 14.07.2021, has finally concluded that it was not a fit case for issuance of a Writ of Habeas Corpus and therefore, H.C.P.No.721 of 2021 was eventually dismissed. While dismissing the said H.C.P., the Division Bench of this Court has made certain observations in the order, which according to the learned counsel, are relevant for the present case, which are extracted hereunder:

"5. Vijay has filed a detailed counter affidavit dated 22.06.2021, wherein, he has made very serious allegations with reasonably supporting materials touching upon the alleged affair of Yazhini with one J.Rathish. It appears from the averments in the said counter affidavit that Yazhini had gone missing in the year 2018. Vijay suspected that she was being illegally detained by



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Rathish who is a son of a political bigwig and therefore, Vijay lodged a police complaint, based on which, a case in Cr.No.8 of 2018 was registered by the Inspector of Police, A.W.P.S., Thanjavur against Rathish for the offences under Sections 366 and 497 IPC. Since the police were unable to secure Yazhini, Vijay filed a habeas corpus petition in H.C.P.No.1399 of 2018 before the Madurai Bench of Madras High Court, wherein, Rathish was shown as the third respondent. It may be referred to extract the observation in the order dated 21.10.2018 passed in H.C.P.(MD).No.1399 of 2018:'

"We have spent extensive time with the parties. Both the petitioner and detenue are emotional. We also spent considerable time with respondent No.3. It appears that as against respondent No.3, a case in Cr.No.8 of 2018 has been registered by the All Women Police Station, Thanjavur for the offences under Sections 366 and 497 IPC. Section 366 IPC was subsequently deleted in view of the statement given by the detenue that she went out of the wedlock on her own volition. Therefore, what remains is Section 497 IPC which also gets extinguished in view of the decision of the Hon'ble Apex Court declaring the aforesaid Section as unconstitutional. Even otherwise, the aforesaid section has no credence before the respondent police, as for that private complaint alone will lie. Therefore, we direct respondent no.2 to close the FIR in Crime No.8 of 2018 within two weeks from the



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date of receipt of a copy of this order."
(emphasis supplied)

A reading of the above shows that Yazhini is said to have appeared before the police and has said that she went out of the wedlock on her own volition which resulted in the police deleting Section 366 IPC.

7. At the outset, it is pertinent to state that Yazhini, in her affidavit running to 14 pages with 23 paragraphs, has not whispered a word about the H.C.P. proceedings before the Madurai Bench in H.C.P.(MD).No.1399 of 2018, about which, we have alluded to in paragraph 5, *supra*, for the reasons best known to her. Of course, she has quietly placed a copy of the order dated 31.10.2018 passed in H.C.P.No.1399 of 2018 in the voluminous typed set of papers, perhaps, to escape the charge of *suppressio veri* that Vijay would mount on her in this proceedings. In our opinion, in all fairness, when so much of dirty linen has been washed in those proceedings, Yazhini should have alluded to it in her affidavit in these proceedings, especially when she has taken care to mention about all the allegations betwixt her and Vijay.

8. In one breath, Yazhini herself has stated that she gave custody of the children to Vijay, but, of course with some explanations. Even before the filing of H.C.P.No.1019 of 2019, Yazhini has moved this Court on the Original Side in G.W.O.P.No.335 of 2019 for the custody of the children. While disposing of H.C.P.No.1019 of



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2019 on 19.06.2019, this Court did not place reliance on the mediation agreement because it was repudiated by Vijay and therefore, this Court merely held that the custody of the children with their father cannot be said to be illegal and on that short ground, closed the habeas corpus petition. Subsequently, before the single Judge, in G.W.O.P.No.335 of 2019, Yazhini disputed the observations of the Division Bench in the order dated 19.06.2019 passed in H.C.P.No.1019 of 2019 and therefore, she was directed to get appropriate clarification. The Division Bench refused to entertain her clarification plea and held that any pending petition will have to be decided on its own merits. When the same issue was raised before another single Judge in G.W.O.P.No.335 of 2019, there was no direction issued to Vijay to produce the children and contrarily, the learned Judge had permitted Yazhini to speak to the children through video call every week end. Had H.C.P.No.1019 of 2019 been ordered on the strength of the agreement dated 17.06.2019, then, the situation would have been a little different.

9. Coming to the judgments relied upon by Mr.Ramamurthy referred to above, they turn out on their own facts, which is not the position here. The children are admittedly American citizens and Yazhini had given their custody to Vijay and Vijay is stoutly contesting the guardianship proceedings which was instituted even before the filing of H.C.P.No.1019 of 2019. Yazhini has also not spoken a word about the earlier habeas corpus proceedings in H.C.P.(MD).No.1399 of 2018 in her affidavit.



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10. In such perspective of the matter, this Court is of the view that this is not a fit case in which a writ of habeas corpus is required to be issued as prayed for by Yazhini.

In the result, this habeas corpus petition stands dismissed"

43. The petitioner, being aggrieved by the above order of the Division Bench, has also filed Special Leave Petition(C).No.15434 of 2021 before the Honourable Supreme Court of India. The Honourable Supreme Court, however, vide order dated 01.10.2021, rejected the said S.L.P. However, while rejecting the SLP, the Honourable Supreme Court has requested that the pending (i) Cont.P.SR.No.60739 of 2020 and (ii)G.W.O.P.No.335 of 2019 before this Court be disposed of expeditiously and preferably within a period of six months' time from the date of communication of the order. The Supreme Court further observed that, while disposing of the contempt petition and the guardian O.P., this Court shall decide the same independently on their own merits and in accordance with law and the observations of the High Court made in H.C.P., vide order dated



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14.07.2021, shall not come in the way of deciding the said two petitions.

Thereafter, the matters are listed and heard by this Court.

44. The learned counsel further submitted that, repeatedly, the petitioner has been filing Applications, Contempt Petition, Habeas Corpus Petitions, etc., on vexatious grounds and in all her attempts, she has never been successful. According to the learned counsel, despite her fixated and obsessive conduct and repeatedly filing applications, she has been all along interacting with the minor daughters in terms of the arrangement already in place since 03.10.2020 as per the directions of this Court, dated 30.09.2020. Her insistence to have interim custody of the minor children, as a matter of fact, is against the interest of the children's future both in terms of their robust growth and security. The children are studying in the USA as citizens of the country and the respondent-father being well-employed in the USA, re-locating the children in India even as an interim measure, may have its legal complications in view of their citizenship status. Further, the safety of the minor daughters and their value based upbringing ought to be the



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paramount consideration of this Court. It is not in dispute that the petitioner has chosen to live with her chosen partner outside the wed-lock and this being the case, the question of giving interim custody of the minor daughters to her would have a disastrous impact on the psyche of the minor children.

45. The learned counsel then proceeded to submit that the un-numbered Contempt Petition D.No.60739 of 2020 has been filed for wilful disobedience of the order dated 19.06.2019 passed by this Court in H.C.P.No.1019 of 2019 based on Memo of Compromise, dated 17.06.2019 in File No.10 of 2019, arrived at before the Mediation and Conciliation Centre of this Court. According to the learned counsel, the Contempt Petition cannot be countenanced, both in law and on facts and in this regard, he recalled the order of the Division Bench of this Court. dated 19.06.2019 passed in H.C.P.No.1019 of 2019, which has been extracted supra. The Division Bench has simply closed the petition holding that, "If the parties are of the view that the agreed terms would require modification, the remedy lies elsewhere." The Division Bench, while closing the petition, as a matter



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of fact, concluded that there was no illegal detention of the children involved. Thereafter, the same issue was sought to be raised by the petitioner before a learned Judge of this Court and the learned Judge, vide order dated 14.08.2019 in A.No.3226 of 2019 in the O.P., observed that the matter may be clarified before the Division Bench. There is nothing in the order of the Division Bench in favour of the petitioner herein, who was the petitioner therein that could be complained of that the respondent herein flouted the order of the Division Bench in the said H.C.P.

46. The learned counsel would further submit that, subsequently, the O.P. was heard on several occasions along with the connected applications filed by the petitioner as mentioned above and orders had been passed from time to time. In the meanwhile, the petitioner had also gone before the H.C.P. Division Bench by filing a clarification petition seeking to clarify what it meant as custody. The Division Bench of this Court however refused to entertain the clarification petition in CrI.M.P.No.12399 of 2019 in H.C.P.No.1019 of 2019 by observing as under in the order dated



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26.09.2019:

"A clarification has been sought for in this petition on the ground that para 4 of the order passed in H.C.P.No.1019 of 2019 dated 19.06.2019, has been taken advantage of by the third respondent by taking the children abroad.

2. We are of the view that no clarification as such is required since we have only made an observation by having a look at the settlement arrived at between the parties dated 17.06.2019 especially Clause 6. Therefore, the above said para 4 with respect of the agreement on behalf of the petitioner has to be seen in the context of clause 6 of the settlement agreement dated 17.06.2019. Therefore, any pending petition will have to be decided on its own merits. This petition is disposed of accordingly."

47. Once the above clarification sought by the petitioner, was finally refused to be entertained by the Division Bench, the Contempt Petition in Cont.P.D.No.60739 of 2020 is an abuse of the process of the Court and



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liable to be rejected as not maintainable. Filing of the Contempt Petition amounted to yet another vexatious attempt by the petitioner not to let go of her continued harassment to the respondent.

48. The learned counsel, after concluding his lengthy arguments, finally implored this Court that in the light of the cumulative facts and the circumstances of the case, the applications filed by the respondent herien in A.Nos.3175 and 3176 of 2020 in O.P.No.335 of 2019, seeking to set aside the order dated 20.11.2020 passed in A.Nos.1986 and 1987 of 2020, may be allowed and the order dated 20.11.2020 of this Court, may be set aside. Along with the same, the un-numbered Contempt Petition may also be dismissed as a blatant abuse of process of the Court.

49. Per contra, Mrs.G.Thilakavathi, learned Senior Counsel appearing for the petitioner would submit that starting of the marital discord between the parties could be traced to an unpleasant event which took place on 05.07.2018 when the petitioner came under physical assault unleashed by



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the respondent in front of her in-laws and she was also locked up in a bedroom and was prevented from going to the College. Only after intervention of the neighbours, the doors of the bedroom were opened and the petitioner was rescued from the forced confinement. As the petitioner was anticipating another physical assault from the respondent, a Police complaint was lodged in C.S.R.No.245 of 2018 before the Inspector of Police, J-7 Police Station, Velacherry, Chennai, against the respondent. Thereafter, the parents of the petitioner came down from Thanjavur and took her along with the children to Thanjavur. After the unsavoury incident, she was living with her parents for some time with the children in Thanjavur. From that point of time onwards, there were several issues between the petitioner and the respondent, which led to the filing of the above referred cases/applications etc.

50. The learned Senior Counsel also referred to the order dated 31.10.2018 passed in H.C.P.(MD).No.1399 of 2018, wherein the Division Bench observed that the petitioner therein, the respondent herein would



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leave the minor children in the custody of the parents of the detenu, the petitioner herein in the ensuing Christmas holidays. But deliberately, the respondent did not oblige and the children were not left in the custody of the petitioners' parents during the said Christmas Holidays. She also referred to the order passed by the learned Judge of this Court in C.M.P.No.9826 of 2019 in Tr.C.M.P.No.338 of 2019, dated 25.04.2019. A direction was issued by the learned Judge in the said case to the respondent herein that he and minor children shall not leave India without getting permission from the Court. The respondent, as admitted by him, has flagrantly violated this direction also. The respondent stealthily left India along with the children to the U.S., unmindful of the specific direction of the Court.

51. The learned Senior Counsel also referred to the subsequent order passed by another learned Judge of this Court on 16.05.2019 in A.No.3226 of 2019 in the above O.P. The learned Judge, after taking note of the fact that postal cover was duly returned with endorsement "unclaimed" and also the fact that e-mail sent to the respondent, was not responded to, granted



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interim custody of the minor children in favour of the petitioner for a period of 15 days from 20.05.2019 and also directed the jurisdictional Inspector of Police, All Women Police Station, to accompany the petitioner while obtaining the custody of the twin children and also to give necessary Police protection to her and two minor children during the aforesaid period.

52. The learned Senior Counsel further referred to the settlement agreement, dated 17.06.2019 and particularly, drew the attention of this Court to the contentious condition incorporated in the settlement, namely that the respondent will not take away the children out of India or to any foreign country without the written consent of the petitioner. But ultimately, the respondent went back on the terms of the settlement by illegally taking away the children to the U.S. without the knowledge of the petitioner. According to the learned Senior Counsel, at every stage, the respondent had mischievously and cunningly ensured the petitioner was denied of her rightful access to her daughters.



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53. The learned Senior Counsel further referred to the order passed by the Division Bench of this Court in the second Habeas Corpus Petition in H.C.P.No.1019 of 2019, dated 19.06.2019. On behalf of the respondent, when the dispute was raised in regard to the condition incorporated in the agreement, dated 17.06.2019 of taking the children away abroad without the written consent of the petitioner and sought clarification, but the Division Bench refused to clarify the position observing that remedy for modification of the agreed terms lies elsewhere and eventually closed the H.C.P. itself. The learned Senior Counsel therefore submitted that the condition not to take away the children abroad, without the consent of the petitioner, is very much in force even as on date.

54. The learned Senior Counsel has drawn the attention of this Court to yet another order dated 24.10.2019 passed by the learned Single Judge of this Court, wherein the learned counsel who represented the respondent at that point of time, on instructions, submitted that the petitioner could talk to her children over 'Skype' twice a week. Even that arrangement agreed to



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was not complied with. On the other hand, the learned counsel who appeared for the respondent, had to withdraw his appearance and he had filed a Memo, dated 19.12.2019 to that effect. That was recorded by the learned Judge of this Court in the proceedings, dated 02.01.2020.

55. Thereafter, the petitioner was directed to serve notice on the final address of the respondent in the U.S.A. and also through e-mail and posted the case for hearing on 24.01.2020. The O.P. was listed for hearing subsequently on 13.03.2020. A learned Judge of this Court, finding no response from the respondent herein, on the one hand, and on the other, the minor children, had been taken away without the permission of the petitioner, directed the learned Public Prosecutor to produce the father of the respondent before the Court on 17.03.2020. According to the learned Senior Counsel, the Court was thoroughly unhappy and miffed with the attitude of the respondent in deliberately evading service of notice from this Court. The devious conduct of the respondent invited the ire of this Court forcing it to observe that the respondent has deceived the Court.



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56. On 17.03.2020, a learned counsel appeared on behalf of the father of the respondent who had been produced before this Court by the jurisdictional Police. The learned Judge recorded the undertaking of the father that he would file a counter affidavit and would also advise his son to bring the children over to India after the present Pandemic Corona Virus, was resolved and the matter stood adjourned to 21.04.2020.

57. The learned Senior Counsel also referred to the complaint given to the U.S. Consulate and the subsequent action taken by the local county Police in the U.S.A. and the report filed by the county Police. She would particularly emphasise the fact that consistently, the respondent has been avoiding receipt of notice and thereafter, avoiding appearance before the Court. All the legitimate attempts by the petitioner to have the custody of her minor daughters, have ended in futility only because of the obdurate attitude of the respondent in refusing to honour the commitment in terms of the settlement agreement, dated 17.06.2019, and furthermore, repeatedly

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violating the orders of this Court by taking away the children illegally abroad without the permission from this Court, without consent from the petitioner.

58. In the meanwhile, due to the Covid-19 situation, the matter was not listed for some time, but in the meanwhile, Contempt Notice was also issued on behalf of the petitioner, through her counsel on 22.08.2020. Thereafter, the matter was listed for hearing on 30.09.2020. On that day, an order was passed allowing the petitioner to make a Video Call and interact with the minor daughters every week-end. The respondent, who was represented by another learned counsel, was directed to facilitate the meeting. The Court has also fixed the timing of the meeting at 8.30 p.m. on Saturdays and Sundays (Indian Standard Time) starting from the following week-end, i.e. 03.10.2020.

59. According to the learned Senior Counsel, even this arrangement has not been properly complied with and refuted the submission made on



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behalf of the respondent, that the arrangement put in place, vide order dated 30.09.2020, has been adhered to scrupulously.

60. According to the learned Senior Counsel, on many occasions, the respondent ensured that the week-end conversation between the petitioner and her daughters, did not go through continuously and smoothly and the video interaction was frequently disrupted after a short-while under the pretext of connectivity issue. The respondent also saw to it that the virtual access lasted only for a short duration, preventing the petitioner from having a meaningful and quality interaction with her children.

61. The learned Senior Counsel then proceeded to refer to the subsequent orders passed by this Court which have already been referred to by the learned counsel for the respondent in regard to the direction to the Passport Authority for impounding the Passport of the respondent and the subsequent order restraining the Passport Authority from taking any coercive action. The learned Senior Counsel submitted that the petitioner



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being the mother of the twin children, has been unjustly and illegally denied custody of her children, despite her repeated efforts, armed with Court orders at frequent intervals. The respondent however managed to maliciously stay away from the jurisdiction of this Court and thus successfully scuttled the implementation of the orders of this Court, resulting in complete deprivation of the mother's right to access her own minor daughters. The petitioner cannot at all be blamed or faulted with for resorting to the repeated litigations, since the respondent alone has been responsible towards pushing her to the brink of desperation. After all, whatever be the allegations against the petitioner in regard to her so called extra-marital relationship, the fact that the petitioner is the biological mother of the minor daughters, cannot be lost sight of. Therefore, she has been resorting to all the possible legal remedies that are available which ought to be appreciated from the point of view of the emotional longing of mother towards her minor daughters.

62. The learned Senior Counsel would contend that the respondent



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being located in a far-away country outside the jurisdiction of this Court, has been successful in evading service of notices and also denying the petitioner proper access and interaction with the children. She would therefore plead with this Court to appreciate the petitioner's desperate pining to go to the U.S.A. and have the custody of the children for some time or atleast a direction may be issued to the respondent to bring the children over to India during Christmas holidays (2021) or any other time.

63. While making the above passionate plea, the learned Senior Counsel finally submitted that right of the mother to visitation or custody of her minor children, cannot be denied at all, merely because they are at present located abroad and their future is more safe and secured there. Before deciding the custody O.P. finally, the respondent ought to be directed to provide access to the petitioner of her children, meaningfully and some workable arrangement should be put in place towards achieving the said purpose. The learned Senior Counsel thus concluded and prayed for grant of some relief to the emotionally exhausted, despaired petitioner-mother.



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64. Responding to the above factual and impassioned submissions of the learned Senior Counsel, the learned counsel for the respondent insistently reiterated the facts and the averments as contained in paragraph 9 of the counter affidavit of the respondent herein, filed in Application No.3226 of 2019 in the O.P. The contents of the said paragraph are reproduced hereunder:

"9. I submit that in these circumstances, I filed HMOP.No.24/2019 before the Sub-Court, Thanjavur for divorce on the grounds that the applicant had voluntary sexual intercourse with the said J.Rathish who too as impleaded as a party respondent. The ground of cruelty was also included. I have narrated in detail about the conduct of the applicant in having illicit relationship with the said J.Rathish and reference has been made to the audio recordings in my possession which would conclusively establish the long time intimacy and sexual relationship which the applicant was having with the said J.Rathish. This HMOP was filed in January 2019."

In the light of the conduct of the petitioner, grant of interim custody of the

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minor daughters in favour of the petitioner, would not advance the interest of the minor daughters, but on the other hand, it may cause adverse impact on their impressionable minds. The learned counsel also once again referred to the order passed by the Division Bench in H.C.P.No.721 of 2021, dated 14.07.2021, wherein the Court observed on the erring conduct of the petitioner.

65. According to the learned counsel, the intention of the respondent is not to violate any orders/direction of this Court or to resile from any commitment he has undertaken with reference to the pending proceedings before the Court or with reference to the settlement agreement, dated 17.06.2019. In the paramount consideration of the welfare of the minor daughters, the respondent was compelled to take them away to the U.S.A. As the daughters being the U.S.A. citizens, they cannot be left behind for indefinite period of time, particularly, with the mother, who is alleged to be living in illicit relationship.



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66. In the cumulative circumstances as narrated above, it would not be prudent and safe to bring the children back to India even for a short-while, as that would result in disastrous consequences going by the past conduct of the petitioner. Her request for permission to visit the USA for limited custody of the children, pending consideration of the O.P. before this Court, is also not a workable option, as such arrangement would not certainly result in healthy union and may not also be practicable in a foreign land. In view of the constraints starring at the parties, the learned counsel would submit that the arrangement that has been put in place by the learned Judge of this Court, vide order dated 30.09.2020 in A.Nos.1986 and 1987 of 2020 being duly complied with every week-end till date, the same may be continued, pending final consideration of the O.P. by this Court.

67. The learned counsel for the respondent, in order to bolster his factual submissions with legal support, has referred to the following two decisions :

(i) 2008 (9) SCC 413 (Nil Ratan Kundu Vs. Abhijit Kundu), in which



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WEB COPY he relied on paragraph 52, which is extracted herein:

"Principles governing custody of minor children

52. In our judgment, the law relating to custody of a child is fairly well settled and it is this: in deciding a difficult and complex question as to the custody of a minor, a court of law should keep in mind the relevant statutes and the rights flowing therefrom. But such cases cannot be decided *solely* by interpreting legal provisions. It is a human problem and is required to be solved with human touch. 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 we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the court must consider such preference as well, though the final decision should rest with the court as to what is conducive to the welfare of the minor."



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WEB COPY (ii) 2019 (7) SCC 42 (Tejaswini Gaud Vs. Shekhar Jagdish Prasad

Tewari): The learned counsel drew the attention of this Court to paragraphs

26 to 28, which are extracted herein:

"Welfare of the minor child is the paramount consideration

26. The court while deciding the child custody cases is not bound by the mere legal right of the parent or guardian. Though the provisions of the special statutes govern the right of the parents or guardians, but the welfare of the minor is the supreme consideration in cases concerning custody of the minor child. The paramount consideration for the court ought to be child interest and welfare of the child.

27. After referring to number of judgments and observing that while dealing with child custody cases, the paramount consideration should be the welfare of the child and due weight should be given to child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings, in *Nil Ratan Kundu (Nil Ratan Kundu Vs. Abhijit Kundu - 2008 (9) SCC 413)*, it was held as under: (SCC pp.427-28, paras 49-52)

"49. In *Goverdhan Lal Vs. Gajendra Kumar* (2001 SCC OnLine Raj 177 : AIR 2002 Raj 148), the High Court observed that it is true that the father is a natural guardian of a minor child and therefore has a preferential right to claim the custody of



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his son, but in matters concerning the custody of a minor child, the paramount consideration is the welfare of the minor and not the legal right of a particular party. Section 6 of the 1956 Act cannot supersede the dominant consideration as to what is conducive to the welfare of the minor child. It was also observed that keeping in mind the welfare of the child as the sole consideration, it would be proper to find out the wishes of the child as to with whom he or she wants to live.

50. Again, in *M.K.Hari Govindan Vs. A.R.Rajaram* (2003 SCC OnLine Mad 48 : AIR 2003 Mad 315), the Court held that custody cases cannot be decided on documents, oral evidence or precedents without reference to "human touch". The human touch is the primary one for the welfare of the minor since the other materials may be created either by the parties themselves or on the advice of counsel to suit their convenience.

51. In *Kamla Devi Vs. State of H.P.* (1986 SCC OnLine HP 10 : AIR 1987 HP 34), the Court observed: (SCC OnLine HP para 13):

'13. the Court while deciding child custody cases in its inherent and general jurisdiction is not bound by the mere legal right of the parent or guardian. Though the provisions of the special statutes which govern the rights of the



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parents or guardians may be taken into consideration, there is nothing which can stand in the way of the Court exercising its parens patriae jurisdiction arising in such cases giving due weight to the circumstances such as a child's ordinary comfort, contentment, intellectual, moral and physical development, his health, education and general maintenance and the favourable surroundings. These cases have to be decided ultimately on the Court's view of the best interests of the child whose welfare requires that he be in custody of one person or the other.'

52. In our judgment, the law relating to custody of a child is fairly well settled and it is this: in deciding a difficult and complex question as to the custody of a minor, a court of law should keep in mind the relevant statutes and the rights flowing therefrom. But such cases cannot be decided *solely* by interpreting legal provisions. It is a human problem and is required to be solved with human touch. 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,



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the court is exercising *parens patriae* jurisdiction and is expected, *may* 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 we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the court must consider such preference as well, though the final decision should rest with the court as to what is conducive to the welfare of the minor."

28. Reliance was placed upon *Gaurav Nagpal (Gaurav Nagpal Vs. Sumedha Nagpal - 2009 (1) SCC 42 : 2009 (1) SCC (Civ) 1)*, where the Supreme Court held as under: (SCC pp.52 & 57, paras 32 & 50-51):

"32. In *McGrath (Infants), In re* ((1893) 1 Ch 143 (CA)), Lindley, L.J. observed: (Ch p.148):

'.... *The dominant matter for the consideration of the court is the welfare of the child.* But the welfare of the child is not to be measured by money only nor merely physical comfort. The word "welfare" must be taken in its widest sense. The moral or religious welfare of the child must be considered as well as its



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physical well being. Nor can the
tie of affection be disregarded.'

* * *

50. When the court is confronted with conflicting demands made by the parents, each time it has to justify the demands. The court has not only to look at the issue on legalistic basis, in such matters human angles are relevant for deciding those issues. The court then does not give emphasis on what the parties say, it has to exercise a jurisdiction which is aimed at the welfare of the minor. As observed recently in *Mausami Moitra Ganguli case* (*Mausami Moitra Ganguli Vs. Jayant Ganguli - 2008 (7) SCC 673*), the court has to give due weightage to the child's ordinary contentment, health, education, intellectual development and favourable surroundings but over and above physical comforts, the moral and ethical values have also to be noted. They are equal if not more important than the others.

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



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jurisdiction arising in such cases.
(emphasis in original)"

68. The above two decisions of the Honourable Supreme Court of India, is the reiteration of the settled legal principle that, in selecting proper guardian of a minor, the paramount consideration should be the welfare and the well-being of the child. In consideration of the well-being of the child, the factors to be taken into consideration are the child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. According to the learned counsel, if these factors are to be applied in this case, the petitioner is not entitled to any relief even on a temporary or interim measure.

69. In the circumstances, the learned counsel prayed for allowing of A.Nos.3175 and 3176 of 2020 and dismissal of Contempt Petition Diary No.60739 of 2020 and A.No.3226 of 2019 seeking interim custody.



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70. Heard the detailed arguments/submissions of the learned Senior Counsel for the petitioner and the learned Counsel for the respondent, perused the pleadings and the materials placed on record.

71. At the outset, this Court would first deal with the applications filed by the respondent in A.Nos.3175 and 3176 of 2020 in O.P.No.335 of 2019 filed seeking to set aside the order dated 20.11.2020 passed by this Court in A.Nos.1986 and 1987 of 2020 in O.P.No.335 of 2019. This Court has narrated in-extenso the facts and the circumstances that led to the filing of the above Applications, the un-numbered Contempt Petition and the Habeas Corpus Petitions.

72. For the limited extent of examining these applications, this Court has to inevitably deal with the circumstances which led to the passing of the order dated 20.11.2020 by this Court in A.Nos.1986 and 1987 of 2020 directing the Passport Office to issue notice to the respondent to show cause as to why his Passport be not impounded for breaching the order of this



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Court by removing the minor children outside the jurisdiction of this Court.

The Court in the order dated 20.11.2020, has referred to two proceedings as the basis, for finding of the breach of the orders of this Court: (i) dated 25.04.2019 in Tr.C.M.P.No.338 of 2019 and (ii) settlement recorded in the mediation proceedings, dated 17.06.2019. Besides, the Court also felt that the respondent had not been responding to the applications filed by the petitioner frustrating the efforts taken by the mother to meet her minor daughters.

73. In regard to the above, the subsequent conduct of the parties needed to be examined to put the matter in proper perspective. When H.C.P.No.1019 of 2019 filed by the petitioner came up for hearing on 19.06.2019, immediately, after the settlement agreement, dated 17.06.2019, an issue was raised on behalf of the respondent herein regarding the incorporation of the condition that the children not to be taken abroad without the written consent of the petitioner. The Division Bench however refused to entertain any plea for modification of the agreement, dated



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17.06.2019, but left it to the parties by observing that their remedy lies elsewhere. While making such observation, the Division Bench has held that there was no illegal detention of the children involved in the custody of the respondent and accordingly, the HCP was closed on 19.06.2019. What is relevant and germane for consideration of the Court is that the respondent, within two days from the date of the settlement agreement, dated 17.06.2019, raised the issue of the condition being made part of the settlement, namely children not to be taken away without the written consent of the mother before the Division Bench on 19.06.2019 itself and therefore, it cannot be stated to be an after-thought.

74. As far as the earlier order dated 25.04.2019 was concerned, passed in Tr.C.M.P.No.338 of 2019, that was the time when the learned Judge in Tr.C.M.P.No.338 of 2019 was dealing with the transfer of matrimonial O.Ps. pending in two different Courts and was considering the situation where the Passport of the minor children needed to be renewed to enable them to return to the U.S.A. Moreover, the learned Judge had taken



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note of the facts presented to him that the parties were at liberty to settle their issue amicably and adjourned the matter to 29.04.2019 for filing of appropriate joint memo of compromise. In that context, the direction was issued against the respondent that minor children shall not leave India without getting permission from the Court. But what transpired subsequently is more relevant and crucial. The petitioner herein filed H.C.P.No.1019 of 2019 in May 2019 and the Division Bench which heard the matter, referred the dispute to the mediation, followed by the settlement agreement between the parties, dated 17.06.2019.

75. In view of the later development and the closure of the H.C.P. on 19.06.2019 by the Division Bench, the order date 25.04.2019 passed by the learned Judge, deemed to have been diluted by the conduct of the parties. This is more so when the petitioner herself had sought clarification before the Division Bench in H.C.P.No.1019 of 2019 by filing Crl.M.P.No.12399 of 2019 in August 2019. The clarification that was sought by the petitioner from the Division Bench was to the effect that what the Bench meant when



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it observed "Suffice it to state that there is no illegal detention of children involved and, at least, insofar as the petitioner is concerned, she has agreed to let the custody of the children with the 3rd respondent" and explain the term "custody" mentioned in the order. However, the Division Bench refused to entertain the clarification petition on the ground that what was made in the original order was only an observation and as such, no clarification required. The CrI.M.P. was accordingly disposed of on 26.09.2019. In the face of these developments, it cannot be gain-said that the respondent had wilfully flouted the orders of this Court.

76. In fact, in the recent H.C.P.No.721 of 2021 filed by the petitioner, yet another Division Bench of this Court has confirmed the fact of the custody of the children was with the respondent, in its order dated 14.07.2021. In such circumstances, alleging contemptuous conduct on the part of the respondent, that too in a sensitive matrimonial matter, in the opinion of this Court, amounted to abuse of process of the Court. It is needless to mention that every-time fresh direction issued in response to new



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applications at the instance of the parties, any earlier order or direction passed relating to the same issue, qua parties, get subsumed and it cannot be disjunctively resurrected in order to hold the respondent to contempt.

77. As regards the order dated 20.11.2020 is concerned, it was subsequently explained to the learned Judge that the counsel's name was not printed in the cause list when the matter was heard on that day (20.11.2020). However, when the respondent had come to know about the show cause notice being issued for impounding of his Passport, immediately, he instructed his Advocate to take up the issue before this Court. Consequently, A.Nos.3175 and 3176 of 2020 came to be filed seeking to set aside the order dated 20.11.2020 passed in A.Nos.1986 and 1987 of 2020. The learned Judge, after being apprised of the factual position, has passed further orders on 21.12.2020, directing the Passport Authority not to pass any coercive orders without the permission of this Court and posted the matter on 18.01.2021.



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78. On 18.01.2021 in A.Nos.3175 and 3176 of 2020, on behalf of the respondent, the learned counsel appeared, as could be seen from the records and submitted that the order dated 30.09.2020 passed by this Court granting permission to the petitioner for her interaction with her children on week-ends (Saturdays and Sundays), has been duly complied with. The matter was further adjourned to 08.02.2021 for appearance of the parties. Thereafter, the matter was adjourned from time to time.

79. In the meanwhile, a counter affidavit has also been filed on behalf of the respondent, in A.No.3226 of 2019 in September 2020. The counter affidavit contained detailed averments in regard to the personal conduct and character of the petitioner and particularly, with regard to her illicit relationship with one Mr.J.Rathish. These averments are integral of part of the above factual narrative and the said Rathish also has been made a party in the Habeas Corpus Petition in H.C.P.(MD).No.1399 of 2018 and in the matrimonial O.P. The Division Bench which heard the H.C.P., as stated above, held discussion not only with the petitioner and the respondent, but



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also with the said J.Rathish. Ultimately, finding no amicable settlement forthcoming and no action could be taken against such relationship, considering the age, status of the parties, the Division Bench did not choose to pass any orders. The H.C.P. was eventually withdrawn on 08.01.2019.

80. Now, reverting to the subsequent events, after the order was passed on 18.01.2021, regularly, the matter was adjourned from time to time. On behalf of the petitioner, a common counter affidavit has also been filed on 05.02.2021 in A.Nos.3175 and 3176 of 2020 filed by the respondent herein. Very curiously and strangely, in reference to the averments contained in the counter affidavit filed by the respondent in September 2020, relating to the allegations against the character and conduct of the petitioner, nothing has been whispered in the counter affidavit filed by the petitioner. In fact, from the essence of averments contained in the counter affidavit, it could be deduced without any pale of doubt that allegation of her adulterous conduct has not been disputed. In fact, in paragraph 14 therein, a feeble attempt has been made as to the reason for



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not dealing with the allegations of adultery, but this Court finds that the statements contained therein being insidious and crafty, appear to be made without any conviction at all, and the same therefore, do not cut much ice with this Court. In the absence of any strong and vehement denial by the petitioner in this regard, amounted to implied acceptance of the allegation.

81. In fact, this Court, in the course of the arguments advanced on behalf of the petitioner, confronted the learned Senior Counsel as to whether the petitioner is willing to go on record firmly denying the alleged illicit relationship, but no answer was forthcoming and there was a studied silence from her end. This Court made it clear that the purpose towards confronting the counsel was such allegations were not hurled wildly and wickedly to win over the custody of the children by the respondent.

82. Whatever be the conduct of the petitioner and the veracity of the allegations, this Court would not venture to wear a sanctimonious garb and pronounce upon the alleged relationship of the petitioner, as being an adult



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she can chart out her priority independently and lead a life of her choice. But when it comes to the issue of custody of minor children, the alleged relationship which was not disputed specifically could be a crucial or even clinching factor. The trite ruling of the Courts consistently in custody matters, wholly premised on the paramount consideration of the welfare and the well-being of the minor children. The exercise of power or issue of direction towards grant or refusal of interim custody or permanent custody, is dependent solely from the point of view of minors' interest and such interest cannot be allowed to be undermined in the egoistical clash of the parents. The efforts of the Courts ought to be directed towards ensuring the decision of the adult parents as far as possible do not affect the minors' psyche and their wholesome growth.

83. Insofar as A.Nos.3175 and 3176 of 2020 are concerned, after the order was passed on 20.11.2020, much water has flowed under the bridge. In fact, as referred to earlier in this order, the petitioner had also raised a dispute on her part that she has never agreed for the custody of the children



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with the respondent. This dispute was raised by her as a sequel to the Division Bench observation in its order dated 19.06.2019 made in H.C.P.No.1019 of 2019, wherein, the Division Bench had observed that the custody of the children was with the respondent and thus, there was no illegal detention. She first raised the issue before the learned Judge who heard the O.P. and the learned Judge, by order date 14.08.2019, directed the petitioner to seek clarification from the Division Bench.

84. When the petitioner reverted to the Division Bench by seeking clarification in Crl.M.P.No.12399 of 2019 in H.C.P.No.1019 of 2019, the Division Bench, vide order dated 26.09.2019, refused to clarify on the ground that the observations were made on the basis of the contents of the settlement agreement dated 17.06.2019, particularly, in terms of Clause 6 of the settlement. Her efforts to unsettle the custody of the children with the respondent, did not eventually succeed.

85. The petitioner, having failed in all her attempts in disturbing the



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status-quo of the minor children, has once again approached this Court recently by filing another H.C.P.No.721 of 2021 seeking the production of her two minor daughters. After referring to all the earlier proceedings, H.C.P.No.1399 of 2018, H.C.P.No.1019 of 2019, clarification Crl.M.P.No.12399 of 2019, and also the present interim custody application in A.No.3226 of 2019, etc., the Division Bench has made observations in paragraph 5, which has been extracted supra, observing that the allegations regarding the alleged affair of the petitioner, were supported by reasonable materials. The Division Bench finally dismissed the H.C.P. as devoid of merits, vide its order dated 14.07.2021.

86. While dismissing the above said H.C.P.No.721 of 2021, the Division Bench has also found fault with the petitioner, for not disclosing the first H.C.P. filed by the respondent herein in H.C.P.(MD).No.1399 of 2018. In fact, in paragraph 7 of the order, the Division Bench has observed that the petitioner quietly placed the copy of the order dated 31.10.2018 passed in H.C.P.(MD).No.1399 of 2018 in the voluminous typed set of papers,



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perhaps, to escape from the charge of *suppressio veri*.

87. The petitioner, being aggrieved by the dismissal of H.C.P.No.721 of 2021, has approached the Honourable Supreme Court in S.L.P.(C).No.15434 of 2021. However, the Honourable Supreme Court, vide order dated 01.10.2021, rejected the said S.L.P., but requested this Court to dispose of Cont.P.D.No.60739 of 2020 and G.W.O.P.No.335 of 2019, within a period of six months from the date of the communication of the order.

88. As stated above, insofar as A.Nos.3175 and 3176 of 2020 filed by respondent, are concerned, the direction of this Court on 20.11.2020 came to be issued by the learned Judge, primarily taking exceptions to the conduct of the respondent for not responding to the notices issued in the proceedings and flouting the orders of this Court, by taking away the minor children without the permission of the Court or without the written consent of the petitioner. But immediately thereafter, the same learned Judge, after being satisfied on due representation from the respondent's side, has passed further



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direction on 21.12.2020 that no coercive action to be taken by the Passport authorities pursuant to the earlier order dated 20.11.2020.

89. Therefore, this Court, while taking into account all the subsequent events and the conduct of the parties, and also the explanation from the respondent, comes to an inexorable conclusion that the order of this Court dated 20.11.2020 is liable to be recalled and not to be pursued. This Court perused the order directing impounding of Passport of the respondent, as the learned Judge was constrained to take a serious view, when repeated attempts to reach him through Court notices, e-mail, etc., failed to yield results. The Court, at that point of time, under compelling circumstances, initiated harsh action with a view to force the respondent to respond to the applications filed by the petitioner. However, once the absence before the Court on a few occasions, had been explained satisfactorily, it would be a travesty of justice to hold on to the punitive order passed by this Court on 20.11.2020. When the bed-rock of consideration in all custody matters is wholly being the welfare of the minors, such punitive order if taken forward to its logical end, it would be nothing but disaster befalling on the entire



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family, particularly the children who are citizens of the U.S.

90. In the said circumstances, A.No.3175 and 3176 of 2020 shall stand allowed and the order dated 20.11.2020 passed in A.Nos.1986 and 1987 of 2020, is hereby cancelled and recalled.

91. As far as the un-numbered Contempt Petition in Cont.P.D.No.60739 of 2020, is concerned, as detailed above, it appears that the same has been filed complaining of Contempt for wilful disobedience of the order dated 19.06.2019 passed by this Court in H.C.P.No.1019 of 2019. According to the petitioner, the order was passed on the basis of the Memorandum of Compromise, dated 17.06.2019 entered into by the petitioner and the respondent before the Mediation and Conciliation Centre of this Court. This Court is unable to countenance as to how the Contempt could be made out from the following laconic order of the Division Bench, dated 19.06.2019:

"The mother of the detenues namely,



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(1)Arumantha and (2) Prithyanka has filed this petition seeking production of detenues before this Court.

2. Pursuant to the orders passed by this Court on 17.06.2019, the dispute has been resolved between the parties amicably before the Mediation Centre.

3. The learned counsel for the 3rd respondent has submitted that there is a hitch in respect of one of the clauses though agreed upon with regard to taking his children abroad which requires consent from the petitioner.

4. We do not propose to say anything on this. If the parties are of the view that the agreed terms would require modification, the remedy lies elsewhere. Suffice it to state that there is no illegal detention of children involved and, at least, insofar as the petitioner is concerned, she has agreed to let the custody of the children with the 3rd respondent. This Habeas Corpus Petition is closed accordingly with the above observations."



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92. From the above order, it is incomprehensible how the respondent could be said to have committed contempt in the face of the above elaborate factual narrative. The petitioner presumably, out of desperation, has come up with this un-numbered Contempt Petition as one more salvo targeting the respondent, complaining of contempt in respect of the above orders of the Division Bench. From the plain expression of the language of the Division Bench, it is inconceivable how the respondent could be blamed for any transgressional conduct.

93. In any event, as a matter of record, when the same petitioner has approached the Division Bench for clarification of paragraph 4 of the order alone passed in the H.C.P., the Division Bench refused to clarify the same, in CrI.M.P.No.12399 of 2019 in H.C.P.No.1019 of 2019, by order dated 26.09.2019. The Division Bench refused to clarify, as it held that the order was passed on the basis of the contents of the agreement settlement, dated 17.06.2019 drawing reference to Clause 6 of the agreement. The relevant observations of the Division Bench made in the clarification petition have



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also been extracted supra.

94. Even in regard to the condition incorporated in the settlement agreement, dated 17.06.2019, namely that the children should not be taken abroad without the written consent of the mother, the same was sought to be clarified at the instance of the respondent immediately before the Division Bench of this Court on 19.06.2019 in the above H.C.P. However, the Division Bench relegated the parties to seek the remedy for modification elsewhere. Therefore, in the face of the stand taken by the respondent as to the condition incorporated in the settlement agreement, dated 17.06.2019 appeared to be not as a result of consensus, the question of holding the respondent for contempt for violation of the order of this Court or against the settlement agreement, dated 17.06.2020, would not arise at all.

95. Moreover, when the respondent taken away the children in July 2019, as rightly submitted by the learned counsel for the respondent, he had no option having been placed in the tight spot facing fusillade of litigations,



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fearing loss of employment in the U.S., and the possible adverse consequences on the citizenship status of the minor children, etc. This Court could well appreciate the ominous situation portending at that time, having practically left with no choice the respondent had to leave India with his minor daughters. In matters like this, the Courts cannot wield a stick even if there is a perceived breach of the order of Courts, but ought to exhibit a larger understanding of the interplay of emotions, turmoil and strain of the estranged parties.

96. As held by the Honourable Supreme Court and referred to by the learned counsel for the respondent in 2008 (9) SCC 413 (Nil Ratan Kundu Vs. Abhijit Kundu), the Courts, in family, and particularly, in custody matters, exercise 'parens patriae' jurisdiction. In discharge and exercise of such jurisdiction, the Courts cannot let loose its power of contempt on the parties. In matrimonial disputes, particularly, in sensitive custody matters, there are two extreme emotive display of parents' conduct could be seen. One passionate appeal to custody and the other equally passionate



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resistance to and retention of custody of the minor/minors concerned. In their anxiety to hold on their respective positions, breaches and transgressions do happen quite often, which the Courts need to wisely overlook with a judicious display of sangfroid, on singular consideration of the welfare of the minors. An act of Court in such matters should not end up like introducing "a Bull in a China shop". In the said circumstances, this Court does not see any scope for entertaining the un-numbered Contempt Petition.

97. In the said circumstances, the Contempt Petition stands rejected at the Diary stage itself, as not maintainable.

98. As far as the interim custody application is concerned (A.No.3226 of 2019), the twin children being the citizens of the U.S., and the respondent admittedly being employed in a good position in the country, the entire well-being and the welfare of the children is surely secured without a modicum of doubt, in the custody of their father in the U.S. Contrarily, if the interim



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custody application is to be allowed, that will be in essence, opposed to the welfare and the well-being of the children, who may, by virtue of their stay there, possibly have a better future by being the U.S. citizen. When the minor children are pursuing their education in the U.S., granting interim custody to the petitioner who is in India may satisfy the petitioner's ego having won the interim custody battle against the respondent, but on a hindsight, she herself might realise, such scenario is not good for the future of her daughters.

99. Moreover, the alleged relationship of the petitioner with the said J.Rathish, being not seriously disputed, how far the petitioner could devote her undivided time towards parenting the minor daughters, is also another crucial and relevant factor to be taken into consideration. In this view of the matter, the custody of the minor daughters ought to remain with the respondent to sub-serve the best interest of the children, pending final disposal of the O.P. Further, when the children are used to particular environ and social settings, having been born and brought up in the U.S.,



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upsetting and re-locating them here in India by grant of interim custody in favour of the petitioner, can never be an option which any Court, can think of in the facts and circumstances of the case.

100. On behalf of the respondent, two decisions of the Honourable Supreme Court have been cited and the relevant paragraphs containing the guiding principles on the subject matter, extracted supra. The Courts have emphasised the aspect of moral and ethical values as indispensable qualities to be inculcated in the growth of the children. More than the physical and material comfort enjoyed by them as being citizens of advanced country, the children also require ethical and moral overarch and ambience during the crucial formative years of their upbringing.

101. At the same time, denying interim custody to the petitioner, does not mean that the petitioner is not entitled to the visitation rights as mother of the children. The learned Senior Counsel in this regard, pleaded that the petitioner may be permitted to visit the minor children in the U.S. or to direct



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the respondent to undertake a trip to India with the minor daughters during some time to enable the petitioner to be closeted with them during the time and to experience filial reciprocation from the children.

102. At this, the learned counsel for the respondent would submit that the the arrangement that has been put in place, vide order dated 30.09.2020, has been working well till date. Disputing the same, the learned Senior Counsel submitted on behalf of the petitioner that week-end interaction through virtual mode being frequently stymied by the mischievous respondent under the pretext of citing technical glitches. This Court however cautioned the respondent that as mother of the minor daughters, she cannot be prevented from seeking emotional comfort in her week-end meetings with her daughters and such meetings should not be disrupted by indulging in backstage manoeuvre by the respondent. The learned counsel on instructions, would submit that the respondent undertakes that the petitioner will be allowed to interact with her children in terms of the order dated 30.09.2020 unhindered and also she can call her



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daughters if need be, any time, mutually agreeable.

103. In view of the undertaking given by the learned counsel for the respondent, the status-quo in terms of the direction, dated 30.09.2020 shall continue till the disposal of the O.P. The present arrangement is fair enough and the best option in the circumstances of the case, considering the location of parties in the different countries/continents.

104. In the conspectus of the above prolix judicial discourse, the following decisions are handed out:

(i) A.No.3226 of 2019 seeking interim custody by the petitioner-mother, stands dismissed.

(ii) Cont.P.D.No.60739 of 2020 is rejected.

(iii) Appl.Nos.3175 and 3176 of 2020 stand allowed.

(iv) In view of the order passed in the above applications, A.Nos.1986 and 1987 of 2020 shall stand closed.



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105. The Honourable Supreme Court of India advised this Court to dispose of the main O.P. within six months, vide, its order dated 01.10.2021 passed in S.L.P.(C).No.15434 of 2021. Therefore, the main O.P. is ordered to be listed before the learned Master for recording evidence, if any on 07.02.2022. The learned Master is directed to conclude the enquiry as expeditiously as possible and thereafter, post O.P. before the Court at an early date for its disposal in terms of the Supreme Court's request.

106. Before parting with this case, this Court would wish to clarify that refusal to grant interim custody to the petitioner is not meant to belittle her mother-hood or slighting the umbilical relationship of the mother and her minor daughters. But what stood in the way was the apparent hysterical disposition manifested in her interminable acrimonious legal pursuit in the matter.

107. This Court, despite the observations and the conclusion as recorded above, is of the considered view that the situation could be



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salvaged, if the petitioner abandons her confrontational approach and work towards an amicable settlement for her own good. The petitioner with incensed and agitated mind filled with simmering anger, unable to succeed in all her arm-twisting endeavours inevitably led herself to the precipice of desperation, as could be seen in her latest attempt to secure her minor daughters custody by filing a vexatious HCP No.721/2021 and invited adverse comments from the Bench on her conduct. As the main OP is to be disposed of expeditiously as indicated above, it is in the hands of the petitioner to get hold of herself and regain her composure and equanimity. That alone will eventually lead to an amicable and compatible resolution in the end.

108. Retrieving the estranged conjugal relationship appears to be not pragmatic in the circumstances of the case. But enragement on that account for whatever reasons, need not be nurtured or harboured and carried to the future, undermining the parental bond, if she truly cares for the welfare of her minor daughters. The petitioner can think of taking a professional advice



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and work towards a mutually acceptable settlement, instead of playing the legal games of one-upmanship. The situation could still be reversed and salvaged. The ball is in her court and not in this Court.

109. No costs.

28.01.2022

Index: Yes/no
Speaking Orders: Yes
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