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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	06.10.2021
DELIVERED ON	28.10.2021

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH
AND
THE HON'BLE MS. JUSTICE R.N. MANJULA

H.C.P. NO.654 OF 2021

Girish Arunagiri
American Citizen
S/o Dr. M. Arunagiri
Having occupation at
Business Development Financial Service
Amazon Web Services (AWS)
Hemdon, Virginia
United States of America

Also at:

23124, Newcut Road
Clarksburg
MD 20871

...Petitioner

VS.

1.Mahalakshmi Senthil Nathan
American Citizen
23124, Newcut Road
Clarksburg, MD 20871

Now at India:
Flat No.5-B, Mayflower Silver Ridge
62 East Venkataswamy Road
R.S. Puram
Coimbatore 641 002
Tamil Nadu State, India



2.Minor Girl Shakthi Girish (12 years)

American Citizen

D/o Girish Arunagiri

Now, at India under the custody of

Mahalakshmi Senthil Nathan

Flat No.5-B, Mayflower Silver Ridge

62 East Venkataswamy Road

R.S.Puram, Coimbatore 641 002

Tamil Nadu State, India

3.Minor child Sharadha Girish (3 years)

American Citizen

D/o Girish Arunagiri

Now, at India under the custody of

Mahalakshmi Senthil Nathan

Flat No.5-B, Mayflower Silver Ridge

62 East Venkataswamy Road

R.S.Puram, Coimbatore 641 002

Tamil Nadu State, India

4.Dr. S.S. Senthil Nathan (68 years)

Doctor at R.S. Hospital

No.6, 224, Sambandam Road E

R.S. Puram (West)

Coimbatore - 641 002

Tamil Nadu State, India

Residing at:

Flat No.5-B, Mayflower Silver Ridge

62 East Venkataswamy Road

R.S. Puram

Coimbatore 641 002

Tamil Nadu State, India

5.Rajeswari Senthil Nathan (64 years)

W/o Dr. S.S. Senthil Nathan

Residing at:

Flat No.5-B, Mayflower Silver Ridge

62 East Venkataswamy Road

R.S. Puram, Coimbatore 641 002

Tamil Nadu State, India



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6.The Secretary
Ministry of Home Affairs
Government of India
New Delhi - 110 001, India

7.The Secretary
Foreign Affairs
Ministry of Foreign Affairs
Government of India
New Delhi - 110 001
India

8.The Foreigners Registration Office (FRO)
Lok Naik Bavan
New Delhi - 110 001

9.The Commissioner of Police
Coimbatore City
Office of the Commissioner of Police
Coimbatore - 641 018

...Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India to direct the ninth respondent, viz., the Commissioner of Police, Coimbatore City, Tamil Nadu, to produce the bodies of respondents 1 to 3 before this Court by removing them from the custody of the fourth and fifth respondents, for their due safe return to the United States of America, since they are the citizens of the said country.

For petitioner	:	Mr. N. Jothi for Mr. S. Vinod
For RR 1 - 5	:	Mr.I.Abrar Mohammed Abdullah
For RR 6 - 8	:	Mrs.S.P.Arthi Sr.Panel Counsel for Central. Govt.
For R9	:	Mr. R. Muniyapparaj Additional Public Prosecutor

ORDER

P.N. PRAKASH, J.

This is a petition for habeas corpus filed by the father seeking the return of his two minor children to the United



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States of America. For the sake of convenience, Girish Arunagiri, the petitioner herein and Mahalakshmi Senthil Nathan, the first respondent herein, who are spouses, will be referred to as Arunagiri and Mahalakshmi, respectively.

2. The minimum uncontroverted facts that resulted in the dispute betwixt the spouses, viz., Arunagiri and Mahalakshmi, qua custody of their two daughters, viz., Shakthi Girish and Sharadha Girish, are as under:

2.1 Arunagiri's father and Mahalakshmi's father are leading orthopaedic surgeons in Tamil Nadu. After completing his higher education in the United States, Arunagiri was gainfully employed there since February 2004. He married Mahalakshmi, for visa purposes, on 14.06.2006. On 15.01.2007, their marriage was customarily solemnized at Coimbatore, Tamil Nadu. The couple left for the United States shortly thereafter.

2.2 Their first daughter Shakthi Girish was born in India on 15.01.2009 and their second daughter Sharadha Girish was born in the United States on 07.09.2017, on account of which, the latter became a naturalised American citizen. Subsequently, on 14.02.2020, Arunagiri, Mahalakshmi and Shakthi Girish became American citizens and acquired American passports.

2.3 The family was living in the State of Maryland. Mahalakshmi left the United States on 11.09.2020 with her two children and reached Coimbatore on 13.09.2020 for visiting her ailing grandmother. Arunagiri came to India on 18.12.2020 and went to meet Mahalakshmi and his children in Mahalakshmi's natal home in Coimbatore on 21.12.2020.

2.4 According to Arunagiri, he was not able to meet his children and his father-in-law told him that he has no intention of sending his daughter and granddaughters to the United States.

2.5 According to Mahalakshmi, Arunagiri came to her house in Coimbatore on 21.12.2020, picked up a quarrel with her, demanding partition of her parents' properties and in that quarrel, he manhandled her and their children. In this connection, a police complaint was lodged by Mahalakshmi to the



A.W.P.S. (West), Coimbatore City, which was registered on 15.01.2021 in CSR No.16 of 2021.

2.6 Arunagiri returned to the United States on 10.01.2021. When he learnt that Mahalakshmi had admitted their elder daughter Shakthi Girish in a school in Coimbatore, it became clear to him that Mahalakshmi has no idea of returning to the United States and so, he issued a legal notice on 18.01.2021 through his advocate, to Mahalakshmi, informing her of his intention to initiate custody proceedings in America in the Circuit Court for Montgomery County, Maryland (for brevity "the Maryland Court"). Mahalakshmi replied to the notice on 20.01.2021 and on the same day, i.e., on 20.01.2021, Arunagiri filed a petition for custody in the Maryland Court.

2.7 On 21.01.2021, Hon'ble Bibi M. Berry, Judge of the Maryland Court, directed Arunagiri and Mahalakshmi, to appear via video conferencing in her Court. After hearing them extensively, the learned judge passed an order directing Mahalakshmi to bring the children to the United States by 04.02.2021. A copy of the order was emailed to both Arunagiri and Mahalakshmi.

2.8 On 02.02.2021, Mahalakshmi filed a petition in G.W.O.P. No.316 of 2021 in the Family Court, Coimbatore, for guardianship of her children invoking Section 14 of the Guardians and Wards Act, 1890. Further, on 05.02.2021, she initiated proceedings under the Protection of Women from Domestic Violence Act in D.V.A. No.17 of 2021 in the Court of the Special Judicial Magistrate, Coimbatore, against Arunagiri and his parents, alleging acts of domestic violence.

2.9 On 26.02.2021, a staff from the US Consulate in Chennai, conducted a virtual welfare and whereabouts visit for the two children, Shakthi Girish and Sharadha Girish, in order to find out their whereabouts and well-being as they are US citizens.

2.10 On 03.03.2021, the Indian visa that was given to Mahalakshmi and her two children expired.

2.11 On 08.03.2021, Arunagiri filed the present habeas corpus petition seeking custody of the children, based on the



judgment of the Supreme Court in Surya Vadanani vs. State of Tamil Nadu and others [(2015) 5 SCC 450].

2.12 Since the children did not return to the United States by 04.02.2021 as ordered by the Maryland Court, Arunagiri initiated contempt proceedings on 19.03.2021 and summons was issued to Mahalakshmi for her appearance in person on 14.05.2021.

2.13 However, Mahalakshmi sent her response to the contempt petition on 06.05.2021 alleging that Arunagiri used to physically and mentally abuse the children and therefore, their first daughter Shakthi Girish is scared to go to him. She further alleged that Arunagiri was in the habit of excessive drinking and that he used to abuse her and their children.

2.14 On 12.05.2021, Mahalakshmi made a request to the Maryland Court for appearance via video conferencing which was rejected and she was directed to appear in person on 14.05.2021.

2.15 On 14.05.2021, the Maryland Court found that Mahalakshmi had committed contempt, but, did not issue any warrant to her, inasmuch as, according to Arunagiri, he did not want to precipitate the matter any further.

2.16 On 14.06.2021, Mahalakshmi filed a suit in O.S. No.55 of 2021 in the Additional Family Court, Coimbatore, seeking, inter alia, a declaration that the proceedings before the Maryland Court are sans jurisdiction and to set aside the ex parte interim custody order dated 21.01.2021 passed by the Maryland Court.

2.17 On 16.06.2021, Mahalakshmi filed a writ petition in W.P. No.10128 of 2021 before this Court for grant of Indian citizenship to her and the children. This writ petition is stated to be pending as on date.

3. In these proceedings, Mahalakshmi filed a counter affidavit dated 12.06.2021 levelling various allegations against Arunagiri, for which, a reply affidavit dated 28.06.2021 was filed by Arunagiri, refuting the same.



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4. On our direction, Mahalakshmi appeared before us, along with her two children, on 07.09.2021. On an enquiry made by us, she stated that she is not willing to take the children to the United States.

5. Heard Mr. N. Jothi, learned counsel representing Mr. S. Vinod, learned counsel on record for Arunagiri, Mr. I. Abrar Mohammed Abdullah, learned counsel for respondents 1 to 5 and Mr. R. Muniyapparaj, learned Additional Public Prosecutor appearing for the ninth respondent.

6. Mr. N. Jothi, learned counsel for Arunagiri, drew our attention to the oath of allegiance taken by Mahalakshmi and her children in the United States while obtaining US citizenship and laid emphasis on the following passage from the said pledge of allegiance:

"That I will support and defend the constitution and the laws of the United States of America against all enemies, foreign and domestic, that I will bear true faith and allegiance to the same."

7. He contended that for 14 years, the couple was living happily in the United States and their elder daughter Shakthi Girish was studying in a school in the United States right from the beginning. He denied the various allegations that were leveled by Mahalakshmi in her counter affidavit via a reply affidavit.

8. He further contended that both parents and their two children are US citizens and therefore, the unitary act of Mahalakshmi in bringing the children to India and overstaying in India is illegal and that she should have to participate in the pending custody proceedings in the Maryland Court and not initiate frivolous litigations in Coimbatore.

9. As regards the allegation of Mahalakshmi that she was subjected to abuse in the United States by Arunagiri, Arunagiri, in his reply affidavit, has stated that some member of Mahalakshmi's family used to stay with them in the United States and has given the details of the same in paragraphs 6 and 7 of his reply affidavit which read as under:

"6 To nullify this incorrect statement, it is submitted that a person from her family always used to



be at America with our family as per the details given in the table hereunder:

TABLE

"Mahalakshmi's father, mother and aunt' Dr. Kalanithi Ramasamy travelled to the US and stayed with the family beginning the month of August 2017 to assist with Sharadha's birth in September, 2017. Ever since then (August 2017), either Mahalakshmi's mother Rajeswari or Mahalakshmi's relative, Shanthi Karunagaran (Cell # 91 97892 31368) (who is also employed by Mahalakshmi's father at his hospital as a Receptionist) had lived with them until September, 2020.

Here's the timeline of their stay with the family of Mahalakshmi and girish in America:

1. August 2017 to January 2018 - Rajeswari
2. January 2018 to June 2018 - Shanthi
3. June 2018 to July 2018 - Mahalakshmi had travelled to India with the children.
4. July 2018 to December 2018 - Rajeswari
5. December 2018 - June 2019 - Shanthi
6. June 2019 - July 2019 - Mahalakshmi, Girish and the two children visited India for two weeks.
7. July 2019 - January 2020 - Rajeswari
8. January 2020 - September 2020 - Shanthi"

7 As mentioned above, there was always a third person from Mahalakshmi's family continuously residing with Mahalakshmi, Girish and the children since August 2017 in America. In such circumstances, where is the question of ill-treatment to her or to children? Where is the proof for that? Why were there no complaints ever made to law enforcement in America during this 3 year and 1 month period?"

10. As regards the allegation that he came to Coimbatore on 21.12.2020 and picked up a quarrel with Mahalakshmi demanding partition of her parents' properties, Arunagiri has stated in paragraphs 8 and 9 of his reply affidavit as under:

"8. As far as para no.5 of the counter is concerned, her false statement of "demanding a partition of the properties" is again now completely



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fabricated. It is made only to cause prejudice against this petitioner. The alleged criminal complaint to which CSR 16/2021 was obtained on 15th January 2021 is 24 days after the alleged incident. The said CSR 16/2021 seems to have been obtained only to use it in her pleadings before various Courts which she now belatedly commenced.

9. In fact, this petitioner is fully aware that as foreigners, we have got legal restrictions in owning or acquiring immovable properties or assets in India without Central Government's permission. I am also aware of the legal position on this issue and the effect of a special enactment called "the Foreign Exchange Management Act, 1999." This Act, Rules and Orders issued under the Act, prohibits foreigners to acquire assets in India without Central Government's permission. Hence, the question of demanding partition, that too on that night is nothing but a "cock and bull story".

11. In support of his contentions, Mr. Jothi placed reliance on the following judgments:

1	Mrs. Elizabeth Dinshaw vs. Arvand M. Dinshaw & anr.	(1987) 1 SCC 42
2	Nithya Anand Raghavan vs. State (NCT of Delhi) and another	(2017) 8 SCC 454
3	Lahari Sakhamuri vs. Sobhan Kodali	(2019) 7 SCC 311
4	Yashita Sahu vs. State of Rajasthan and others	(2020) 3 SCC 67

12. Per contra, Mr. Abrar Mohammed Abdullah, learned counsel for Mahalakshmi, submitted that Mahalakshmi was not given a fair opportunity during the hearing on 21.01.2021 in the video conferencing by the Maryland Court and therefore, she was forced to file an anti-suit injunction in O.S.No.55 of 2021 in the Additional Family Court, Coimbatore, based on the judgment of the Supreme Court in Madhavendra L. Bhatnagar vs. Bhavna Lall [(2021) 2 SCC 755]. He further submitted that Mahalakshmi will not get complete justice in the Maryland Court and that apart, she does not have any relative there to go and litigate. It is his further contention that the comity of court principle has slowly given way to the principle of paramount welfare of children. In support of this contention, he took this Court



through the various passages in the judgment of the Supreme Court in Nithya Anand Raghavan (supra).

13. We have considered the rival submissions and carefully examined the material on record.

14. The preliminary question is whether a habeas corpus petition is maintainable to secure the custody of the two children and direct their return to the United States. We find that this issue is no longer *res integra*, and is settled by a decision of the Supreme Court in Yashita Sahu (supra), wherein, it is observed thus:

"10. It is too late in the day to urge that a writ of habeas corpus is not maintainable if the child is in the custody of another parent. The law in this regard has developed a lot over a period of time but now it is a settled position that the court can invoke its extraordinary writ jurisdiction for the best interest of the child. This has been done in Elizabeth Dinshaw v. Arvand M. Dinshaw [Elizabeth Dinshaw v. Arvand M. Dinshaw, (1987) 1 SCC 42 : 1987 SCC (Cri) 13] , Nithya Anand Raghavan v. State (NCT of Delhi) [Nithya Anand Raghavan v. State (NCT of Delhi), (2017) 8 SCC 454:(2017) 4 SCC (Civ) 104] and Lahari Sakhamuri v. Sobhan Kodali [Lahari Sakhamuri v. Sobhan Kodali, 2019) 7 SCC 311 : (2019) 3 SCC (Civ) 590] among others. In all these cases, the writ petitions were entertained. Therefore, we reject the contention of the appellant wife that the writ petition before the High Court of Rajasthan was not maintainable."

15. We also notice that the basis of our jurisdiction under Article 226 of the Constitution of India, in a case of this nature, is essentially predicated on the best interests of the children. We have, therefore, consciously refrained from being sidetracked into the matrimonial allegations levelled by the spouses against each other in their respective affidavit and counter affidavit.

16. In cases of child custody, the jurisdiction of the Court is essentially *parens patriae*. The welfare and best interests of the children must be the pre-dominant



consideration. In Elizabeth Dinshaw (supra), the Supreme Court has observed as under:

"Whenever a question arises before a court pertaining to the custody of a minor child, the matter is to be decided not on considerations of the legal rights of parties but on the sole and predominant criterion of what would best serve the interest and welfare of the minor."

When a writ of habeas corpus is sought to direct the return of a child to another country, the Court would also examine which of the two Courts (the domestic or foreign) would have the most intimate connect with the minor for the purposes of securing the child's safety and well-being. In Surinder Kaur Sandhu vs. Harbax Singh Sandhu [(1984) 3 SCC 698], the Supreme Court dealt with an identical case of spouses who had set up their matrimonial home in England. Their child was a British citizen. The Court, speaking through Chief Justice Y.V.Chandrachud, opined thus:

"Ordinarily, jurisdiction must follow upon functional lines. That is to say, for example, that in matters relating to matrimony and custody, the law of that place must govern which has the closest concern with the well-being of the spouses and the welfare of the offsprings of marriage. The spouses in this case had made England their home where this boy was born to them. The father cannot deprive the English Court of its jurisdiction to decide upon his custody by removing him to India, not in the normal movement of the matrimonial home but, by an act which was gravely detrimental to the peace of that home. The fact that the matrimonial home of the spouses was in England, establishes sufficient contacts or ties with that State in order to make it reasonable and just for the courts of that State to assume jurisdiction to enforce obligations which were incurred therein by the spouses."

(emphasis supplied by us)

17. Keeping in mind the best interests of the minor children and the "most intimate connect" principle, the line of enquiry in a case of this nature has been set out by the Supreme Court in V. Ravi Chandran (Dr.) (2) vs. Union of India and others [(2010) 1 SCC 174], in the following passage:



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"29. While dealing with a case of custody of a child removed by a parent from one country to another in contravention of the orders of the court where the parties had set up their matrimonial home, the court in the country to which the child has been removed must first consider the question whether the court could conduct an elaborate enquiry on the question of custody or by dealing with the matter summarily order a parent to return custody of the child to the country from which the child was removed and all aspects relating to the child's welfare be investigated in a court in his own country. Should the court take a view that an elaborate enquiry is necessary, obviously the court is bound to consider the welfare and happiness of the child as the paramount consideration and go into all relevant aspects of welfare of the child including stability and security, loving and understanding care and guidance and full development of the child's character, personality and talents. While doing so, the order of a foreign court as to his custody may be given due weight; the weight and persuasive effect of a foreign judgment must depend on the circumstances of each case.

30. However, in a case where the court decides to exercise its jurisdiction summarily to return the child to his own country, keeping in view the jurisdiction of the court in the native country which has the closest concern and the most intimate contact with the issues arising in the case, the court may leave the aspects relating to the welfare of the child to be investigated by the court in his own native country as that could be in the best interests of the child. The indication given in *McKee v. McKee* [1951 AC 352 : (1951) 1 All ER 942 (PC)] that there may be cases in which it is proper for a court in one jurisdiction to make an order directing that a child be returned to a foreign jurisdiction without investigating the merits of the dispute relating to the care of the child on the ground that such an order is in the best interests of the child has been explained in *L (Minors), In re* [(1974) 1 WLR 250 : (1974) 1 All ER 913 (CA)] and the said view has been approved by this Court in *Dhanwanti Joshi*



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[(1998) 1 SCC 112] . Similar view taken by the Court of Appeal in *H. (Infants), In re* [(1966) 1 WLR 381 (Ch & CA) : (1966) 1 All ER 886 (CA)] has been approved by this Court in *Elizabeth Dinshaw* [(1987) 1 SCC 42 : 1987 SCC (Cri) 13]."

18. To complete the picture, we also notice a mild jurisprudential shift in *Nithya Anand Raghavan (supra)* and *Kanika Goel v. State (NCT of Delhi)* [(2018) 9 SCC 578], wherein, it was held that the doctrine of "intimate and closest concern" are merely of persuasive relevance when the child is uprooted from its native country and taken to a place to encounter alien environment, language, custom, etc. with the portent of mutilative bearing on the process of its overall growth and grooming; the adjudicative mission in such cases has the obligation to secure the unreserved welfare of the child as the paramount consideration. These principles have been cited and reiterated in *Lahari Sakhamuri (supra)*. In its recent decision in *Nilanjan Bhattacharya vs. State of Karnataka* [2021 SCC Online SC 928], the Supreme Court opined that where a child has been removed from its native country to India, it would be in the best interests of the child to return to its native country if the child has not developed roots in India and no harm would be caused to the child on such return. It was held that where one parent had acted with sufficient promptitude, the Court is only required to conduct a summary inquiry to ascertain whether there is any harm if the child returns to the United States, where he was born and has been brought up. The Court is required to engage in an elaborate inquiry on the merits of the case, only if a considerable time has passed since the child has been removed and if the child has developed roots in India. In either event, the primary consideration of the Court is to ascertain the welfare of the child.

19. Keeping the aforesaid jurisdictional parameters in mind, we are required to decide as to whether we should conduct a summary enquiry or an elaborate enquiry. In the facts and circumstances of this case, we are of the considered view that a summary enquiry would suffice for the following reasons:

- a) The couple was living in the United States for 14 years and the two children, grew up in the U.S, from their birth. Both children are American



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citizens. Shakthi Girish, the elder daughter, was also attending a local school in Maryland.

- b) Mahalakshmi left the United States for India with her children on 11.09.2020 to visit her ailing grandmother and reached Coimbatore on 13.09.2020, after which, she decided to remain in Coimbatore with her children. When she got admission for her elder daughter in a school in Coimbatore, Arunagiri immediately approached the Maryland Court on 20.01.2021 seeking custody of the children. The Maryland Court passed an order on 21.01.2021 directing Mahalakshmi to return her children to the United States by 04.02.2021. Mahalakshmi flouted this order resulting in Arunagiri approaching this Court on 08.03.2021 by filing the present petition for a writ of habeas corpus.
- c) On any view of the matter, considering the facts set out above, we are of the view that Arunagiri had acted with sufficient alacrity in approaching this Court for redress. It cannot possibly be said that the two children, who have spent their entire lives in the United States prior to 11.09.2020, have had sufficient time to develop roots in India over the past few months and get acclimatized to the Indian environment. On the contrary, we find that they have been uprooted from their natural environment and social circles in the United States which was, after all, their home prior to 2020.
- d) In Nilanjan Bhattacharya (supra), the Supreme Court dealt with a case, the facts of which approximate very closely to the case on hand. Speaking for the Court, D.Y. Chandrachud, J has observed thus:

“The Court has come to the conclusion that the welfare of the child would best be served by his accompanying the appellant to the US. The child was born in the US and is a citizen of the US by birth. The



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appellant has taken the responsibility for shared parenting while the child was in the US. The respondent left US shores for a brief sojourn but has unilaterally resolved not to return. Both the appellant and the respondent are qualified professionals who have been employed in the US and the appellant continues to be employed there. Faced with the departure of his spouse and child, the appellant moved the court of jurisdiction in New Jersey for orders of temporary custody. He has followed their tracks to India and invoked judicial remedies here. The child has remained here for a short period and it would not be contrary to his interest to allow the appellant to take him back."

(emphasis supplied)

- e) For the aforesaid reasons, having regard to the totality of circumstances, we are of the considered view that it would be in the best interests of the minor children if they are directed to be returned to the United States and placed in the jurisdiction of the Maryland Court, which would then be best placed to pass such orders as may be necessary to secure their safety and well-being. The best interest of the children, being of paramount importance, will be served if they return to United States and enjoy their natural environment with love, care and attention of their parents and to resume school and be with their teachers and peers.

20. Mr. Abrar Mohammed Abdullah, learned counsel for the respondent contended that Hon'ble Judge Bibi M. Berry did not give a fair opportunity to Mahalakshmi in the proceedings before the Maryland Court on 21.01.2021. We carefully perused the proceedings of the Maryland Court and found that the learned Judge has interacted extensively with Mahalakshmi and has explained to her as to why she is required to bring back the



children to the United States. For instance, we extract the following exchange from the transcript between Mahalakshmi and the learned Judge:

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Ms. Nathan No, like that, that is actually wrong, it says in the order because like I am the mom and I've been taking care of the kids, like I have been doing this all the time. That is like--

The Court I appreciate that, Ms. Nathan. I appreciate that. But you don't get to make that choice. You don't get to decide that these children are going to be taken thousands of miles away from their home, and from the other parent, just because you want to do it. You don't get to do that, okay?

So, I understand a complaint for custody was filed. You have the option certainly of filing a counter-complaint, and once you are served, I don't know if you've been served, and participate in the action in Maryland. And you may very well wind up with custody, but I can let you know right now if this the way that you do this, you may very well lose custody of your children.

So, I am going to issue, based on what I've been advised, the motion that I've heard, what I have been advised by Mr. Shipe, what I've been advised by you. I am going to give you some time to get back here, because I know it could be difficult to do it immediately. And what I would propose is the children must be returned to their residence in the State of Maryland by, what's today, February 4th. That gives you two weeks to get your tickets. That's more than enough time to get your tickets and get back here with the children. If you don't do it, that is certainly a decision you can make, but I would strongly encourage you not to do that."



21. After examining the record, we are unable to countenance the submission of Mr. Abrar Mohammed Abdullah that Mahalakshmi was not given a fair opportunity before the Maryland Court. On the contrary, Mahalakshmi has, in fact, told the Judge that she would return to the United States by March or first week of April 2021. The relevant exchange from the transcript between Mahalakshmi and the Judge is as under:

The Court: Okay, when do you plan on returning, Ms. Nathan?

Ms. Nathan: I would say like end of March or first week of April.

The Court: Is Mr. Arunagiri not to see his children for the next four months, ma'am? Is that your suggestion?

22. Since the learned Judge felt that March 2021 was too long a period, she directed Mahalakshmi to return the children to the United States by 04.02.2021. What has really troubled us is that, after these proceedings before the Maryland Court, Mahalakshmi immediately filed a police complaint against Arunagiri and also followed it up with a complaint under the Protection of Women from Domestic Violence Act against him and his parents. In the process, she has successfully ensured that the sword of arrest in India is kept hanging over Arunagiri's head eternally so that he does not venture to come to India to even see the children, lest, he should end up in a legal quagmire.

23. We are constrained to pen down our lament on the sorry state of affairs which we have observed, of late. A peculiar trend exists in matrimonial cases where a chain reaction is triggered with a complaint for cruelty followed up by a complaint under the Protection of Women from Domestic Violence Act, followed by petitions for divorce and maintenance, and in some extreme cases, even a complaint under the POCSO Act. A barrage of these petitions is oftentimes filed with oblique and tainted motives of denying custody or visitation rights to a child to one of the spouses by misusing the machinery of the law.



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24. In Re: H (Infants) [1966 1 WLR 381], Cross, J. had observed thus:

"The sudden and unauthorised removal of children from one country to another is far too frequent nowadays, and, as it seems to me, it is the duty of all courts in all countries to do all they can to ensure that the wrongdoer does not gain an advantage by his wrongdoing."

The courts in all countries ought, as I see it, to be careful not to do anything to encourage this tendency. This substitution of self-help for due process of law in this field can only harm the interests of wards generally, and a Judge should, as I see it, pay regard to the orders of the proper foreign court unless he is satisfied beyond reasonable doubt that to do so would inflict serious harm on the child."

The aforesaid passage was cited and approved by the Supreme Court in Elizabeth Dinshaw (supra).

25. Reverting to the case on hand, we also find that Arunagiri's parents, who are senior citizens aged 74 years and 71 years and are living in Chennai, are unfortunately embroiled in the litigation under the Protection of Women from Domestic Violence Act that has been initiated by Mahalakshmi in Coimbatore, which is about 500 kms. from Chennai.

26. As contended by Mr. N. Jothi, both parents and two children are American citizens and the children were not ordinarily residing in Coimbatore. In this connection, it may be profitable to refer to the following observation of the Supreme Court in Lahari Sakhamuri (supra).

"31. In the given facts and circumstances, we find no difficulty in upholding the opinion of the High Court that the minor children were not ordinary residents of Hyderabad (India) as envisaged under Section 9(1) of the Guardians and Wards Act, 1890. Resultantly, the application for custody of minor children filed before the Family Court, Hyderabad is rightly rejected by the High Court in exercise of power under Order 7 Rule 11



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CPC. At the same time, when the orders have been passed by the US court, the parties cannot disregard the proceedings instituted before the US court filed at the instance of the appellant (Lahari Sakhamuri) who is supposed to participate in those proceedings."

27. Thus, in our opinion, filing of G.W.O.P. No.316 of 2021 in the Additional Family Court, Coimbatore, by Mahalakshmi, seeking custody of children, appears misconceived.

28. Lastly, the fact remains that the Indian visa that was given to Mahalakshmi and her children had expired on 03.03.2021. Thereafter, their overstay would become an offence which is punishable under Section 14 of the Foreigners Act. Therefore, this Court, cannot turn a blind eye and tacitly approve her overstay in India.

29. Having thus concluded that it would be in the best interests of the minor children if they are returned to the United States, the next issue is the nature of directions that ought to be passed to facilitate this process. In Lahari Sakhamuri (supra), the Supreme Court had directed as under:

"57. We accordingly direct the appellant (Lahari Sakhamuri) to return to US along with both the children, namely, Arthin and Neysa, within a period of six weeks from today."

30. However, in Yashita Sahu (supra), the Supreme Court has observed as follows:

"35. A writ court in India cannot, in proceedings like this, direct that an adult spouse should go to America."

31. Since Yashita Sahu (supra) is subsequent in point of time to Lahari Sakhamuri (supra), we do not propose to issue any positive direction to Mahalakshmi to return to the United States.

32. We go no further than to advise Mahalakshmi to return to the United States with her children within a period of six weeks from today. We further direct that if Mahalakshmi returns to the United States with her two children within the aforesaid period, Arunagiri shall make all arrangements for accommodating



Mahalakshmi and the children in their own house and also to bear their travel expenses (including air tickets). If Mahalakshmi is not willing to stay in the matrimonial house for any personal reasons, Arunagiri shall make all arrangements for stay at the place of her choice at a reasonable cost.

33. In case, Mahalakshmi reports that she is not inclined to travel to the United States along with the minor children or does not show any interest to accompany the children within the aforesaid period, Arunagiri shall deposit a sum of Rs.15 lakhs in the bank account of Mahalakshmi. Proof of such deposit shall be filed before the Registry of this Court. The Registrar General shall, thereafter, call upon the Consulate General of the US at Chennai to take the custody of the minor children, viz., Shakthi Girish and Sharadha Girish, along with their passports and other travel documents from Mahalakshmi and hand over the same to Arunagiri, with a condition for taking the custody of the minor children (Shakthi Girish and Sharadha Girish) for being taken to the United States and placing them before the jurisdictional Court in the United States until further orders are passed in the pending proceedings by the Maryland Court. Mahalakshmi will be at liberty to utilize the money deposited by Arunagiri in connection with her visit to the United States, if so desired, in future and Arunagiri shall not take any coercive steps against her which, in any manner, may result in adverse consequences. In giving the aforesaid directions, we are implicitly following the directions issued by the Supreme Court in Lahari Sakhamuri (supra). In the event of Arunagiri coming to India for the aforesaid purpose, he shall not be arrested in the frivolous police complaint that is pending in C.S.R. No.16 of 2021 on the file of the A.W.P.S. Coimbatore City, which can, any time, metamorphose into a regular FIR.

34. We make it clear that the observations made by us in this order are only for the limited purpose of facilitating a summary enquiry for consideration of the prayer for habeas corpus and will have no bearing in the proceeding before the Maryland Court which will, obviously, be decided on its own merits.



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This habeas corpus petition is allowed on the above said terms.

Sd/-
Assistant Registrar (CS-VIII)

// True Copy //

Sub Assistant Registrar

cad

To:

- 1.The Secretary
Ministry of Home Affairs
Government of India
New Delhi - 110 001, India
- 2.The Secretary
Foreign Affairs
Ministry of Foreign Affairs
Government of India
New Delhi - 110 001, India
- 3.The Foreigners Registration Office (FRO)
Lok Naik Bavan
New Delhi - 110 001
- 4.The Registrar General
Madras High Court
Chennai 600 104
- 5.The Commissioner of Police, Coimbatore City
Office of the Commissioner of Police
Coimbatore - 641 018
- 6.The Public Prosecutor
Madras High Court
Chennai 600 104

+10ccs to Mr.S.Vinod, Advocate SR.No.55795, 55993
+1cc to M/s.S.P.Arthi (SPC-CG), Advocate SR.No.55788
+2ccs to Mr.I.Abrar Md Abdullah, Advocate SR.No.56258

H.C.P.No.654 of 2021

GSM(CO)
RVM(11/11/2021)