7. Learned counsel appearing for the appellant, however, contended that though the appellant had signed the compromise deed with the above-mentioned terms in it, the same was obtained by the respondent-husband and his family under threat and coercion and in fact she did not receive lump sum maintenance and her Stridhan properties, we find it extremely difficult to accept this argument in the background of the fact that pursuant to the compromise deed the respondent-husband has given her a consent divorce which she wanted thus had performed his part of the obligation under the compromise deed. Even the appellant partially performed her part of the obligations by withdrawing her criminal complaint filed under Section 125. It is true that she had made a complaint in writing to the Family Court where Section 125 Cr.P.C. proceedings were pending that the compromise deed was filed under coercion but she withdrew the same and gave a statement before the said Court affirming the terms of the compromise which statement was recorded by the Family Court and the proceedings were dropped and a divorce was obtained. Therefore, we are of the opinion that the appellant having received the relief she wanted without contest on the basis of the terms of the compromise, we cannot now accept the argument of the learned counsel for the appellant. In our opinion, the conduct of the appellant indicates that the criminal complaint from which this appeal arises was filed by the wife only to harass the respondents.

8. In view of the above said subsequent events and the conduct of the appellant, it would be an abuse of the process of the Court if the criminal proceedings from which this appeal arises is allowed to continue. Therefore, we are of the considered opinion to do complete justice, we should while dismissing this appeal also quash proceedings arising from the Criminal Case No. Cr. No. 224/2003 registered in Police Station, Bilaspur, (Distt. Rampur) filed under Sections 498A, 323 and 506 IPC and under Sections 3 and 4 of the Dowry Prohibition Act against the respondents herein. It is ordered accordingly. The appeal is disposed of.

KERALA HIGH COURT (D.B.)

Before :- K.A. ABDUL GAFOOR & J.M. JAMES, JJ.

W.P. (Crl.) No. 61 of 2004(S)/Decided on 7.4.2004

Eugenia Archetti Abdullah — Petitioner

Versus

State of Kerala — Respondents

For the Petitioner : Mr. Govind K. Bharathan, Pinky Anand & Mr. Manu Mohan, Advocates.

For the Respondents : Mr. Sujith Mathew Jose, Government Pleader & Mr. C.P. Mohammed Nias, Advocate.

Constitution of India, Article 226--Custody of minor--Habeas Corpus--Parents and children U.S. Citizens--Proceedings for divorce and custody of children pending in U.S.A.--Mother entitled to custody of children until final decision by Court in U.S.A.--Custody by father, illegal--Writ of Habeas Corpus, maintainable. (Paras 13 and 14)

Cases referred :--

1. Sumedha Nagpal v. State of Delhi, (2000) 9 SCC 745 [Para 3]
2. Dr. Veena Kapoor v. Sri Varinder Kumar Kapoor, (1981) 3 SCC 921 [Para 3]
3. Saritha Sharma v. Sushil Sharma, (2000) 3 SCC 14 [Para 3]
4. Syed Saleemuddin v. Dr. Rukhsana, 2001(1) Hindu Law Reporter (S.C.) 583 [Para 3]
5. Margarate Maria Pulparambil v. Dr. Chacko, 1969 KLJ 363 [Para 6]
6. Manju Tiwari v. Rajendra Tiwari, AIR 1990 SC 1156 [Para 13]
7. Kanu Sanyal v. District Magistrate, Darjeeling, AIR 1973 SC 2684 [Para 21]

JUDGMENT

K.A. ABDUL GAFOOR, J.--The petitioner is a U.S. citizen. She has approached this Court with this Writ Petition seeking to issue a writ of Habeas Corpus or any

other writ or direction commanding respondents 2 to 4 to produce two infants named Roshan and Nishant before this Court and to handover their custody with their passports to the petitioner, their mother.

2. According to her, herself and 2nd respondent Jamshed Ahamed Abdullah got married while in United States. Thereafter, both of them went to Behrain in connection with the employment of the latter. While in Behrain she gave birth to the said two children, twins. Because of the shift of his employment, they went back to the State of Texas in United States and settled there. According to the petitioner, their married life was not happy, as there was domestic violence from the part of the 2nd respondent. This resulted in a criminal case. Finally, the matter was patched up. Unfortunately, the second respondent lost his employment in Texas. He had to seek another employment. Anyhow, both of them with their children, visited India and came to Kozhikode where the second respondent did have his roots. While so, according to the petitioner, there was again ill-treatment from the part of the second respondent and she was thrown out of the residential house and finally, she had to fly to United States without the children. The second respondent, with the children continued in Kozhikode. According to her, the custody of the children with the second respondent is an illegal custody and thus they are illegally detained. Being the mother, the petitioner is entitled to the lawful custody of the children. As the children were born in America, their native place is United States and therefore, their custody shall always be with the mother, the petitioner, who is employed and lives there. They are being illegally detained beyond their motherland. So the children shall be taken out of the illegal custody of the second respondent, though their father, and given back to the petitioner. She has already moved a petition for custody of the children as well as for dissolution of the marriage with the second respondent, in accordance with the Family Law applicable in the State of Texas in United States.

3. This petition is resisted by the second respondent contending that the custody of the minor children with the father cannot be termed as "illegal custody" or "illegal detention". Father is always entitled to the custody of his minor children. According to him, there was domestic violence from the part of the petitioner and he had never ill- treated her. Even while in Kozhikode, they were leading happy life and the petitioner had to leave India in order to continue her employment in Texas. According to him, there was loving communications between the two, enquiring about the well being of the children. These are sufficient to indicate that the allegation of the petitioner that she had been thrown out of the residence at Kozhikode is false. It is further contended that the dispute raised by the petitioner with regard to the custody of the children, whether they shall be with the mother or with the father, is not a matter for a petition to issue a writ in the nature of Habeas Corpus. It can only be decided taking evidence, in a proceedings relating to a family dispute. So, this petition itself is not maintainable, he submitted. It is further contended that merely because the children are of less than three years of age, the mother is not indisputably entitled to the custody of the children. When the petitioner had already moved the Family Court in Texas, another proceeding for custody of children in another country like India is not maintainable and cannot be entertained. The second respondent is prepared to appear through Pleader in the Court at Texas and the matter shall be decided and he is prepared to abide by the order whatever the Family Court at Texas may pass. It is further submitted that the children are loving more towards the father rather than the mother. Because of that bondage, shifting of the children from the father to the mother may affect them adversely. It is also contended that this petition by a foreigner is not maintainable. Decisions reported in *Sumedha Nagpal v. State of Delhi ((2000) 9 SCC 745), Dr. Veena Kapoor v. Sri Varinder Kumar Kapoor (1981) 3 SCC 921), Saritha Sharma v. Sushil Sharma((2000) 3 SCC 14)* and *Syed Saleemuddin v. Dr. Rukhsana, 2001(1) Hindu Law Reporter (S.C.) 583* are relied on.

4. It is replied by the petitioner that even admittedly by the second respondent himself, the children and the petitioner are U.S. citizens. Therefore, they shall be governed by the law in United States. In such circumstances, having come to India as a visitor, the second respondent should not have stayed for long in India, merely because, he is having his roots in India. He ought to have gone to his native country, where he holds a citizenship, along with the children, to face the proceeding now pending there. Detention of minor children for long, even by the father, beyond the limits of their motherland, shall always be an illegal detention, as the infants shall have a conducive atmosphere for their physical and psychic growth only in their motherland, the environment to which they are accustomed. When the children are kept in India, a foreign country, it cannot be taken, even if with their father, that it is not an illegal custody. Their alleged affinity with the father is only because, for the last few weeks, they are with the father, to the exclusion of the mother. It is a temporary phenomenon, as children of less than three years of age cannot distinctly prefer one among the parents to the other. During the last week as she is looking after the children, they have developed intimacy with her. Moreover, the children are twins having less than three years of age. Consequently, they are having certain health problem. One among the twins had undergone a surgery for ailment to kidney. The present atmosphere and environment in India are not sufficient for them to get them acclimatized here. Their domicile is in U.S., like that of their father, the 2nd respondent. Therefore, it is essential for the welfare of the children that they shall be taken to the environment to which they are adaptable and are accustomed. Moreover, for the twins, it is always better that they shall be with the mother, rather than in the custody of the father. She is also having a decent employment in Texas to support the children and the children can be looked after by her elder daughter aged 14 years. So, the custody shall be given to the petitioner, she submits.

5. It is added by the second respondent that the parents and other relatives of the second respondent are very affluent, educated and that there are even medical practitioners in the family and several of them are owners of a hospital. In such circumstances, the health of the children can better be looked after in the hands of the father. There are several maid servants in the house where the second respondent is at present living and the children are kept in the company, all the time, of the children of the same age, of his sisters. So, the welfare of the children shall always be safe with the second respondent.

6. It is in this background that we have to decide the question arising in this case. To borrow the age old words of a Full Bench of this Court in *Margarate Maria Pulparambil v. Dr. Chacko, 1969 KLJ 363:*

> "The question by no means a simple or an easy one, with which we are faced is, whether we can and if we can whether we should, grant the prayers in this petition....."

7. The contention of the second respondent that a Writ Petition is not maintainable by a foreigner cannot be gone into in this petition, relating to the custody of two minor children, as the parens patriae jurisdiction will guide the Court for respondents. As held by the Full Bench of this Court in *Margarate Maria Pulparambil v. Dr. Chacko 1969 KLJ 363:*

> "It must be remembered in this connection that the jurisdiction that we exercise when we decide on the question of custody of infants brought before this Court in Habeas Corpus, proceeding is an inherent jurisdiction as distinct from a statutory jurisdiction conferred by any particular section in any special statute. In this view, we consider that none of the provisions contained in the enactments. The Guardians and Wards Act, 1890, and 'The Travancore Christian Guardianship Act, 1116' to which reference has been made by Counsel on behalf of the 1st respondent stand in the way of our exercising our parens patriae jurisdiction arising in a case of this nature. We are satisfied that nothing in these enactments trammel such jurisdiction of ours in any manner."

8. Next, we will consider the contention whether a Habeas Corpus petition can be entertained in a family dispute, relating to the custody of the minor children, between their parents. As already mentioned above, the parents and the children are U.S. citizens. It is not disputed before us. Of course, the second respondent is an American of India origin. He had been, as submitted by the Counsel, in India till the age of 14 years and went to U.S. He is a man of 40 years now. Had the parties been Indian citizens, this dispute with regard to the custody of the minor children would not have been ordinarily entertained by this Court as they will have effective, equal and efficacious remedy to approach the Family Court or the Civil Court, as the case may be. Even admittedly by the second respondent in his additional counter-affidavit:

> "Since we are American citizens, the said Court in Texas is the competent Court to decide the question of divorce, temporary and permanent custody of the children."

So, they are not amenable to the jurisdiction of the Family Courts in India and a case is admittedly pending in the Family Court at Texas. In such circumstances, as ordinarily done in the case of Indian citizens, we cannot direct the parties, in this case, to approach the Family Court here, rather than invoking the extraordinary jurisdiction vested in this Court under Art.226 of the Constitution of India.

9. This is not the first occasion when this Court is facing with the claim of custody of children by the parents, in Habeas Corpus Petition. In the decision reported in *Margarate Maria v. Dr. Chacko, 1969 KLJ 363*, a Full Bench of this Court had issued a writ of Habeas Corpus for the custody of infants.

10. Referring to a passage in Halsbury's Laws of England Volume II, page 33 that:

> "A parent, guardian or other person who is legally entitled to the custody of child can regain that custody when wrongfully deprived of it by means of the writ of Habeas Corpus."

This Court held as follows:

> "In using the writ of Habeas Corpus for the custody of infants the jurisdiction exercised by the Court in deciding whether the custody should be entrusted with one or other of the contesting parties depends not on the legal right of one of those parties to the custody of the child but as to whether in the best interests and welfare of the child the custody should be entrusted with one or the other."

This Court further held that:

> "Before considering the test of the best interests of the children, we have to examine whether there are any such impediments to the exercise of our jurisdiction. It must be remembered in this connection that the jurisdiction that we exercise when we decide on the question of custody of infants brought before this Court in Habeas Corpus, proceeding is an inherent jurisdiction as distinct from a statutory jurisdiction conferred by any particular section in any special statute." This was also a case of custody of children born in a foreign country and one among their parents, a foreign citizen.

11. The decision reported in *Sumedha Nagpal v. State of Delhi ((2000) 9 SCC 745))* relied on by the 2nd respondent has difference in fact situation. It was a case for custody of minor children, between Indian parents who could have resorted to statutory proceedings in terms of the relevant statute. Even in that case, referring to S.6(a) of the Hindu Minority and Guardianship Act, 1956, the Supreme Court held that:

> "The same would not militate against the welfare of the minor child and particularly in the absence of any material to show that such welfare is in jeopardy, this Court ought not to exercise its power under Art.32 of the Constitution."

Meaning thereby, that based on materials and considering the welfare of the child, the Court can exercise writ jurisdiction even in limited circumstances. In this case, in the peculiar facts frame that the parties and children are U.S. citizens and the parents

are living in two different countries now, obliges this Court to step into protect the welfare of the children.

12. The decision in *Veena Kapoor's case ((1981) 3 SCC 92)* also does not help the 2nd respondent. It is one where the Supreme Court has entertained a Habeas Corpus Petition, though the District Judge was directed to take evidence regarding the interest and welfare of the child and to make a report to the Supreme Court. Equally so is the decision in *Santa Sharma's case ((2000) 3 SCC 14)* which is founded on entirely different fact situation. In that case, the parents were Indian citizens whom, according to the Supreme Court, the High Court ought to have "directed the respondent to initiate appropriate legal proceedings". In *Syed Salimuddin's case ((2001) 5 SCC 247)* cited on behalf of the 2nd respondent also, the Supreme Court has not held that a Habeas Corpus Petition is not maintainable, for custody of children. The Apex Court on the other hand held that:

> "From the principles laid down in the aforementioned cases it is clear that in an application seeking a writ of Habeas Corpus for custody of minor children the principal consideration for the Court is to ascertain whether the custody of the children can be said to be unlawful or illegal and whether the welfare of the children requires that the present custody should be changed and the children should be left in the care and custody of a child the welfare of the child is of paramount consideration for the Court."

13. In the Full Bench decision of this Court cited supra, this Court quoted with, approval certain passage from American Jurisprudence Volume 25 page 202 to 205 as follows:

> "Habeas Corpus is a proper remedy to obtain the discharge of an infant from a detention which is illegal and to determine controversies concerning the right to the custody of the infant, at least under the conditions requisite to the issuance of the writ generally. Where the writ is availed of for the latter purpose, the proceeding partakes of the incidents of a suit in equity and is considered to be one in rein, the child being the res."
>
> "The writ of Habeas Corpus is a proper remedy on the part of one parent to recover a child from the other parent, either before or after the parents have been legally separated or divorced. Since the welfare of the child is the primary consideration in making and award for the custody of it, such an award may be made in a Habeas Corpus proceeding without reference to where the domicile of the parents may be."

We also see from the decision of the Supreme Court reported in *Manju Tiwari v. Rajendra Tiwari (AIR 1990 SC 1156)* that a writ of Habeas Corpus has been issued with respect to the custody of minor children in a lis between their parents. So, this is a case where we find that this Court can certainly exercise jurisdiction vested in it under Art.226 of the Constitution of India with respect to the issuance of a writ of Habeas Corpus, which the petitioner seeks for.

14. A writ of Habeas Corpus will be issued only when there is illegal detention or wrongful custody. Therefore, we have now to consider whether the custody of the minor children with the father is illegal or wrongful custody and whether it amounts to illegal detention. Admittedly even by the father, himself and his two children are American citizens. An adult American citizen can go anywhere in the world subject to travel restrictions and can have abode in any place on the globe subject to the law regarding residential permit there. But, so far as the minor children are concerned, they shall be in the custody of their parents and if there is any dispute between the parents, their custody shall be dependent upon the welfare of the children, as is normally considered by a Family Court. The children of less than 3 years cannot decide where they shall live in a better manner conducive to their health. In such circumstances, the only conclusion possible is that children born in the globe will have their residence conducive to their well being in the place where they were born and brought up as the citizen. Immediately after birth, these two children had been

taken from Behrain to Texas. This fact is admitted and thereafter until December, 2003, the children had been in Texas except on temporary visit to some other places with their parents. In such circumstances, when, admittedly by the father, the children are U.S. citizens and are subject to the law of United States, necessarily, it shall be taken as their permanent abode for the time being. So their well being cannot be ensured in any other country. Necessarily, if the children of tender age of less than 3 years are kept out of their motherland to the exclusion of their mother, even if it is by their father, it can only be treated as an "illegal detention", not being conducive for the well being of the children. Necessarily, when there is illegal detention, this Court has to step in and remove the detenu from such illegal detention.

15. Admittedly by the 2nd respondent, father, he is a visitor to India and is searching for employment in India. A visitor cannot take the children, as baggage, to the places of his visit when the mother of the children is in the residence. His domicile is also not India. His affluent position cannot be a criterion in this case as the mother, the petitioner, is also decently employed in Texas.

16. When the alleged detenu are minor children, usual consideration is not sufficient. It shall be after considering the welfare of the children. The children are, as already mentioned above, twins. They are below the age of 3 years. It is true, as contended by the Counsel for the second respondent, merely because the children are below the age of 3 years, it is not automatic that the custody shall be with the mother.

17. That one among the children had undergone a surgery is not disputed. When the children are twins, it will not be conducive for their psychic and physical development take one from the company of the other. When one among the children had undergone a surgery while in United States, it is only appropriate that it should have the company of the mother. This is a case where the father, though in India is a U.S. citizen. Today or tomorrow, as the things stand at present, he has to go to United States, he being not an Indian citizen. He has not disclosed before us when will he be leaving for U.S. He has also not disclosed to us what was the type of his visiting visa. Admittedly by him, he had been in India for more than 4 months. Further admittedly, the mother had to leave India without the children. Again admittedly, the entire family came to India with return tickets. If there had been cordial relationship, as contended by the second respondent, between him and the petitioner, necessarily, as any father will normally do, the 2nd respondent would have entrusted the custody of the children with the mother, while the mother goes to the motherland and when the father was in a foreign country searching for an avocation. That had not happened here. Therefore, we are constrained to presume that there was an estrangement among the couple and because of that the petitioner had to go to U.S. without taking the twins. In such a situation, we have to conclude that the father had been forcibly keeping the children away from the mother, beyond their motherland.

18. The father and mother are equally important for the welfare of the children. Unfortunately, in this case, there is no question of bringing them together especially when the petitioner had filed an application for divorce in the Family Court at Texas. Therefore, in a case like this, the welfare of the two American infants of less than 3 years shall always, for the time being, until the dispute regarding their custody is resolved by the Court at Texas, be with the mother. The second respondent, being an American citizen, is free to go at any time he wishes to Texas, where he is having his own residential house and private conveyances and even a return ticket with him. On the other hand, it is not possible for the petitioner, as easily as in the case of the second respondent to go to America, to come to India because of the travel restrictions and her commitments there. So we are of the view that the interest of both the parties also will have comparably more or less equal footing when the children are with the mother in the United States. Therefore, we are of the view that the welfare of the children shall for the time being the better served if they are with their mother, the petitioner.

19. The lap of the mother is the natural cradle where the safety and welfare of the these twins under the age of three years can be assured and there is no substitute for the same. Mother's protection for such children is indispensable. As held by the Full Bench:

> "We cannot think of any other protection which will be equal in measure and substance to that of the mother."

20. As noted earlier, the parents with the children, all U.S. citizens, paid a visit to India with return tickets. But the father stayed away with the children and the mother was constrained to leave India. He did not send these kids with the mother to their homeland; while he stayed away in India in search of an employment. Thus, in effect, he has whisked away the children from her. There is no circumstances to support that the new environment in which the babies are brought is more conducive to that welfare.

21. As noticed earlier, the children, being U.S. citizens, are accustomed to the environment there. They cannot express their desire to be in another country. They are twins. One had to undergo surgery in U.S. Their detention in India in such circumstances be illegal. As held by the Supreme Court in *Kanu Sanyal v. District Magistrate, Darjeeling (AIR 1973 SC 2684).*

> "It will be seen from this brief history of Habeas Corpus that it is essentially a procedural writ. It deals with the machinery of justice, not the substantive law. The object of the writ is to secure release of a person who is illegally restrained of his liberty.
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> *** *** *** ***
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> The most characteristic element of the writ is its peremptoriness and, as pointed out by Lord Halsbury, L.C. in *Cox v. Hakes ((1890) 15 AC 506),* the essential and leading theory of the whole procedure is the immediate determination of the right to the applicant's freedom and his release, if the detention is found to be unlawful. That is the primary purpose of the writ; that is its substance and end."

22. When their custody is given to the mother, it is likely that they might be sent out of the jurisdiction of this Court. That also is not a bar in passing appropriate orders in the interest of the children. A Full Bench of this Court in Margarate Maria's case considered this aspect as follows:

> "Nor are we impressed by the argument that we will lose jurisdiction to entrust the children with the mother even if we come to the conclusion that it is in their best interests, since this would involve the children being sent out of the jurisdiction of this Court. That there is no such absolute rule is clear from the following passage from Simpson on the Law of Infants, Fourth Edition, page III.
>
> The general rule of the Court is that award of Court may not be removed out of the jurisdiction, and in several cases an order of this kind has been enforced on the father, as well as on other guardians; and orders have been made to bring backwards who are out of the jurisdiction.
>
> Though the rule is as above stated, it will bend to special circumstances, and non-enforcement of it is much more easily obtained now than formerly; but some undertaking is usually required from responsible persons, or some security insisted on, that the infant will be brought back if necessary, and will be under proper control when abroad. The Court now gives leave without a case of necessity being shown, if it considers that it is for the benefit of the ward, and that there is sufficient security that future orders will be obeyed."

To the same effect are the comments in Eversley on Domestic Relations, Sixth Edition, page 611.

> "Before an infant ward can be properly removed out of the jurisdiction, the leave of the Court must be obtained. The Court was wont not to grant permission readily, but did accede from time to time to the request to remove them. Its practice was to refuse an order permitting its infant wards to be remove out of the jurisdiction, with a view to their residing permanently abroad, except in a case of

imperative necessity, as where it was clearly proved that a constant residence in a warmer climate was absolutely essential to their health; and such an order, if made, would comprise a scheme for the education of the infants, as well as a provision for informing the Court from time to time of their progress and condition, and an undertaking to being them within the jurisdiction when required. But in modern times, the Court is less strict in the exercise of this jurisdiction and leave is now given to take an infant ward out of the jurisdiction without a case of necessity being shown; but the Court must be satisfied that the removal is for the infant's benefit, and that future orders will be obeyed."

We may also refer to the following passage from Joseph H. Beale on Conflict of Laws, Volume Two, page 720.

"The fact that the parent to whom the award of custody would otherwise be made is likely to take the child into another. State is not usually a ground for refusing to make the award. Even if the child is to be taken into another country the award will be made, at least if it is a friendly country with a similar civilization, like England, though it might be different if it were a barbarous country, or one with an alien civilization or religion, and clearly a child's custody will not be awarded to a parent who is an alien enemy. Nevertheless, the Court in awarding custody may order the parent not to remove the child from the State, though the case would have to be a very extreme one indeed to justify such interference with the natural and legal rights of a parent. If the Court allows a child to be taken out of the State, it may require the parent to give a bond to return the child at the end of a fixed time, or on order of the Court; but this will not usually be required."

The decision of the Court of Chancery in England In Re Kerot (an infant) ((1964) 3 All. ER 339) shows that on facts very much similar to those that we have in this case Plowman, J. had passed an order granting custody to the Italian mother giving her liberty to take the child out of the jurisdiction of the Court. It is significant that the order was passed by an English Court in the case of an English father, the child having the father's domicile and permitting the child being taken to Brescia in Italy. It is thus clear that the fact that the child may have to leave the jurisdiction of the Court granting custody is no bar to the passing of appropriate orders in the interests of the child.

24. But we cannot, as easily in any other case, handover the custody of the children to the petitioner without rigorous conditions. Therefore, we impose the following conditions:

(a) The petitioner shall furnish a bank guarantee for 7,500 U.S. dollars before she takes the children to the United States. The bank guarantee shall be in the name of the Registrar of this Court.

(b) She shall also execute a bond for another amount of 7,500 dollars, undertaking to produce the children before this Court as and when ordered.

(c) The petitioner shall also obtain an undertaking from the U.S. Embassy or U.S. Consulate in Madras that whenever this Court requires, with a notice of 15 days, she shall be present and shall produce the children at her own expenditure, and that in case of her failure, the Texas/U.S. Administration including the Embassy will see that the directions of this Court in this regard are complied with and the children be produced before this Court.

(d) She can take the children to Texas only on fulfilment of the aforesaid conditions and on expiry of the period mentioned (1) below.

(e) The petitioner shall, from tomorrow onwards, for 7 days, stay in Kozhikode so that the 2nd respondent shall have frequent visit to the Children between 10 a.m. and 1 p.m. during the said seven days. Until she leaves India, the children shall be regarded as in the joint custody of both, so that the 2nd respondent shall have visitorial rights on the children.

(f) The 2nd respondent shall entrust the passport of the children and their birth certificates with the Registrar of this Court within a week from today and the Registrar shall give appropriate receipt to him.

(g) The petitioner shall send bi-monthly reports about the health of the children from a Senior Pediatrician of at least 20 years of practice, duly attested by a notary or the Indian Embassy/Consulate in United States.

(h) The petitioner shall not remove herself or the children from her present address shown in this petition i.e.

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TEXAS, U.S.A. 76262-5109

(i) She shall not, except to take the children to India as per the order, if any, to be passed by this Court, take them beyond the State of Texas.

(j) In case of any default or violation of any of the conditions in this judgment by the petitioner, or in case of any emergency in respect of the children the second respondent is free to fly to Texas and for that he can obtain sufficient amount from out of the bank guarantee provided by the petitioner.

(k) Whenever the second respondent goes to Texas, the petitioner shall provide him the visitorial rights always to see the children and shall put them in his company.

l) Even if the petitioner complies with all the conditions, we make it clear that she shall not take the children out of India for a period of three weeks from today.

(m) A copy of the passport of the petitioner and the children, duly attested by the Registrar of this Court with the seal of this Court, shall be regarded as a duly original passport for the purpose of their travel inside India.

(n) If the petitioner complies with the aforesaid conditions, the petitioner's passport as well as the passports and the birth certificate of the children shall be handed over to the petitioner and the certificate given to her as mentioned in direction (m) shall be returned to the Registrar.

(o) If the petitioner happens to leave without complying with the above directions, necessarily, she shall leave the custody of the children to the 2nd respondent.

(p) The petitioner shall not, except for going to Calicut and Chennai, leave her present address in Ernakulam.

(q) This arrangement in terms of this judgment will be in force until the Family Court at Texas, where the petitioner has instituted a lis, passes any interim or final order, as the case may be, regarding the custody of the children. We make it clear that any such order passed by the Court at Texas will override the directions contained in this judgment.

Writ Petition is disposed of as above.

ANDHRA PRADESH HIGH COURT
Before :- L. NARASIMHA REDDY, J.
CMA No. 3168 of 2003/Decided on 16.8.2004

R. Rajeswaramma and another — Appellants

Versus

C. Sada Varalakshmi and others — Respondents

For the Appellants : Dr. K. Lakshminarasimha, Advocate.
For the Respondent Nos. 1 and 2 : Mr. Kovvuri V.R. Reddy, Advocate.

Succession Act, 1925, Section 372--Administration Tribunals Act, 1985, Section 3(q)--Succession Certificate--The expression "service matter" includes in itself the several aspects and incidences of service of the category of employees covered by the Administrative Tribunals Act--Such