

K.S. Mohan Vs. Sandhya Mohan

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Court : Chennai

Decided On : Oct-13-1992

Reported in : AIR1993Mad59

Judge : A.R. Lakshmanan, J.

Acts : [Hindu Minority and Guardianship Act, 1956](#) - Sections 6; [Evidence Act, 1872](#) - Sections 63; Hindu Marriage Act, 1956 - Sections 10

Appeal No. : O.P. No. 573 of 1991 and Application No. 462 of 1992 in O.P. No. 573 of 1991

Appellant : K.S. Mohan

Respondent : Sandhya Mohan

Advocate for Def. : Mr. R. Alagar, Senior Adv., for;Mr. V. Sitharanjandas

Advocate for Pet/Ap. : Mr. A.L. Somayaji, Adv., for;M/s. Srinivasan and;V. Sudhkar

Judgement :

ORDER

1. The above Original Petition is filed by the husband against his wife to direct his wife to hand over custody of the minor son Skanda, who is now aged about four years, under the following circumstances. Application No. 5362 of 1991 is filed by

the petitioner/husband for an interim order granting custody of the minor boy Skanda to the petitioner pending disposal of the main Original Petition.

2. Application No. 462 of 1992 is filed by the respondent/wife claiming visitation right to the two daughters Swetha and Shradha and to retain their custody during week ends. The said application (Application No. 462 of 1992) was filed before the Family Court, Madras, and numbered as I.A. No. 649 of 1991 in O.P. No. 651 of 1991. Since both the respondent and the petitioner agreed for the transfer and trial of that application along with O.P. No. 573 of 1991, an order was passed by me by consent transferring I.A. No. 649 of 1991 in O.P. No. 651 of 1991 from the Family Court, Madras, to this Court for joint trial of both the said application and the main O.P. No. 573 of 1991 filed by the husband in this Court.

3. The respondent, who is the wife of the petitioner, has filed O.P. No. 651 of 1991 before the Family Court, Madras, under S. 10 of the Hindu Marriage Act, 1956, against the petitioner/husband seeking the relief of judicial separation on the ground of cruelty. Along with that petition, the respondent has filed I.A. No.649 of 1991 before the Family Court, which was subsequently transferred to this Court by consent of both parties and numbered as Application No. 462 of 1992, seeking a direction to the petitioner to permit her to have access to her two daughters viz., Swetha and Shradha and also retain their custody during week ends as an interim arrangement until the disposal of the main Original Petition filed by her for judicial separation.

4. The petitioner and the respondent got married on 29-4-1979 They have three children, who are all minors. The first child is a daughterly name Swetha. She was born on 15-11-1980. The second child is also a daughter by name Shradha, who was born on 8-12-1985. The last child, who is a boy by name Skanda, was born on 22-11-1988. The third child is a minor whose custody is the subject matter of dispute.

5. According to the petitioner, he reposed immense confidence in the respondent and she was given full freedom and liberty. But the respondent betrayed the trust and confidence reposed in her and developed illicit relationship with one A. R. Ramesh, who also happened to be one of the friends of the petitioner. The

petitioner, as a person following the path of restraint, was appealing and persuading the respondent to desist from going out or being seen with the said A. R. Ramesh. The respondent was also in the habit of talking to the said A. R. Ramesh over phone for long hours almost every day and such talk used to be in whispers. To the utter shock and dis-ap-pointment of the petitioner, the respondent used to meet the said A. R. Ramesh in Park Sheraton Hotel and go out with him in his car to isolated and secluded places. During August, 1989, the respondent used to take the first daughter to Park Sheraton Hotel for coaching her in swimming. After leaving the child in the swimming pool, the respondent used to go away with the said A. R. Ramesh in his car to an isolated corner in the Boat Club Road. On one such occasion, the respondent and A. R. Ramesh were caught red-handed by the petitioner at Boat Club Road and both of them were found in the car in a compromising position. The petitioner was totally upset over the conduct of the respondent and stopped talking to her. On seeing that the petitioner was angry and upset, the respondent, of her own accord, wrote and gave a letter Ex.P-1 to the petitioner, wherein it was stated that wives like her will never to be forgiven. The respondent admitted that in future, she would shower all love on the petitioner. In Ex.P-1 letter, the respondent was wondering as to how she behaved foolishly.

6. To the utter shock and dismay, the petitioner found that the respondent continued to go out with the said A. R. Ramesh and was also indulging in telephone conversation with him. The petitioner also received reports that the respondent was seen with A. R. Ramesh in his car at different places. When the petitioner brought all the facts to the notice of the respondent's father, he wrote a letter to the respondent advising her to stop any communication with any man particularly with A. R. Ramesh. The respondent was asked to take the advice seriously by her father in the context of her being the mother of three children and the first of whom was aged about ten years at that time. Similar advises were also given to the respondent by the petitioner's mother and father. It is also significant to note that the said A. R. Ramesh is a married man with two children. The respondent, without any provocation, suddenly disappeared from the matrimonial home along with the three children during June, 1990. After great deal of search, the respondent along with the children were located in her parent's house at

Tiruvanmiyur, Madras-41, and at the intervention and advise of the petitioner's father, mother and other relatives, the respondent returned to the matrimonial home the same day. The first two children are willing to stay with the petitioner only. Both the children are studying in Shisya School, Adyar.

7. According to the petitioner, the respondent has been slowly making the tender child to forget the petitioner, who is very much attached to him being the last and only male child. The respondent is employed in House Keeping Department in I.T.C. Group of hotels, Madras. She has deliberately chosen to leave the column with regard to the name of the father of the child blank in the application form submitted to Chettinad Vidyashram School, and the respondent has instructed the school authorities to prevent the petitioner from coming to see and be with his son. It is also the case of the petitioner that on 2-10-1991 when the I.T.C. Hotels catered to the dinner hosted by His Excellency the Governor at Raj Bhavan, the respondent along with her colleagues went on official duty to Raj Bhavan. Since it was late night by the time the function was over, all her colleagues returned by the conveyance provided by the management of the hotel. But, the respondent chose to get into the car of A. R. Ramesh even though it was after 9.00 p.m. This clearly establishes that the respondent is continuing her immoral relationship with the said A. R. Ramesh.

8. Further, the minor son Skanda is not taken care of by the respondent as she leaves home in the early morning and returns back late at night. Having regard to the conduct and behaviour of the respondent, she is ineligible to have the custody of the minor boy. The respondent has neglected and failed to discharge her duties and obligations as the mother of the minor child. In fact, when the first daughter had an attack of Jaundice during July, 1991, the respondent did not bother to visit and take care of the child. The respondent is not concerned about the welfare of the minor children. Admittedly, the petitioner is the natural guardian. It is submitted by the petitioner that having regard to the facts and circumstances stated supra, it is not in the interest and welfare of the minor child Skanda to be in the custody of the respondent.

9. The respondent filed a detailed statement of objections to the averments contained in the Original Petition. According to the respondent, she had no intimacy with anybody and she strongly objected to the accusations. The petitioner used to strangle her when she was protesting. The respondent never behaved rudely or insolently. The behaviour of the petitioner raised suspicions and the respondent's father took him to Dr. Chandrasekar for medical check up. He examined the petitioner and found that he was suffering from Paranoia. She was advised that Paranoia is not an illness and hence no cure and she must learn to live with such person unmindful of his behaviour or leave him. However, for the sake of the children, she decided to live with him and undergo the indignities. The respondent also denied giving any such letter as mentioned by the petitioner. She further denied the alleged meetings in the Foreshore Estate beach in the company of A. R. Ramesh. She also denied the incident said to have taken place at Raj Bhavan. It is false to state that the respondent is leading an immoral or wayward life. She is taking proper care of the children. The respondent has not done anything to lose her right in her duties. The petitioner cannot claim custody on the ground that she is living away. Legal custody till five years is with the mother. Even after completion of five years, the interest and welfare of the minor are paramount consideration and the petitioner is not entitled to have the custody of the third child. The respondent is capable of providing as much good education as the petitioner himself can do. Further, the petitioner suspects everybody and even his parents are not spared. His parents have been advising the respondent to forgive him for his utterances because they were the result of his suspicious nature. The third child should be only in the custody of the respondent. The petitioner has no legal right to claim custody.

10. I have heard Mr. A. L. Somayaji, learned counsel for the petitioner and Mr. R. Alagar, learned senior counsel for the respondent.

11. The petitioner examined himself as P.W. 1 and Dr. C. R. Chandrasekar as P.W. 2. The manager of the Globe Detective Agency and one Leslie Martin, an Investigator in Globe Detective Agency, were examined as P.Ws. 3 and 4 respectively, besides marking number of documents and also a tape recorded conversation between the petitioner and the respondent on 10-9-1990. The

respondent, besides examining herself as R.W. 1, examined her father as R.W. 2. She has also examined one Raminder Seema as R.W. 3, one Rajaraman as R.W. 4 and one Pangaraj as R.W. 5 besides marking some documents.

12. Before adverting to the submissions made by the learned counsel for both parties, it becomes necessary for me to consider whether the tape recorded conversation between the petitioner and the respondent on 10-9-1990 viz., Ex.P-7, is admissible in evidence. The highest Court of the land had occasion to consider the identical question in the decision reported in Ram Singh v. Palmal Ram Singh, : AIR 1986 SC3 , wherein the following principles had been laid down :

i) The voice of the speaker must be duly identified by the maker of the record or by others who recognise his voice. In other words, it manifestly follows as a logical corollary that the first condition for the admissibility of such statement is to identify the voice of the speaker. Where the voice has been denied by the maker, it will require very strict proof to determine whether or not it was really the voice of the speaker.

ii) The accuracy of the tape recorded statement has to be proved by the maker of the record by satisfactory evidence, direct or circumstantial.

iii) Every possibility of tampering with or eraser of a part of the tape recorded statement must be ruled out; otherwise, it may render the said statement out of context and therefore inadmissible.

iv) The statement must be relevant according to the rules of the Evidence Act.

v) The recorded cassette must be carefully sealed and kept in safe or official custody.

vi) The voice of the speaker should be clearly audible and not lost or distorted by other sounds or disturbances.

13. Applying the above principles, it has to be seen whether the tape Ex.P-7 is admissible in evidence or not. Regarding the voice of the speakers, it is admitted by the petitioner and the respondent and their respective counsel Mr. A. L.

Somayaji and Mr. R. Alagar, that the tape contains the conversation between the petitioner and the respondent. To a specific question put by me to the learned senior counsel appearing for the respondent Mr. R. Alagar, whether his client disputes that the tape contains the conversation between the petitioner and the respondent, his answer was that there is no dispute that Ex.P-7 contains the conversation between the petitioner and the respondent. In other words, there is no dispute at all about the identity of the voice of the speakers. As regards the accuracy of the tape recorded statement, P.W. 1 has deposed that the tape contains the accurate conversation between the petitioner and the respondent. Even the respondent does not dispute the accuracy of the taperecorded statement.

14. The only objection of Mr. R. Alagar, learned senior counsel for the respondent is, that some of the admissions made by the petitioner have not been recorded in the tape. In other words, there is no dispute about the accuracy of the statements as recorded in the tape. The respondent does not allege in her evidence or no suggestion has been made to the petitioner in the course of cross-examination that the tape recorded statement has been tampered with. The statements recorded in the tape, in my opinion, are relevant statement as envisaged by the provisions of the Evidence Act. Pursuant to my direction, the tape containing the conversation between the petitioner and the respondent was sealed and kept in the safe custody of the Court Officer. The voice of both the petitioner and the respondent is clearly audible. As a matter of fact, I played the tape in open Court in the presence of both parties and their respective counsel and satisfied myself that the tape contains the conversation between the petitioner and the respondent.

15. Except stating that the cassette is not the correct record of the conversation because some of the admissions said to have been made by the petitioner are not recorded, the respondent has failed to place before this Court as to the nature of admissions said to have been made by the petitioner and at what point of time and in what context such admissions were alleged to have been made. I am unable to accept the ipse dixit of the respondent that the tape is not the correct record because it does not contain the so-called admissions said to have been made by the petitioner. Nothing prevented the respondent from placing before this Court the

so-called admissions said to have been made by the petitioner and as to when they were made. Further, there is no dispute that the conversation as recorded is not true. When the contents of the conversation as recorded in the tape is not in dispute and when no material has been placed before me to show that the tape was tampered with, it is necessary for this Court to accept the tape recorded statement as admissible in evidence. Therefore, I find that Ex. P-7, which is the original cassette containing the tape recorded conversation between the petitioner and the respondent, is admissible in evidence. The voice of the petitioner and the respondent has been identified. The date and the time of recording has been spoken to by the petitioner. Therefore, there cannot be any legal objection for accepting Ex.P-7 as a piece of evidence.

16. There is no dispute that the petitioner and the respondent got married on 29-4-1979 and three children were born to them in the wedlock, who are minors. The first child is a daughter by name Swedha, the second child is also a daughter by name Shradha and the last child is boy called Skanda born on 22-11-1988. There is also no dispute that ever since August, 1990, the respondent is not living with the petitioner and she is staying with her parents at No. 1, 19th East Street, Kamarajar Nagar, Tiruvanmiyur, Madras-41. According to the respondent, she left the matrimonial home during August, 1990, unable to bear the mental cruelty caused by the petitioner by suspecting her fidelity. It is stated in the statement of objections by the respondent that the petitioner was a doubting Thomas and he was suffering from Paranoia. This was diagnosed by one Dr. Chandrasekar, and she was advised that Paranoia is an illness without any cure. Further, the petitioner created a situation making it impossible for the respondent to stay with him by his suspecting nature.

17. According to the petitioner, there is no answer or justification for the respondent to abandon the matrimonial home and it is the specific and categorical case of the petitioner that the respondent developed illicit relationship and continues to have such relationship with one A. R. Ramesh. It is claimed by the petitioner that during August, 1989, the respondent used to take the first daughter to Hotel Park Sheraton for coaching her in swimming and on one such occasion, the respondent left the child, i.e., the first daughter in the swimming pool and went

out with the said A. R. Ramesh in his car to an isolated corner in the Boat Club Road. On that day, it is claimed, the petitioner came to Hotel Park Sheraton to find out the progress of his first daughter in swimming and he did not find the respondent anywhere in or near the hotel and so, according to the petitioner, he got worried and proceeded to his friend's house at Boat Club Road to find out from his mother over phone as to whether the respondent has gone out anywhere else. But, on the other hand, he found the respondent and the said A. R. Ramesh in an isolated corner in Boat Club Road in the car of the said A. R. Ramesh and they were found in a compromising position. The petitioner caught both of them red-handed. However, both the respondent and the said A. R. Ramesh got separated from each other and the said A. R. Ramesh left the respondent in the hotel and spread away. Further, the petitioner stated, that an accident took place in Alwarpet Junction to the vehicle driven by the respondent and when the petitioner rushed to the spot, he found the said A. R. Ramesh also in the scene of the accident. It is also claimed by the petitioner, that the respondent and the said A. R. Ramesh were seen together in different places at different points of time.

18. More or less, at the same time, the said A. R. Ramesh, who is also married and having two children, is also said to have driven out his wife and children in street during sometime in September, 1990, from the matrimonial home. The respondent has filed a detailed statement of objection denying the contention with the said A. R. Ramesh as stated in paragraphs supra.

19. As already stated by me, the petitioner submits that the respondent is unfit to have the custody of the minor boy on account of her illicit relationship and connection with another married man A. R. Ramesh, who deserted his wife and children.

20. In support of his case, the petitioner would place reliance on Ex.P-1, an undated letter claimed to have been given by the respondent to the petitioner soon after the respondent and the said A. R. Ramesh were caught red-handed in the Boat Club Road, during August, 1989, when the respondent and the said A. R. Ramesh were found in a compromising position in the car belonging to the said A. R. Ramesh. The respondent admits that the letter is in her handwriting. The

petitioner in his petition has specifically referred to this letter and some of its contents in paragraph 5 of the petition. In the statement of objection the respondent has categorically stated that she did not give any such letter referred in paragraph 5 of the petition. She also reserved her right to reply when she is allowed inspection of the same, long before the commencement of the trial, I directed the petitioner to furnish copies of all documents and also a duplicate copy of the tape recorded conversation to the respondent and accordingly, the documents as well as the duplicate copy of the cassette were furnished to the respondent as directed by me. For reasons best known, the respondent has not chosen to file any reply. It became necessary for me to refer some of the contents of Ex.P-1.

21. The respondent had admitted in the letter Ex.P-1 that she was solely responsible for the various incidents which had taken place on the previous date, that she was not able to understand why her mind made her act that way and that wives who behave like her cannot be pardoned at all. It is also stated in Ex.P-1 that because there are some people like the petitioner in the world, who are like Gods, sinners like her get pardon. She has further stated in Ex.P-1 that the legs of the petitioner should be washed not with her tears but with her blood. She has then said in that letter that she was prepared to accept any punishment for her action. She wanted the petitioner to look at her with a smile in token of the petitioner having pardoned the respondent. She has also said in Ex.P-1 that for all the mistakes and sins committed by her till then, she is going to seek redemption. She has also wondered as to how she got infatuated and why she acted foolishly.

22. As could be seen from Ex.P-1, the respondent has, in categorical terms, accepted that she committed a sin which no other wife will commit and there is no pardon for her. Strangely, the respondent in the course of her evidence has come forward with a plea for the first time, that Ex.P-1 was written by her on the dictation of the petitioner. No doubt, the learned counsel for the petitioner raised an objection to the above evidence of the respondent on the ground that without there being any plea, evidence cannot be allowed. It is significant to notice that the respondent has totally denied having written Ex.P-1. In her statement of objection and in her evidence, she admits of her having written the letter Ex.P-1 but made

an attempt to explain it away by stating that it was written on the dictation of the petitioner. I find much force in the contention of Mr. A. L. Somayaji, learned counsel for the petitioner, that the reason given by the respondent in her evidence for writing Ex.P-1 is without necessary plea and therefore, it should be excluded from consideration.

23. Even otherwise, if really Ex.P-1 was written on the dictation of the petitioner, one would not expect the respondent to accept the fact of having written the letter in her statement of objection. It is also unbelievable that the respondent would have written the letter Ex.P-1 on the dictation of the petitioner. The respondent admits in her evidence that she believes in independence and she would not accept that she is foolish merely because the petitioner has suggested it. It is her further evidence that she will not sacrifice her independence without proper reason merely because the petitioner wants it. It is unbelievable and incredible to believe that the respondent, who believes in her independence and who also appears to be independent, as could be seen from her demeanour in Court, would have written Ex.P-1 as dictated by the petitioner. Hence, I reject the contention of the learned senior counsel Mr. R. Alagar, that Ex.P-1 was written by the respondent as dictated by the petitioner because some suspicious mark which the petitioner normally puts in any correspondence or document, is found in Ex.P-1. The natural consequences of accepting Ex.P-1 is that the respondent has admitted of committing grave matrimonial offence for which there is no pardon. Therefore, I hold that the respondent was caught red-handed by the petitioner in the company of the said A. R. Ramesh in an isolated place during August, 1989, in the car of the said A. R. Ramesh and immediately thereafter, she has written Ex.P-1. Ex.P-1 does not bear any date. The respondent has not been in the habit of putting the date on the letters written by her, as could be seen from Ex.P-14 as well.

24. The petitioner would then rely upon Ex.P-2, a letter written by the father of the respondent viz., P.W. 2 to the respondent on 6-3-1990, in support of his case that the respondent has illicit connection with A. R. Ramesh, and she was in the habit of talking to him over phone in whispers. Ex.P-2 is reproduced hereunder :

'My dear Sandhya,

I came to see you and collect the suit cases for my U.S. Trip. But you were away with Indhu to see Viji. I had a talk with Mohan's mother. She is also worried about you as we do. She was very nice and polished and said that.* They refer to your frequent telephonic conversations with Ramesh (either he phones up or you phone up)* which cast a heavy suspicion on your character. Just as I have always been telling you 'Stop any communication with any man particularly Ramesh'. This assumes greater significance in the context of your being a mother of three children. Shwetha is 10 years and these things may have and will have a bearing on her. As I have always been telling you, we all love you, care for you and are concerned about you. We cannot but offer our advice to you. You should not take this as an interference in your life, on our part. Whatever may be the shortcomings of Mohan and others, you should not make things very bad for yourself and your children. You cannot afford to give room to suspicions about your fidelity and character. Please listen to us. Stop all the actions of yours, that may throw suspicion on your character. Preserve the cherish your marriage and children. I still want to talk to you in detail before I leave for U.S.A. Please listen to me. Do not refuse your Daddy this. Myself and your mom love you, your sisters very much. We will do anything for your sake and for that of your peace and happiness. Please do not think that your mother-in-law told me lot of unpleasant things. She only asked me to advice you in your interest, their interest and our interest. She was quite decent about it.

You may or may not know, that for the past 2-3 years (ever since I came to Madras) I am not at peace concerning you. We want you to be happy. Please come over to our house and let us talk. Please stay away from the Phone. That is your worse enemy. I expect you, after this, to see me and talk to me.

Yours affectionate and loving father

N. Srinivasan.

P. S.: Everybody concerned expects me, rightly to talk to you and resolve the issue before I leave for U.S.A. I can also go to U.S.A. peacefully if I talk to you.'

25. In Ex. P-2, the father of the respondent has stated that he was worried about the respondent as much as the petitioner's mother. He says in that letter that the respondent's frequent telephonic conversation with A. R. Ramesh, either he phones up or respondent phones up, and talks in whisper has cast a heavy suspicion on her character. It is admitted in the said letter, that the father of the respondent has always been telling the respondent to stop any communication with any man, particularly with A. R. Ramesh. The father of the respondent has also laid importance on this aspect having regard to the fact that the respondent is the mother of three children and the eldest daughter being ten years old. It is also stated in Ex. P-2 that the respondent's communication with the said A. R. Ramesh will have a bearing on the eldest daughter. In that letter, the father of the respondent advised her to stop all her actions which may throw suspicion on her character. There is also an indication in that letter that the respondent is refusing to talk to her father on this aspect, because it is specifically mentioned in that letter that the respondent should not refuse to talk in detail before he leaves for U.S.A. It is also mentioned in Ex. P-2 that the petitioner's mother asked him (R. W. 2) to advise the respondent. R.W. 2 had mentioned in Ex. P-2 that 'for the past two or three years I had come down to Madras, I am not in peace concerning you.' Ex. P-2 letter has been ended with the following : 'Please stay away from phone. That is your worst enemy.' The foot-note to that letter referred to the fact that everybody concerned expects R.W. 2 rightly to talk with the respondent and resolve the problem before leaving for U.S.A., so that he can go to U.S.A. peacefully. With regard to Ex. P-2, the respondent has stated in her statement of objection that Ex. P-2 was written by R.W. 2 in order to prevent the respondent from taking extreme steps unable to bear the insinuating remarks of the petitioner.

26. The stand taken by the respondent in the statement of objection has been given a go-by by R.W. 2 in his evidence. He stated in his evidence that he wrote Ex. P-2 to the respondent on the lines suggested by the petitioner's mother. The reason given by R.W. 2 for writing Ex. P-2 was that he had lot of work in hand before his U.S.A. trip and he thought that he would not be able to come to Adyar soon and, therefore, he opted to write the letter to the respondent. It is surprising to find that R.W. 2 admits categorically that he had to cut short his visit to U.S.A. and return to India because the respondent suddenly left the matrimonial home

along with the children during June, 1990. After returning to India, R.W. 2 states, it took one month for him to talk to his daughter as to why she left the matrimonial home even though he was forced to return from U.S.A. cutting short his visit adrift on account of the development concerning the respondent.

27. It is also necessary for me to refer to the evidence of R.W. 2, who states that the respondent never complained to him about the insinuations made by the petitioner at any point of time. He admits in clear terms that he would not believe in somebody making wild allegations against his daughter with regard to her moral character unless he was fully satisfied about the same. If the version of R.W. 2 were to be accepted that he would not believe any statement concerning the moral conduct of the respondent unless he was fully satisfied, then, no explanation is forthcoming from R.W. 2 for writing Ex. P-2. I am unable to accept the case of R.W. 2 that he wrote Ex. P-2 because the petitioner's mother instructed him to write. I can only say that R.W. 2 is not speaking the truth even at this age. His evidence is unbelievable and in my view, the same has to be eschewed.

28. It is understandable as to how a doctor father, who has got so much confidence with the respondent, would have written Ex. P-2. That apart, as reading of Ex. P-2 itself shows that R. W. 2 has been telling the respondent to stop any communication with any man, particularly with A. R. Ramesh. This clearly shows that prior to Ex. P-2, R.W. 2 very well knew that the respondent had been communicating with the said A. R. Ramesh. Hence, I reject the explanation given by R.W. 2 for writing Ex. P-2. It is also relevant to notice that he has not written any letter to the petitioner's mother stating that Ex. P-2 was written by him to satisfy her or as instructed by her.

29. The petitioner's learned counsel would then place reliance on Ex. P-14 and submit that the said letter was written by the respondent to A. R. Ramesh. The respondent in her evidence, while admitting the fact of having written the letter Ex. P-14, would state that the said letter was written by her to the petitioner. In Ex. P-14, the respondent would state that she does not know (how) to address the recipient of that letter. There is also a mention in Ex. P-14 that it should be torn off after reading it. Admittedly, the petitioner and the respondent were living under the

same roof during mid 1990. Therefore, there is no need for the respondent to write Ex. P-14 to the petitioner. When the respondent was confronted with the contents of Ex. P-14, she would give a mechanical answer that she did not remember the incident. A reading of the entire letter creates an indelible impression in my mind that the respondent had written that letter not to the petitioner. Following is the text of Ex. P-14 :

'I do not know how to address you. So I am just writing what I felt. I am very sorry for the way I behaved over the phone today. But I couldn't help it. Before I continue, please tear this card off after reading it.

You do not know what an attachment means to me. Easily you said that I give more attachment to it. I repeat your words. Only yes: I do give more attachment for these things. But you know something. I don't give that preference to everybody: It belongs to only one person in the whole Universe. You know the 'PERSON'. Still, you take things very easy which I am not able to. I am terribly upset now. I didn't want to write in a letter-pad. I couldn't get a better card than this to write these brief thoughts which goes on and on in my mind.

If you think what I did is wrong, I fell at your feet when I see you. O.K. For Heaven's sake, please do not give any more punishments. I am not in a position to bear any more punishments. I hope you will talk to me after I come back from Maduraj. Hope you will understand me. I still do not know why I felt like writing this letter to you. I am not able to judge myself now. Perhaps, you can do it. Pardon me for blabbering like this. I know I am not myself now.

Before I conclude this letter. I would like to tell you some thing, I love you, I love you, I love you.....'

The respondent has repeated the words 'I love you' till the end of the letter.

30. I have to necessarily accept the case of the petitioner that Ex. P-14 was written by the respondent to the said A. R. Ramesh and that the petitioner has snatched it away from the respondent before she could complete it and get it posted. The argument of Mr. R. Alagar, learned senior counsel for the respondent in reply, that

Ex. P-14 was written to somebody else makes matter worse. It is also significant to notice that the respondent is not in the habit of putting the date in any of the letters written by her, as could be seen from Exs. P-1 and P-14.

31. Exs. P-8 to P-10 are the reports submitted by Globe Detective Agency. These reports were prepared by P.W. 3, who is the Investigation Manager of Globe Detective Agency. According to P.W. 3, Exs. P-8, P-9 and P-10 were prepared on the basis of the investigation report. The investigators report is marked as Ex. P-11. P.W. 4 is the Investigator, who prepared Ex. P-11. According to P.W. 4, he did the surveillance on the respondent on 12-6-1991, 13-6-1991, 22-6-1991, 24-6-1991 and 12-7-1991 and handed over the investigation report to P.W. 3, who is the Investigation Manager. It is seen from the report Ex. P-11 that during the relevant period the investigations were made, the respondent was employed in Namo Computer Consultancy, who had their office in Eldorado Building at Nungambakkam High Road. On 12-6-1991, the respondent has got into a Fiat 118 NE bearing No. TSK 5355 at about 5-11 p.m. and the said Ramesh was at the wheel and the car proceeded from Nungambakkam High Road to Foreshore Estate. The respondent and the said Ramesh remained seated in the car from 5-32 to 6-06 p.m. and thereafter, the respondent was dropped at the Fourth Main Road, Kamarajar Nagar, Tiruvanmiyur. Again, on 13-6-1991, the said Ramesh came in his car TSK 5355 at about 5-30 p.m., and the respondent got into the car at 5-48 p.m. and reached Foreshore Estate at 6-04 p.m. They remained seated in the car from 6-04 to 7-09 p.m. Thereafter, the respondent was dropped on the Fourth Main Road, Kamarajar Nagar, Tiruvanmiyur, at 7-33 p.m. The surveillance report with regard to 22-6-1991 is that the said Ramesh came to Eldorado Building in his car bearing No. TSK 5355 at 1-45 p.m., the respondent got into the car at 1-52 p.m., and both the respondent and Ramesh went to Woodlands Drive in Restaurant on Cathedral Road at about 1-57 p.m. Thereafter, the respondent was dropped in her office at 2-36 p.m. Once again, at 5-30 p.m., the said Ramesh had come in his car bearing No. TSK 5355 at Eldorado Building and the respondent got into the car at 5-35 p.m. At 5-40 p.m., the car went inside Kadher Nawas Khan Road and both the respondent and Ramesh went inside Gems Court. Afterwards, at 5-53 p.m., they got into the car and proceeded to Foreshore Estate Beach. They reached the place at 6-11 p.m. The respondent and Ramesh remained in Foresaid

Estate Beach till 7-15 p.m. The investigation report with regard to 24-6-1991 shows that the said Ramesh came in his car TSK 5355 at about 5-40 p.m., and the respondent got into the front seat of the car. According to the report, both the respondent and Ramesh were in a jolly mood laughing and tapping each other. The car reached Foreshore Estate Beach at 6-09 p.m., and the respondent and Ramesh were seated very close to each other and were found behaving in a very intimate manner. They left Foreshore Estate at 7-04 p.m. According to the report, on 12-7-1991, the said Ramesh came in his car TSK 5355 to Elderado Building at 5-45 p.m., and the respondent got into the car and the car reached Foreshore Estate Beach at 6-17 p.m. According to the report, both the respondent and Ramesh were found sitting very close to each other and were acting intimately and were often found lying on each other. The report of P.W. 3 for 13-7-1991 has been produced but it is not supported by the investigators report. Therefore, I am not taking into account Ex. P-10 in so far as it relates to 13-7-1991.

32. As could be seen from the above reports, the respondent appears to have regular contact with the said A. R. Ramesh and both of them have been going to Foreshore Estate Beach and they have been moving intimately and closely. There is no reason for me to reject the report given by Globe Detective Agency, a reputed Detective Agency in Madras for, they are professional agents engaged in conducting surveillance. The respondent has let in evidence to show that some of the particulars given in the reports are not correct. I prefer to accept the evidence of the professional agency rather than the interested testimony of the respondent.

33. R. W. 4 one Rajaraman was examined to show that front spring and coil spring were purchased from Sundaram Motors by the said Ramesh on 21-6-1991. According to R. W. 4., the vehicle can move without the coil spring and it will take two to three hours to replace the coil spring. R.W. 5, a motor mechanic, had been examined to show that A. R. Ramesh brought his car 118 NE in June, 1991, for repair and the said car was in the workshop prior to 21-6-1991 and it left the workshop on 25-6-1991. During the cross-examination, he stated that one Sait came to him and asked him whether Ramesh came to his workshop for repairing his car and he showed him the bill given by T. V.S. and also his own bill. After seeing the same, the said Sait asked him to come to Court whenever necessary. It

is not known who the said Sait is. It is admitted by R.W. 5 that he did not meet the said Ramesh after he delivered the vehicle on 25-6-1991. It is not known as to how the respondent came to know that the vehicle bearing No. TSK 5355 was under repair unless some one had contacted Ramesh. The relationship between the respondent and the Sait has not been established. It is really amazing to find that the said Sait straightway lands in the workshop of R.W. 5 when there are thousands of motor mechanic shops in the City of Madras. Unfortunately, the said Sait who located the workshop of R.W. 5 where RSK 5355 was repaired during the last week of June, 1991, was not examined before this court, the examination of R.W. 5 confirms the fact that the said A. R. Ramesh is fully aware of the present proceeding which is going on before this Court. Unless information was given by the said A. R. Ramesh, it would be impossible to locate the workshop where the vehicle was said to have been repaired. R.W. 5 has produced a copy of the bill for Rs. 1,008/-/-. He does not say how he is possessed of a copy of the bill. A look at Ex. R-5 would show that it is written on a new and fresh letterhead. If really the copy was prepared on 25-6-1991, the said copy cannot be so fresh and new. There are no indications to show that the said copy was punched and kept in a file. It looks as though Ex. R-5 has been prepared recently for the purpose of the present case. When a specific question was put to R.W. 5 whether he was maintaining a file connecting all the bills, his answer was in the negative. R.W. 5 has not explained as to how he is in possession of a copy of the bill or the charges raised by him. I disbelieve the evidence of R.W. 5.

34. Mr. R. Alagar, learned senior counsel for the respondent, would argue that if the evidence of R.Ws. 4 and 5 is accepted, it would clearly show that the report prepared by Globe Detective Agency was false. Since I have rejected the evidence of R.W. 5, I accept the evidence of P.Ws. 3 and 4. The very examination of R.W. 5 confirms the fact that the respondent is even now having contacts with the said A. R. Ramesh.

35. Mr. R. Alagar, learned senior counsel for the respondent, would submit that P.W. 4 has admitted that the investigation was commenced on 12-6-1991 and ended on 12-7-1991, and therefore, there could not have been any report on 13-7-1991. I have not referred to the investigation report relating to 13-7-1991 because

Ex. P-10 in so far as it relates to 13-7-1991, is not supported by the basic record viz., investigating report. Hence, I confine myself to Exs. P-8 and P-9 and Ex. P-10 in so far as it relates to the period up to 12-7-1991.

36. Further, no suggestion has been put to either P.W. 3 or P.W. 4 that the report is either false or fabricated. Hence, I accept Exs. P-8 and P-9 and Ex. P-10 in so far as it relates to the period up to 12-7-1991, and Ex. P-11. These exhibits clearly show that the respondent has still connections with the said A. R. Ramesh.

37. The petitioner refers to an incident relating to a car accident at Alwarpet Junction. According to the petitioner, the respondent was provided with a car at her disposal and the car got involved in an accident at Alwarpat Junction and when the petitioner rushed to the place of accident, he found A.R. Ramesh also on the scene of accident. The respondent in her statement of objection stated that she was treated as a Chaffur by the family of the petitioner and she was asked to work in the Accounts Section of the Automobile Auxiliary Services belonging to the father of the petitioner and the salary due to her was debited in the accounts and taken away by her father-in-law. Regarding the car accident at Alwarpet Junction, the respondent has denied that she was provided with a car. She has further stated that she was used as a driver and thereby the petitioner's family saved the salary due to the driver. The accident to the car driven by the respondent was admitted in paragraph 4 of the statement of objections. The statement of the respondent that she was not provided with a car and she was treated as a driver is belied by her own statement contained in the affidavit filed in support of her application for maintenance in I. A. No. 650 of 1991 in O.P. No. 651 of 1991 in the Family Court, Madras, wherein the respondent has stated as follows :--

'In fact when I was living with him, apart from a luxurious life, I was given a car for my personal use. The respondent was very much conscious of his wealth and opulence and it is that arrogance which has made him heartless and inhuman in his behaviour.'

38. It is clear from the above that the respondent has been prevaricating and has been making self-contradictory and inconsistent statements to suit the occasion. According to the petitioner, the accident had taken place in August, 1989.

Surprisingly, without there being any plea, the respondent suggested to the petitioner in the course of the cross-examination that the accident had taken place in the beginning of 1987 and that the car was sent for repairs at A.B.T. Workshop at Guindy. On the basis of the above suggestion, the learned senior counsel appearing for the respondent would raise the contention that the petitioner had failed to produce the bill for repairing the car after the accident and therefore it has to be presumed that the accident had taken place only in the beginning of 1987. Elaborating his argument further. Mr. R. Alagar would suggest that if the accident had taken place in 1987, the petitioner is doubting the paternity of the minor son Skanda because it was admitted in the petition that the petitioner did not have any conjugal relationship with A. R. Ramesh. I am unable to uphold the contention of the learned senior counsel for the respondent for not having pleaded in the statement of objection as to when the accident at Alwarpet Junction had taken place and not having denied the specific statement of the petitioner that the accident had taken place during August, 1989. Hence, it is not open to the respondent to raise the contention without there being a plea. There cannot be any defence unless there is a plea. Since the respondent has not raised any plea with regard to the date of the accident, I repel the contention of the learned senior counsel appearing for the respondent on this aspect of the matter.

39. The petitioner had clearly stated that somewhere in August, 1989, the accident had taken place involving the car left at the disposal of the respondent at Alwarpet Junction when he rushed to the spot, he found Ramesh on the accident spot. Even in the cross-examination, the petitioner maintained that the accident took place only in August, 1989, and not in the beginning of 1987 as suggested to him in the cross-examination. The respondent would only say that A. R. Ramesh was not present at the place of accident. The petitioner would maintain that A. R. Ramesh was very much present at the time of accident and it was he who intervened in the matter on the spot and settled the matter with the lorry owner. The learned senior counsel appearing for the respondent would state that it is unbelievable that the petitioner, who states that the respondent had extra-marital connections with the said A. R. Ramesh, would have allowed him to intervene and settle the matter. I am unable to agree with the learned senior counsel's contention that merely because A. R. Ramesh intervened in the matter and settled the claim, such an

incident could not have happened. Further, the version given by the petitioner rings truth.

40. Another incident relied on by the petitioner relates to a function at Raj Bhavan, Madras, in connection with Gandhi Jayanthi. The Chola Sheraton Hotel had organised a display of Rangoli and the respondent was also one of the members of the staff who was sent to Raj Bhavan. According to the petitioner, while the other members of the staff used the conveyance provided by the Raj Bhavan, the respondent got into the car of A. R. Ramesh after the function was over at Raj Bhavan late in the night and returned home. The respondent had employed R. W. 3, who is also employed at Park Sheraton Hotel. According to R. W. 3, who claims to be a friend of the respondent, she went to Raj Bhavan on 30-9-1991 along with the respondent. She specifically answered to a suggestion that she did not know whether on 30-9-1991 the respondent was given a lift by A. R. Ramesh from Raj Bhavan. It is the specific case of the respondent that she went to Raj Bhavan on 30-9-1991. According to R.W. 3, the respondent asked for her help to give evidence in this matter. It is clear from the evidence of R.W. 3 that she did not know whether A. R. Ramesh had given a lift to the respondent on 30-9-1991. The respondent has also admitted that on 30-9-1991, there was a function at Raj Bhavan and Taj Hotel did the catering and House Keeping Wing of Chola Sheraton was asked to do the decoration. The respondent claims to have travelled in the van belonging to Raj Bhavan and returned from Raj Bhavan to her house. R.W. 3, examined by the respondent, clearly states that she did not know whether the respondent was given a lift by A. R. Ramesh on that date. Since the matter is in the exclusive knowledge of the respondent, she has failed to prove that she left by the van provided by Raj Bhavan on 30-9-1991. R.W. 3, who is examined by the respondent herself, does not support the case of the respondent.

41. According to the petitioner, the respondent abandoned the matrimonial home on 24-8-1990. The reason given by her for leaving the matrimonial home was that the petitioner was doubting her fidelity and making insinuating remarks against her. It is the case of the respondent that the petitioner is a suspicious person and a doubting Thomas, and unable to bear the mental suffering caused by the petitioner, the respondent left the matrimonial home on 24-8-1990. Respondent

would admit that the petitioner was taken to a doctor for medical check up by her father, who is also a doctor. According to the respondent, the doctor diagnosed the ailment of the petitioner as paranoia, for which there is no cure and that she should live with such a person unmindful of his behaviour or leave him.

42. Dr. C. R. Chandrasekar has been examined as P.W. 2. In his evidence he has stated that he had ten session of meetings, where he talked to the petitioner and the respondent separately as well as together. He categorically stated that he did not find the petitioner suffering from Paranoia. Hence, the case of the respondent that the petitioner was suffering from Paranoia and therefore she had to leave him is complete falsehood.

43. Further, there is inconsistent version by the respondent in her pleadings as to whether she left the matrimonial home on her own or she was driven away. On the basis of her evidence and other materials I am satisfied that the respondent has deliberately withdrawn from the society of the petitioner. It is also the case of the petitioner that the respondent was treated very well, which case was fully accepted by the respondent herself in her affidavit filed in support of her application for maintenance wherein she has stated that she was having a luxurious life. But, the respondent would take an inconsistent plea in the present proceedings by stating that she was treated as a Chanffeur and as an Accounts Clerk. I find that the respondent was treated luxuriously as she herself has accepted. There is no justification or reason for her to abandon the matrimonial home. There is no basis for stating that the petitioner is a doubting Thomas and the evidence on record clearly shows that there was every justifiable reason for the petitioner to suspect and find fault with the conduct and character of the respondent.

44. In this connection, I must refer to the arrogant and casual manner in which the respondent was replying to the questions in the witness box. She, in fact, went to the extent of saying that she started hating her husband just two or three years after the marriage which took place on 29-4-1979. When the respondent was confronted with Ex. P-14, a letter written by her to A. R. Ramesh, she said that she wrote Ex. P-14 letter to the petitioner. The text of the letter makes me to believe that she could not have written Ex. P-14 to the petitioner/her husband. It is stated

by the respondent that she started hating the petitioner two or three years after the marriage. There is no explanation for writing Ex. P-14.

45. Ex. P-13 is an interview given by the respondent in Dhinakaran Sunday Malardated 17-5-1987. The respondent would admit her having given an interview to that magazine and the correctness of the report. In Ex. P-13, the respondent had admitted that she was enjoying absolute freedom in her matrimonial home. No doubt, in the cross-examination the respondent would explain it by saying that she was given absolute freedom by her mother-in-law. It is also in evidence that the respondent had met one lawyer of this Court and sought his advice about the legal status of the children if she left the matrimonial home. The petitioner had stated in his petition that the respondent and the said A. R. Ramesh had met a lawyer, seeking his advice as to both of them getting divorce from their respective spouses. The respondent in her statement of objection would deny the allegations of the petitioner as false. However, during cross-examination she admitted of having met the lawyer and asked his advise with regard to the legal stauts of the three children.

46. I am unable to divert my mind from a very material fact which had taken place more or less during September, 1990. The said A. R. Ramesh, who is also a married man having two childern, had driven out his wife and children out of the matrimonial home and the said A. R. Ramesh and his wife are living separately. The petitioner has referred to this fact in paragraph 10 of his petition. The respondent in her statement of objection would state that she was not aware of what is stated in paragraph 10 of the petition and the petitioner seems to know more about the same. The petitioner in his evidence has stated about this fact and there is no cross-examination on this aspect. R.W. 2, father of the respondent, has also admitted that the petitioner told him that A. R. Ramesh was not living with his wife.

47. Yet another fact remains to be noticed by me is this. The respondent had admitted the minor boy Skanda in Chettinad Vidya-shram. The petitioner has stated in his petition that the respondent did not choose to fill up the column with regard to the name of the father of the child in the application form submitted to

the above school. Further, it is stated that the respondent is making the boy forget the petitioner, who is very much affectionate to him, being the last and the only male child. The respondent in her statement of objection would state that she did not fill up the column relating to the name of the father of the child because the Principal of the school told her that if the child took ill, the father would be informed, in which event, there is every possibility of the petitioner taking away the child. I am unable to accept the reason given by the respondent. When once the address of the guardian who is to be contacted is given, there is no reason for not filling up the column relating to the name of the father of the minor. In her cross-examination, the respondent would go to the extent of saying that she thought that her name alone would be enough. The reason given by her for not giving the initial of the minor son in the application form is more puzzling and insinuating. She would further admit in her cross-examination that the minor Skanda does not even remember the petitioner and that she did not take any step to make the child remember the father.

48. I have already taken the view that the tape recorded conversation is admissible in evidence. A reading of Ex. P-14 leaves me with great sorrow and pain. The respondent, no doubt hails from a respectable family and she is educated. She has been addressing the petitioner as if he is her subordinate. Some of the answers given by her reflect her bad taste and the vulgar level to which she can stoop. Her language is, to say the least, unprintable and unreadable. In fact, in one place, she goes to the extent of saying that the last two children were not born to the petitioner, and when the petitioner asked her as to how she can say that, she replied by saying that she alone will know with whom she slept (Page 12 of Ex. P-7) :

49. The learned senior counsel for the respondent would submit that the respondent had said so in desperation on account of mental cruelty and insinuation made by the petitioner. In our country women are held in high esteem and no wife would ever stoop to the level of saying that children were not born to the husband and that she alone would know with whom she slept, whatever be the provocation.

50. When it came to the question of children, the respondent would state in one particular place in the taped conversation (page 61 of the list of documents -- typed set -- filed by the petitioner) that the petitioner can keep all the three children. In another place (page 77 of the typed set) she would state that she is least bothered about the marriage of the eldest daughter and she can run away with whomsoever she wanted. She further states (page 84 of the typed set) that she is not prepared to sacrifice her life for the sake of the children and she had told the same to her father. It is clear from the tape conversation that the respondent is least interested in the welfare of the three minor children. The conversation between the petitioner and the respondent, as could be seen from Ex.P-7, makes me to accept the case of the petitioner that it is the respondent who is causing mental cruelty to the petitioner.

51. The learned senior counsel for the respondent would state that the conversation (Ex.P-7) shows that the petitioner was on the defence. No doubt, he is right. According to me, the core of the problem lies with the petitioner being on the defence all along and the respondent has always been adopting an over power superior attitude. She has not treated the petitioner her husband with the dignity and respect which a husband deserves in Indian society. No doubt, it is beyond my province to embark and lay down the standards for Indian wives. However, I believe that the basic tradition and heritage of this great country should not be lost. Women's independence do not mean degradation of moral values. From the various documents and evidence referred to above, I am fully satisfied that the respondent is unfit to have the custody of the minor child Skanda. This Court is concerned with the paramount welfare of the minor child, which is a compendious term taking within its ambit the material physical well-being of the minor, education and up-bringing happiness and moral welfare. Nothing has been said against the petitioner as to why he should not have the custody of the minor child Skanda. There is no gainsaying that he hails from a respectable family and a family having substantial means. Already the first two children are with the petitioner. Whatever be the ideological and mental differences between the petitioner and the respondent, all the three children in my opinion should stay together and be brought up together which would be in their mutual interest and welfare. Admittedly, the respondent has claimed only visitation rights and right to keep the

first two children during week ends.

52. The respondent is employed in Park Sheraton Hotel and she draws a monthly salary of Rs. 1,050/-. She is depending on her parents, who have settled down in Madras with a view to lead a peaceful retired life. Already the respondent's parents have to nurse and take care of the grand mother of the respondent, who is said to be 80 years old. It will not be possible for the respondent to educate and bring up all the three children together. No doubt, though the petitioner is the legal guardian, law requires that the custody of a minor child below the age of five years should normally be with the mother. But, when circumstances are exceptional and when there are strong reasons to make the mother unfit to have the custody, it is the paramount duty of the Court to remove the minor child below five years from the custody of the mother and entrust the same to the father. I have already referred to very many circumstances which would reveal beyond any shadow of doubt that the respondent is totally unfit to continue to have the custody of the minor boy.

53. I am confining myself to the question as to whether the respondent is fit to have the custody of the minor boy and whether the petitioner has made out a case for departing from the normal rule envisaged under S. 6 of the [Hindu Minority and Guardianship Act, 1956](#). I have already found that it would be in the welfare and interest of the minor boy if all the three children are brought up together. Therefore I find, that the welfare and interest of the minor boy Skanda is best served if he is left in the custody of the petitioner, who is the natural guardian, and the respondent is unfit to have the custody of the minor child Skanda.

54. Before commencing the trial, I tried my level best to bring about rapprochement between the parties in their interest and in the interest of the minor children. On a number of occasions, the petitioner and the respondent met me in my Chamber. Though the petitioner was agreeable to my suggestion to forget the past and start a new life in an independent place along with the respondent and the children, the respondent not only did not evince any interest but turned down my suggestion and said that she is least interested in living with the petitioner. The necessitated me to the unpleasant task of taking up the trial and deciding the matter.

55. In the result, the Original Petition is allowed and the respondent is directed to hand over the custody of the minor child Skanda to the petitioner within one week from to-day. As regards Application No. 462 of 1992, I hold that the respondent shall have visitation right to meet all the three children on Saturdays and Sundays in the house of the petitioner. The respondent can also take the children out on Saturdays and Sundays with the permission of the petitioner and return their custody to the petitioner on the evening of Sundays at 5-00 p.m. The respondent will be at liberty to take out separate application for keeping the children during holidays. The Original Petition and the Application are ordered accordingly. However, in the circumstances of the case, there will be no order as to costs.

56. Petition allowed.

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