IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.HARILAL

&

THE HONOURABLE MR.JUSTICE T.V.ANILKUMAR

WEDNESDAY, THE 10TH DAY OF APRIL 2019 / 20TH CHAITHRA, 1941

Mat.Appeal.No. 182 of 2019

O.P.NO.608/2015 of FAMILY COURT, OTTAPPALAM, DATED 07-02-2019

APPELLANT/PETITIONER:

SUHARA,
AGED 43 YEARS,
W/O.ABDUL RASHEED, KILAYIL HOUSE, MUNNURKODE.P.O.,
OTTAPALAM TALUK, PALAKKAD DISTRICT, PIN-679502.

BY ADVS.
SRI.JACOB SEBASTIAN
SRI.K.V.WINSTON

RESPONDENT/RESPONDENT:

MUHAMMED JALEEL,
AGED 37 YEARS, S/O.AYAMU, KADAYAN KADAN HOUSE,
VAZHANKADA.P.O., MALAPPURAM DISTRICT, PIN-679357.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 21.3.2019, ALONG WITH MAT.APPEAL.198/2019, THE COURT ON 10.04.2019, DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.HARILAL

&

THE HONOURABLE MR.JUSTICE T.V.ANILKUMAR

WEDNESDAY, THE 10TH DAY OF APRIL 2019 / 20TH CHAITHRA, 1941

Mat.Appeal.No. 198 of 2019

O.P.NO.628/2015 of FAMILY COURT, OTTAPPALAM, DATED 07-02-2019

APPELLANTS/RESPONDENTS:

1 ABDUL RASHEED,
AGED 53 YEARS,
KILAYIL HOUSE,MUNNURKODE.P.O.,
OTTAPALAM TALUK,PALAKKAD DISTRICT,PIN-679502.

2 SUHARA,
AGED 43 YEARS,
W/O.ABDUL RASHEED,KILAYIL HOUSE,
MUNNURKODE P.O., OTTAPALAM TALUK,
PALAKKAD DISTRICT,PIN-679502.

3 SAJARUDHEEN,
AGED 29 YEARS,
S/O.ABDUL RASHEED,KILAYIL HOUSE,
MUNNURKODE P.O.,OTTAPALAM TALUK,
PALAKKAD DISTRICT,PIN-679502.

BY ADVS.
SRI.JACOB SEBASTIAN
SRI.K.V.WINSTON

RESPONDENT/PETITIONER:

MUHAMMED JALEEL,
AGED 39 YEARS,
S/O.AYAMU,KANDAN KADAN HOUSE,
VAZHANKADA.P.O.,ANAMANGAD,
MALAPPURAM DISTRICT,PIN-679357.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 21.3.2019 ALONG WITH MAT.APPEAL.182/2019, THE COURT ON 10.04.2019, DELIVERED THE FOLLOWING:

K.HARILAL
&
T.V.ANILKUMAR, JJ.

Mat.Appeal Nos.182 and 198 of 2019

Dated this the 10th day of April, 2019

J U D G M E N T

T.V.ANILKUMAR, J.

Common judgment in O.P.608 and 628 of 2015 passed by the Family Court, Ottapalam on 7.2.2019 is challenged by the petitioner in O.P.608/2015 in Mat.Appeal 182/2019 and by the respondents in O.P.628/2015 in Mat.Appeal 198/2019. The common respondent in both Mat.Appeals is the father of the girl child, Fathimathul Jasla, who was aged only 2 years on the date of institution of original petitions before the court below.

2. The grand mother of the child filed O.P.No.608/2015 for a decree of perpetual prohibitory injunction restraining the respondent herein from taking forcible custody of the child from her. The respondent severely opposed the petition and

simultaneously filed O.P.628/2015 for a decree claiming permanent custody of the child as against the appellants in Mat.Appeal No.198/2019 who are the grand parents of the child and also one of their sons. The Family Court while dismissing O.P.608/2015 for perpetual injunction chose to decree O.P.628/2015 entrusting the child to the permanent custody of respondent/father subject to the appellants' limited right of visitation of the child once in a month at the premises of Family Court, Ottapalam. Being aggrieved by the common judgment, these two separate appeals were filed.

3. Both O.Ps were jointly tried by the court below taking up O.P.No.608/2015 filed by the appellant, grand mother as the main case. The reference in this appeal to the parties, unless the context otherwise indicates, will be as per their rank in Mat.Appeal No.182/2019.

4. Appellant's daughter Sajna was married to respondent on 2.6.2011. She died at the matrimonial house on

8.5.2015. The marriage, the paternity of child and death of Sajna are not disputed facts in these appeals. According to the appellant, right from the date of death of her daughter Sajna, the child was taken care of and maintained at the house of the grand parents and family. The respondent declined to take care and maintain her as if he was not interested in the child. Sajna is said to have died under suspicious circumstances and therefore, a Crime No.91/2016 under Sections 498A, 304B, 302, 201 and Section 149 of IPC was registered against the respondent by Perinthalmanna Police, at the initiation of her father, PW2 and investigation is in progress. Respondent is alleged to be a drunkard and spendthrift who used to ill treat the deceased Sajna demanding dowry. It is his cruel conduct towards wife that is said to have resulted in her death. Respondent is alleged to be ambitious enough to remarry for his pleasure forgetting that he has a child to look after. He is totally disqualified and unfit to seek permanent custody of the

minor ward. No congenial environment exists in the family of respondent and if the child is allowed to stay with him, it will certainly ruin ward's life. On 23.11.2015, respondent is alleged to have made a vain attempt to remove the child from the custody, but it was foiled. Enumerating these allegations, the grand mother filed O.P.608/2015 for a decree of permanent prohibitory injunction.

5. The Family Court, Ottapalam, during the pendency of O.P.No.608/2015, was pleased to grant an *ad interim* ex parte injunction order, restraining the respondent from removing the child from the custody of the appellant.

6. The respondent filed defence statement. The contentions in the defence statement are identical to those taken by him in the petition in O.P.628/2015 also.

7. Respondent's allegation is that, right from the date of death of his wife, he alone maintained Fathimathul Jasla and took care of her affairs. There was no occasion for the

appellant or her family members to take care of the child or protect her. The child and the father were so intimately attached with each other to such an extent that the child used to call him as 'Umma'. He is not responsible for death of Sajna and as a matter of fact, her death was due to heart failure. She was an epileptic patient even before marriage which had been suppressed, but however, she was used to be treated at P.K.Das Hospital for her illness. The life of child with him will be most congenial for her all round growth and development. Another girl child of almost equal age born to his own brother is staying in his family house and therefore Fathimathul Jasla will certainly find her stay with respondent more comfortable than elsewhere. He is a driver by profession and has adequate means to maintain the ward. He is the natural guardian of the child and further very young also. The child was in his sole custody till 22.11.2015 when it was stealthily removed from his custody.

8. He continues to allege that when the appellant pestered him with repeated demands for custody of the child, he approached the Secretary of Bidathi Juma Masjid Mahal Committee to intervene in the matter and evolve a solution with respect to the custody of the child. He moved the Child Welfare Committee, Malappuram also in the meantime to intervene in the matter. The members of Mahal Committee of both parties held a meeting and it is stated that, on 9.10.2015 an amicable settlement was arrived at, whereby the respondent agreed to take the child to the appellant every Sunday, allowing the ward to stay at her house since morning till evening. According to the respondent, this arrangement continued for a few weeks, but on 22.11.2015 surprisingly and under some false pretext, the appellants in Mat Appeal No.198/2019 declined to return the child but instituted O.P.608/2015 for injunction and obtained an interim order of temporary injunction against alleged forceful removal of the

child from their custody misrepresenting facts.

9. The respondent's case is that the Child Welfare Committee deputed RW5, Chairman of Indira Priyadarsini Cultural Centre to prepare a Social Investigation Report and report the true state of affairs in which the ward was placed, to the Committee. Ext.B4 Social Investigation Report revealed the respondent to be a loving parent and nothing rendered him unfit for permanent custody of the child. A settlement formula suggested by the Committee in the interest of the child was also accepted by the parties which, however, did not materialize. In the meantime, the respondent moved the High Court and obtained Ext.A1 order dated 3.4.2017 in O.P.(FC)No.687/2016, whereby the temporary custody of the child was granted to him also since 7.4.2017 onwards once in every alternate week. The child thereafter continues to be in the custody of both the appellant and the respondent as per the arrangement made by the High Court. In the meantime, the appellant admitted the

child to Moloor Central School, Nellaya in L.K.G. and respondent also did the same exercise by admitting the child in MIC English Medium School, Thazhakkode West, to his liking. On these facts, the respondent claimed permanent custody of the child in O.P.628/2015. The defence statement of appellant in O.P.628/2015 contains same allegations which she raised in the original petition in O.P.608/2015.

10. The Family Court, Ottapalam considered two essential questions as to (i) whether the appellant was entitled to obtain a decree of perpetual prohibitory injunction against the father of the ward restraining him from taking forcible custody of the child from the appellant and also (ii) whether he is fit and qualified enough to secure permanent custody of the ward in preference to the grand parents.

11. The grand mother, appellant was examined as PW1. Her husband too was examined as PW2. The Manager of Moloor Central School, Nellaya where the child was admitted

to L.K.G. was examined as PW3. Documents proving admission to school and evidencing payment of tuition fees were tendered and marked in evidence as Exts.A2 to A6 and A8 and A9 and Exts.X1 to X3. The respondent also examined his own witnesses and tendered Exts.B1 to B13 in evidence. Besides his testimony as RW1, he summoned and examined the Secretary of Mahal Committee Rahmaniya Juma Masjid Committee and also another member thereof as RWs 2 and 4 respectively to prove Ext.B5 decision of the Mahal Committee dated 9.10.2015. The records relating to admission of child to MIC English school, Thazhakkode West at the instance of the respondent were proved as Exts.X4 and B6 to B9. The treatment records of deceased Sajna marked as Exts.B2, B3 and B10 were proved through RW3, Doctor in P.K.Das Hospital. The Social Investigation Report prepared by RW5 at the instruction of the Child Welfare Committee, Malappuram was marked in evidence as Ext.B4. The Deputy Superintendent,

Perinthalmanna proved Ext.B13 Report intimating that the Crime No.91/2016 on the file of Perinthalmanna Police Station was referred as false.

12. On consideration of the entire evidence on record, the court below entered into a finding that the child was ever since the death of Sajna, taken care of and maintained by the respondent, father alone as proved by Ext.B5 settlement agreement arrived at, at the instance of the Mahal Committees of both parties. Finding that there was material suppression of Ext.B5, the court below refused to grant injunction and accordingly dismissed O.P.No.608/2015. No significance was attached to Crime No.91/2016 nor to the alleged suspicious circumstances under which the mother of the child died at the matrimonial house. It was of opinion that stay of child with the respondent, the biological father alone would promote the welfare of the child. It did not come across any of the circumstances which could disqualify the respondent from

being a fit and competent guardian of the child. O.P.No.628/2015 filed by the father for permanent custody of the child was thus decreed in favour of the respondent.

13. After hearing the counsel appearing on both sides, we consider the following points being worthy of consideration:

1. Whether the respondent/father in these Mat.Appeals could establish himself to be entitled to permanent custody of the child, Fathimathul Jasla, who is presently 5 years?

2. Whether the criminal proceeding initiated against the respondent in Crime No.91/2016 has any relevance and impact in deciding the question of custody of the child?

3. Whether welfare of the ward demands permanent stay of her with respondent/father and the decree for permanent custody granted by the court below requires any interference?

4. Whether appellant is entitled to a decree of

permanent injunction restraining the respondent/father from interfering with and also removing the child from the custody of appellant?

14. All the points are taken up together for consideration for the sake of convenience.

15. When there is rival claim for guardianship, the court's power to appoint the most suitable person among the contestants could be exercised only upon taking into view those considerations which weigh in favour of the welfare of the child. In other words, the welfare of the child is of paramount consideration than the *interse* rights between the rival contestants for permanent custody. This principle is given effect to in Section 17 of the Guardians and Wards Act, 1890 (for short 'the G&W Act') and reiterated in **Athar Hussain** v. **Syed Siraj Ahmed and Others [2010 KHC 4004]** and **Nil Ratan Kundu and Another** v. **Abhijit Kundu [(2008) 9 SCC 413]** as rightly submitted by the learned counsel for the appellants. In other

words, before deciding to grant permanent custody of child, the court shall take into account the totality of the circumstances in which the child is placed and consider whether entrustment of child to the permanent custody of the petitioning guardian would be in the interest of welfare of the child. In this process, the character of the proposed guardian and also his capacity to maintain the child are also matters requiring consideration. It is equally mandatory that the court has to interact with the child to ascertain the preferential choice which the child may make if he or she is old enough to form an intelligent preference.

16. Sofar as this case is concerned, the court below interacted with the child but was not able to ascertain her wish since the child was not of such a matured age as to be able to form intelligent preference. The impression of the court after interacting with the child was recorded in paragraph 17 of the impugned common judgment.

17. As regards the character of the respondent, the

appellant's allegation is that he is a drunkard and spendthrift and seldom demonstrated any interest in the welfare of the child. This allegation was not proved or substantiated by the appellant by any convincing evidence. No specific incident was alleged either in the pleadings or evidence to the effect that the child was ever subjected to any act of cruelty. It is also very pertinent to note that Ext.B4 Social Investigation Report prepared by RW5, Chairman of Indira Priyadarsini Cultural Centre did not indicate that the respondent/father was a man of any immoral character or disqualified for permanent custody of the ward. He incorporated along with Ext.B4, a compromise agreement entered into between parties with respect to the custody of the child. The report itself indicates that the agreement could not fructify and be put into effect for reasons best known to the parties alone. It suffices to say that neither the testimonies given by appellants 1 and 2 nor their witnesses and Ext.B4 Social Investigation Report disclosed objectionable

conduct on the part of the respondent, towards the child disentitling him to a claim for permanent custody of the child.

18. The appellant's contention is that immediately after the death of her daughter Sajna, the child was taken care of and maintained by her and the family as if the respondent did not show any interest in the welfare of the minor ward. Not only that this allegation was not proved, but it was belied also by evidence on record. The respondent contended that right from the date of death of her wife, he alone undertook the custody of the child maintaining her and it lived with him very happily till 22.11.2015 when he was tactfully deprived of its custody. This contention seems to be probable in view of Ext.B5 amicable decision dated 9.10.2015 taken by the Mahal Committees of both parties settling the issue regarding the custody of the child on the motion of the respondent himself when he was allegedly pestered by the appellant with repeated demands for custody of the child. Ext.B5 was proved through RW2, Secretary of

Rahmaniya Juma Masjid Committee, Bidathi and also one of the members of the Mahal examined as RW4. Ext.B5 Committee decision shows that respondent agreed to take the child to the house of appellants every Sunday allowing her to stay with them since morning till the evening of the day. This arrangement continued for a few weeks also. But according to respondent, on 22.11.2015, under some false pretext, the child was not returned by appellant. Instead she filed O.P.608/2015 and obtained an interim order of injunction restraining him from taking forcible custody of the child.

19. PW1, appellant and her husband, PW2 were not prepared to admit in their pleadings before the Family Court that there was any amicable settlement at the instance of both families in the joint meeting of their Mahal Committees. But during the cross examination, these witnesses admitted that mediation was actually held but the settlement arrived at was limited only to resolution of dispute with respect to gold as well

as custody of a vehicle. This admission in the cross examination is not consistent with their early version in the pleadings. Furthermore, PW2, grand father of the child, during his cross examination admitted that he had given Ext.B4(C2) statement before RW5, Chairman of Indira Priyadarsini Cultural Centre and all that was recorded therein was true. In the said statement, he is seen to have admitted that under Ext.B5 settlement arrived at in the meeting of Mahal Committees, issue with respect to custody of the ward was also discussed and following the compromise between parties, the respondent used to entrust custody of the child with appellants for a few weeks every Sunday. Eventhough he was not confronted with Ext.B4 (C2) previous statement as required by Section 145 of Indian Evidence Act, 1872, it was rightly admitted under Section 14 of the Family Courts Act, 1984 which dispenses with strict rule of admissibility. This conduct on the part of PW2 proves that the custody of the child devolved only on the respondent

immediately after the death of his wife, Sajna. Therefore itself, the allegation that he did not show any interest in the welfare of the child and was only interested in contracting a second marriage as if he was unconcerned with the affairs of the child is quite improbable and also contrary to the evidence on record.

20. Eventhough the Family Court refused to grant interim custody to the respondent, he secured Ext.A1 order from High Court in O.P.(FC)No.687/2016, directing the appellants to hand over custody of the child to respondent every alternate week from 7.4.2017 onwards. It is a fact that the grand parents of the child admitted her in Moloor Central School, Nellaya in L.K.G. on 6.2.2017 and she pursued her studies in the same school in U.K.G. also. This is not disputed by respondent also and even otherwise also, Exts.A2, A3, A4, A8 and A9(a) cash receipts for payment of fees etc. prove the child's admission to the Moloor Central School, Nellaya. It also remains to be a fact that the respondent too after he got interim custody of the child as per

the direction of the High Court in Ext.A1 order, admitted the child in an another School of his choice called MIC English Medium School. Exts.B6 to B9 and Ext.X4 are records which prove that the child used to attend that school as well.

21. The learned Judge of the Family Court noted the fate of the unfortunate child to attend two different schools in the same academic year on account of the unhealthy fight as between grand parents on one side and father on the other side. The court below probed into the sustainability of environment wherein the child could find herself to be comfortable and it held on evidence that her stay with the father/respondent alone would promote her welfare in all respects including education. In the house of RW1/respondent, his parents and other members are also residing. A child of his brother almost equal in age also resides in his family and this would certainly give Fathimathul Jasla a congenial company. It is a fact that the child cannot hope to get such a company in the house of the appellants. The court

below also found on evidence that MIC English Medium School is much more closer to the house of RW1 whereas Moloor Central School is 10 Kms away from the house of the appellants.

22. RW1 is a Driver by profession who has enough resources to maintain the child. Quite naturally, the grand parents of the child are advanced in age than RW1 whose life time is naturally longer. Considering the circumstances and environment in which the child could be better placed, the court below, according to us, rightly found that her life with father/ respondent alone would promote her interests and welfare in life. On re-appreciating the evidence before us also, we do not find any reason to interfere with the finding of the court below that the respondent/father is the fit and proper person to whom permanent custody of the child could be safely entrusted. According to us, the decision to refuse to grant permanent injunction and dismiss O.P.608/2015 taken by the court below is sound.

23. The learned counsel for the appellants advanced an argument that the very fact that respondent is involved in Crime No.91/2016 by itself would disqualify him from functioning as the guardian of the child. According to him, the criminal antecedent of the respondent is a relevant fact to be taken into account by the Family Court while deciding the claim for permanent custody of the child and in this respect, our attention was drawn to paragraphs 62 to 64 of **Nil Ratan's** case (supra) and paragraph 8 of the decision reported in **Yogesh Kumar Gupta** v. **M.K.Agarwal and Another [2009 KHC 7140]**. But we find that the said decisions are clearly distinguishable on facts so far as the present case before us is concerned. Crime No.91/2016 registered against the respondent for offences punishable Sections 498A, 304B, 302, 201 and Section 149 of IPC was referred as false by RW6, Deputy Superintendent of Police through Ext.B13 refer report. The investigating agency could not come across any circumstance incriminating the respondent so as to

hold him as being responsible for the death of Sajna.

24. It is true that as per Ext.A7 letter dated 21.12.2017 issued from Additional Chief Secretary, the crime is still under re-investigation. In our opinion, only because the crime against the respondent is still under re-investigation after issue of Ext.B13 refer report, it could never be taken as a relevant fact for refusing claim of respondent for custody if the claim could be shown to be otherwise legitimate and justifiable. It is an admitted fact that till the death of Sajna, no complaint whatsoever either verbal or written had been made against the respondent before any of the authorities raising any kind of allegation of ill treatment demanding dowry. The appellants made allegations implicating respondent as being responsible for the death of Sajna for the first time only on 24.11.2015, i.e. after elapse of six months since the date of death. On the other hand, **Nil Ratan's** case (supra) is based on an incident where the father of the child was found on evidence to be involved in crime

and was arrested also by police upon cogent materials which sufficiently incriminated the accused. Therefore, we hold that merely because a crime alleging dowry death is under further investigation, the claim for custody of minor ward cannot be denied to the respondent if he is otherwise legitimately entitled to custody especially when the complaint against him was referred as false on a former occasion. On facts, evidence and also principles of law, we do not find any reason to disagree with the view of the court below that the respondent, father is a fit and proper person to be entrusted with permanent custody of the child. We are satisfied that the welfare of the child demands her stay with the father.

25. The learned counsel for the appellants took us to the discussion made by the court below in paragraph 13 of the impugned common judgment referring to a Crime No.849/2018 of Perinthalmanna police station registered under Sections 5 and 6 of the Protection of Children from Sexual Offences Act, 2012

(for short 'the POCSO Act') and taking a view that it was a false incident. According to the learned counsel, the character of the guardian being one of the essential components stipulated in Section 17 of the G&W Act, for determining the claim for permanent custody, the alleged sexual abuse of the ward by the parent himself certainly disqualifies him from being entitled to plead for permanent custody of the child. We are of the view there is nothing on record to probabilise the allegation as being true.

26. We notice that none of the medical or any records in Crime No.849/2018 of Perinthalmanna police station was produced before the court below and it is not known also as to whether statement of the child was recorded by the authorities concerned. What appears from paragraph 13 of the impugned judgment is that while the respondent had the occasion of being in custody of the child pursuant to Ext.A1 order of High Court, he sexually abused the child. The child is stated to have

complained to PW1, when it was returned to her custody, about pain on her stomach and private part, whereupon she was taken to a Gynecologist in Taluk Hospital, Ottapalam. The Doctor then informed the matter to the police officials at Perinthalmanna who registered Crime No.849/2018 against the respondent under the POCSO Act.

27. The learned counsel for the appellants wanted us to call for statement of the child, if any, recorded under Section 164 of the Code of Criminal Procedure and peruse the same. We do not feel ourselves being legally bound in this appeal to go to such an extent in the light of the proved facts and circumstances and also the over all conduct of the appellants in the case. In any view of the matter, we notice that no such request was placed before the court below seeking to call for such a statement before the court if such a course of action was permissible under law.

28. In our opinion, mere registration of a crime under the

provisions of the POCSO Act against the parent of the ward is no assurance to a Family Court that allegation of sexual abuse made against him is nothing but true. The allegation made against the biological father could be true in rare cases, but could be wholly false also. The Family Court, before which such registration of crime is proved must necessarily apply its mind and endeavour to find out the true circumstances which activised the registration rather than being allured by the mere fact of registration. Unless a very cautious approach is adopted by the Family Court to ensure that information on which crime was registered is not frivolous and vexatious, many a innocent parent fighting for custody of his own ward would be victim of false implication of crimes under the POCSO Act. There is a growing tendency in the recent years to foist false crimes against the biological father alleging sexual abuse of own child misusing the provisions of the POCSO Act when serious fight for custody of ward is pending resolution before the Family Courts. The

Family Courts to whose notice registration of crime under the POCSO Act is brought owe an onerous responsibility to ensure that the registration of crime against the parent is not a ruse for defeating his legitimate claim for custody of the ward. The Family Courts ought to examine the outcome of investigation of the crime placed before the court and also take into consideration all relevant facts and circumstances which would help the Judge form a prima facie opinion as to whether the allegation of sexual abuse of the ward is baseless or not. Each case requires to be approached and evaluated on its own facts and we realise that no hard and fast approach could be laid in this respect at all. We do not mean to say that Family Courts should disregard the materials collected by the investigating agency in the crime and hold a total independent enquiry in order to get at the truth or veracity of the allegation. We make it clear that unless there are reliable materials capable enough to convince the allegation of sexual abuse to be well founded, mere

registration of crime shall not be reckoned as a ground for rejecting the claim of the parent for custody of the child.

29. Applying the test above, we find that the appellant has not been able to establish by any materials that the allegation of sexual abuse against the respondent is true or convincing. No result of investigation has been placed either before the Family Court or in appeal. We are told that respondent has not been arrested in connection with the crime hither to despite reasonably a long interval is over. Non arrest itself appears to be one of the circumstances which doubts respondent's alleged involvement of the crime.

30. The entire background of the case in which the allegation against the respondent came to be made also requires to be appraised of. This is a case where right from the date of death of the mother, custody of the child devolved on the respondent. Following the rival claims for custody of the child, the Mahal Committees of both the parties and also the Child

Welfare Committee intervened and came out with a settlement agreement which did not materialise. Bitter enmity in the relationship between parties must be reasonably presumed from the above conduct of parties. Sofar as respondent is concerned, he is put to an allegation that he is responsible for the death of Sajna, but the same could not be substantiated hither to in spite of exhaustive investigation being undertaken in this respect. The case against him was referred as false also. It is also a fact that pursuant to a move by the appellants for re-investigation, with the Government, no tangible progress could be made in that behalf. In this case, we are satisfied that the respondent has neither been shown to have conducted himself in a manner unbecoming of a father nor infringing the interest and welfare of the ward.

31. The Family Court Judge, in his interaction with the child in his chamber could not elicit anything in this regard incriminating the father but only found that the child was so

immature enough to speak to facts and take preferential choice of guardian with respect to her stay.

32. We fully agree with the view taken by the court below that the registration of alleged crime against the respondent is not sufficient to disentitle him to seek for permanent custody of the child. We do not find any ground to interfere with the finding of the court below that respondent is entitled to permanent custody of the child. But at the same time, we want to reiterate the settled principle of law that no order of custody of ward is final and conclusive in as much as it is always liable to further judicial scrutiny and modification by the court depending on proof of substantial changes in the circumstances that occur in the growing life of the ward and guardian. When occurrence of substantial changes is brought to the notice of the Family Court, it is bound, in appropriate cases to modify the orders of custody no mater the original petition itself has culminated in a decree for permanent custody and the

proceeding before the court has come to a logical conclusion.

33. The court below allowed the appellants to have only a limited right of visitation and right to keep temporary custody of the child on 1st Saturday of every month at the premises of Family Court, Ottapalam from 10.00 a.m. to 4.00 p.m. Considering the subsisting relationship of the child with the appellants, we deem it fit and proper to modify and extend the number of days of custody of the child granted by the court below, to every Saturday in a month from 10.30 a.m. till 4.00 p.m. Point Nos. 1 to 4 are answered accordingly.

In the result, Mat.Appeal Nos.182 and 198 of 2019 are dismissed confirming the common judgment dated 7.2.2019 of the Family Court, Ottapalam subject to the modified visitation right of the grand parents who are appellants 1 and 2 in Mat.Appeal 198/2019. The child shall be handed over by the respondent to the custody of the grand parents at the premises of Family Court, Ottapalam every Saturday enabling the child

to stay with appellants 1 and 2 from 10.30 a.m. till 4.00 p.m. The court below will be at full liberty to issue appropriate and necessary orders with respect to the custody of the child on the motion of either of the parties, on proof of the change of circumstances in the life of the child, father and the grand parents.

Sd/-
K.HARILAL
JUDGE

Sd/-
T.V.ANILKUMAR
JUDGE

Bb

[True copy]

P.A to Judge