

"C.R"

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

THURSDAY, THE 14TH DAY OF JULY 2022 / 23RD ASHADHA, 1944

MAT.APPEAL NO. 816 OF 2014

AGAINST THE ORDER/JUDGMENT IN OP 303/2013 OF FAMILY COURT,
KOLLAM

APPELLANT/PETITIONER:

JAMES ROBERT EDWARD PEIRCE
AGED 52 YEARS
S/O.CHARLES ROBERT PEIRCE, 13 DEPDENE,
COURTKINGSWOOD ROAD, SHORTLANDS BROMLEY, POST - BR
20 NW, UNITED KINGDOM, NOW RESIDENT OF ROOM NUMBER
319, CASINO HOTEL, WELLINGTON ISLAND,
KOCHI - 682 003.

(REPRESENTED BY POWER OF ATTORNEY HOLDER)
MR.MATHEW CAIN CUMES, S/O.MILES CUMES, AGED 48
YEARS, PRESENTLY RESIDING AT MIG -19, HOUSE
NO.8/788, SHANTI NAGAR, KOOVAPADAM, MATTANCHERY -
682 002 REPRESENTS THE APPELLANT AS POWER OF
ATTORNEY HOLDER AS PER ORDER DATED 30.05.16 IN IA
1669/16 IN MA 816/14.

BY SRI.JAMES ROBERT EDWARD PEIRCE (Party-In-Person)

RESPONDENT/RESPONDENT:

1 ANNA MATHEWS
AGED 39 YEARS
W/O.JAMES ROBERT PEIRCE, JM MANOR SASTHA TEMPLE
ROAD, MANAPPATTI PARAMBU KALoor, ERNAKULAM NOW
RESIDING AT NETTO HOUSE, PALLIVILAKAM, MAYYANAD,
KOLLAM, PIN 691 303.

2 JIJI MATHEWS
NETTO HOUSE, PALLIVILAKAM, MAYYANAD KOLLAM,
PIN: 691 303.

3 SUJATHA MATHEWS
NETTO HOUSE, PALLIVILAKAM, MAYYANAD KOLLAM, PIN:
691 303.

BY ADV SRI.T.K.ANANDA KRISHNAN

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
21.06.2022, ALONG WITH Mat.Appeal.836/2014 AND CONNECTED
CASES, THE COURT ON 14.07.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

THURSDAY, THE 14TH DAY OF JULY 2022 / 23RD ASHADHA, 1944

MAT.APPEAL NO. 836 OF 2014

**AGAINST THE ORDER/JUDGMENT IN OP 302/2013 OF FAMILY COURT,
KOLLAM**

APPELLANT/RESPONDENT :

ANNA MATHEWS
AGED 40 YEARS
D/O. GIGI MATHEWS, PALALIVILAKAM HOUSE, MAYYANADU,
KOLLAM.

BY ADVS.
SRI.T.K.ANANDA KRISHNAN
SRI.P.SAJU

RESPONDENT/PETITIONER:

JAMES ROBERT EDWARD PEIRCE @ TOM
AGED 53 YEARS
S/O. CHARLES ROBERT PEIRCE,
13, DEPDENE, COURT KINGSWOOD ROAD, SHORTLANDS
BROMLEY, POST - BR 20 NW, UNITED KINGDOM,
RESIDING AT 3B, BAY VIEW APARTMENTS,
FORT KOCHI - 682 001.

BY SRI.JAMES ROBERT EDWARD PEIRCE (PARTY-IN-
PERSON)

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
21.06.2022, ALONG WITH Mat.Appeal.816/2014 AND CONNECTED
CASES, THE COURT ON 14.07.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

THURSDAY, THE 14TH DAY OF JULY 2022 / 23RD ASHADHA, 1944

MAT.APPEAL NO. 849 OF 2014

**AGAINST THE ORDER/JUDGMENT IN OP 1028/2012 OF FAMILY COURT,
KOLLAM**

APPELLANT/PETITIONER:

ANNA MATHEWS,
AGED 40 YEARS,
D/O.GIGI MATHEWS, PALALIVILAKAM HOUSE, MAYYANADU,
KOLLAM. FROM 5B, JM MANOR, SASTHA TEMPLE RD,
MANAPPATTIPARAMBU, KALOOR - 682 017.

BY ADVS.
SRI.T.K.ANANDA KRISHNAN
SRI.P.SAJU

RESPONDENT/RESPONDENT:

JAMES ROBERT EDWARD PEIRCE @ TOM
AGED 53 YEARS
S/O.CHARLES ROBERT PIECE, 5B, JM MANOR,SASTHA
TEMPLE ROAD, MANAPPATTIPARAMBU,KALOOR - 682 017.

BY SRI.JAMES ROBERT EDWARD PEIRCE (PARTY-IN-
PERSON))

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
21.06.2022, ALONG WITH Mat.Appeal.816/2014 AND CONNECTED
CASES, THE COURT ON 14.07.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

THURSDAY, THE 14TH DAY OF JULY 2022 / 23RD ASHADHA, 1944

RP NO. 835 OF 2020

AGAINST THE ORDER DATED 30.10.2020 IN I.A No.2/2020 IN

Mat.Appeal 816/2014 OF HIGH COURT OF KERALA

PETITIONER/APPELLANT:

JAMES ROBERT EDWARD PEIRCE
OF 3 THE VILLAGE, CHIDDINGSTONE, KENT, U.K.
PRESENTLY RESIDING AT HOTEL RAINTREE LODGE, 1/628,
PETERCELLI STREET, FORT COCHIN - 682 001.

BY SRI.JAMES ROBERT EDWARD PEIRCE (Party-In-Person)

RESPONDENTS/RESPONDENTS:

ANNA MATHEWS (1)
SUJATA MATHEWS (NEE NETTO) (2), JIJI MATHEWS (3) OF
NETTO HOUSE, PALIVILAKOM, MAYYANAD,
KOLLAM DIST. - 691 303.

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON
21.06.2022, ALONG WITH Mat.Appeal.816/2014 AND CONNECTED
CASES, THE COURT ON 14.07.2022 PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

THURSDAY, THE 14TH DAY OF JULY 2022 / 23RD ASHADHA, 1944

WP(C) NO. 7321 OF 2016

PETITIONER :

JAMES ROBERT EDWARD PEIRCE
AGED 54 YEARS
S/O CHARLES ROBERT PEIRCE, RESIDING AT 1/292,
PICAN CASA, NAPIER LANE, FORT COCHIN, ERNAKULAM.

BY ADVS.

SRI.C.K.RAPHEEQUE
SRI.K.B.NIDHINKUMAR

RESPONDENTS : :

- 1 MINISTRY OF EXTERNAL AFFAIRS,
REPRESENTED BY THE FOREIGN SECRETARY, SOUTH BLOCK,
CENTRAL SECRETARIAT, NEW DELHI-110 001.
- 2 MINISTRY OF HOME AFFAIRS,
REPRESENTED BY THE HOME SECRETARY, NORTH BLOCK,
CENTRAL SECRETARIAT, NEW DELHI-110 001.
- 3 FOREIGNERS REGIONAL REGISTRATION OFFICER,
OFFICE OF THE BUREAU OF IMMIGARATION, 2ND FLOOR,
CIAL, KOCHI.
- 4 REGIONAL PASSPORT OFFICE,
SNSM BUILDING, KARALKADA JUNCTION, PETTAH P.O,
TRIVANDRUM-695 024.

5 UNIQUE IDENTIFICATION AUTHORITY OF INDIA,
REPRESENTED BY ITS DIRECTOR GENERAL AND MISSIONS
DIRECTOR, 3RD FLOOR, TOWER II, JEEVAN BHARATI
BUILDING, 124 CONNAUGHT CIRCUS, NEW DELHI.

6 ANNA MATHEWS,
W/O.JAMES ROBERT EDWARD PEIRCE, HAVING PERMANENT
ADDRESS AT NETTO HOUSE, PALLIVILAKAM, MAYYANAD,
KOLLAM, PIN-691 303.

7 JIJI MATHEWS
RESIDING AT NETTO HOUSE, PALLIVILAKAM, MAYYANAD,
KOLLAM, PIN-691 303.

BY ADVS.
SRI.SUVIN R.MENON, CGC
SRI.T.K.ANANDA KRISHNAN
SRI.ANTONY C. ETTUKETTIL
SRI.P.SAJU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 21.06.2022, ALONG WITH Mat.Appeal.816/2014 AND CONNECTED
CASES, THE COURT ON 14.07.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE &

THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

THURSDAY, THE 14TH DAY OF JULY 2022 / 23RD ASHADHA, 1944

CRL.REV.PET NO. 1292 OF 2016

CRA 225/2014 OF ADDITIONAL DISTRICT & SESSIONS COURT - VI,

KOLLAM

MC 34/2013 OF CHIEF JUDICIAL MAGISTRATE COURT, KOLLAM

PETITIONER/RESPONDENT/RESPONDENT

JAMES ROBERT EDWARD PEIRCE
AGED 54 YEARS
S/O. CHARLES ROBERT PEIRCE, AGED 54 YEARS, RESIDING
AT 1/292, PICAN CASA, NAPIER LANE, FORT COCHIN,
ERNAKULAM.

BY ADVS.
SRI.V.AJAKUMAR
SRI.T.M.CHANDRAN
SRI.SIDHARTH A.MENON

RESPONDENTS/APPELLANT/1ST PETITIONER:

- 1 ANNA MATHEWS
W/O. JAMES ROBERT EDWARD PEIRCE, HAVING PERMANENT
ADDRESS AT NETTO HOUSE, PALLIVILAKAM, MAYYANAD,
KOLLAM, PIN- 691 303.
- 2 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM. PIN- 682 031.

BY ADV SRI.P.SAJU

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 21.06.2022, ALONG WITH Mat.Appeal.816/2014 AND
CONNECTED CASES, THE COURT ON 14.07.2022 PASSED THE
FOLLOWING:

'C.R'

**A.MUHAMED MUSTAQUE &
SOPHY THOMAS, JJ.**

Mat Appeal Nos.816, 836 & 849 of 2014,
R.P No.835 of 2020 IN I.A. No.2 of 2020 in
Mat Appeal No.816 of 2014, W.P(C) No.7321 of 2016
& Crl.R.P No.1292 of 2016

Dated this the 14th day of July, 2022

J U D G M E N T

Sophy Thomas, J.

*‘Love is blind, which knows no reason, no
boundaries, no distance’.*

Sri.James Robert Edward Peirce, a British National, fell in love with Smt.Anna Mathews, a Keralite lady, and they got married on 22.11.2008 at St.Francis CSI Church, Kochi. They lived together as husband and wife, and a boy child was born in their lawful wedlock. Their relationship became strained due to incompatibility of nature and temperament and they fell apart, and from July 2012 onwards, they are living separate. Thereafter they launched several litigations against each other for custody of the child, domestic violence, restitution, divorce etc.

2. The husband is a freelance filmmaker who often visits Kochi, and he was involved in various film projects for promoting tourism in India. The wife, who was a Journalist, got acquainted with him at Fort Kochi, and their acquaintance developed into a love affair, which eventually lead to their marriage. According to the wife, after marriage, she was ill-treated by the husband, and he continued his ill-treatment even after birth of the child. Since she was not able to withstand the cruelties extended to her by the husband, she returned to her paternal house along with her child. Thereafter she filed O.P No.1028 of 2012 to dissolve their marriage. The husband filed O.P No.302 of 2013 for restitution of conjugal rights, and also O.P No.303 of 2013 for getting guardianship and custody of his minor son Samuel Charles Robert Peirce alias Sam.

3. The Family Court, Kollam tried the above three O.Ps together treating the O.P for divorce as the leading case. PWs 1 and 2 were examined and Exts.A1 to A3 were marked from the side of the petitioner/wife, and RWs 1 and 2 were examined and Exts.B1 to B29 were marked from the side of the respondent/husband. As per common order dated 19.08.2014,

the Family Court dismissed the Divorce O.P filed by the wife, and allowed the restitution O.P filed by the husband. The O.P filed by the husband for getting guardianship and custody of the child was also dismissed.

4. The wife filed Mat.Appeal No.849 of 2014 against dismissal of her divorce petition and Mat.Appeal No.836 of 2014 against the decree for restitution of conjugal rights granted in favour of the husband. The husband filed Mat.Appeal No.816 of 2014 against the dismissal of O.P (G&W) No.303 of 2013.

5. In Mat.Appeal No.816 of 2014, the husband filed I.A No.2 of 2020 for getting interim custody of the child, and as per order in that I.A, he was given interim custody and contact rights through telephone calls. He filed R.P No.835 of 2020 in I.A No.2 of 2020 for shared custody of the child with both the parents, and to repatriate the child to U.K, to live with his father.

6. The husband filed W.P.(C) No.7321 of 2016 against his wife, mother-in-law and also against Government officials, for issuing a writ of mandamus or other appropriate orders to impound the Indian passport and Aadhar card of the child, as those documents were acquired, suppressing the fact that the

child was a British citizen holding British passport.

7. The husband filed Crl.R.P No.1292 of 2016 against the judgment in Crl.Appeal No.225 of 2014, which was filed by the wife against dismissal of M.C No.34 of 2013 on the file of Chief Judicial Magistrate Court, Kollam. According to him, in the appeal no notice was served on him, and his wife had given a wrong address to avoid service of notice to him.

8. Now let us have a re-appraisal of the available facts and evidence, to find out whether any interference is warranted in the orders and judgments impugned.

9. Firstly, let us consider the cases for divorce and restitution.

10. The wife alleging matrimonial cruelties against her husband sought for a decree of divorce. According to her, the husband made her to believe that he was very loving and affectionate with sufficient financial background. But, from the very next day of marriage, he started demanding money from her. He was staying with her in the flat owned by her father. During her pregnancy period, she was tortured mentally. While she was admitted in hospital for delivery, he picked up quarrel

with the doctor for conducting cesarean delivery and even slapped her father for permitting cesarean, under the guise that he needed everything naturally. He was not allowing her to take medicines after delivery. He even locked her and her child in the flat, and only with the aid of police, she could escape. From 2012 July onwards, they are living separate and she is not intending to continue her matrimonial relationship with him anymore as it will be injurious to her and her child.

11. The husband also is admitting the fact that from 2012 onwards, they are living separate and for the last ten years, there is no matrimonial relationship between them. According to him, there is no genuine reason to dissolve their marriage, and still he is ready to continue his conjugal relationship with his wife. At the same time, he is admitting the incident that occurred in the hospital in connection with the delivery of his wife. He has admitted in his pleadings that he wanted everything naturally in tune with the environment, and so he intended to have delivery of his child in its natural way. But his wife opted for a cesarean delivery in a hospital near to her house at Kollam. He is admitting that some unhappy incidents occurred in the hospital, and

thereafter his parents-in-law were not cordial with him. According to the wife, since her condition was critical, doctors opted for cesarean delivery only to save the mother and child.

12. The husband also is alleging various acts of cruelty against his wife and her parents. According to him, the child was baptised without his consent, and against his wish to conduct the same in St.Francis Church in Fort Kochi, where their marriage was blessed. He was not allowed to sleep with his baby in the bedroom of his wife. He was often threatened by her father that he would call Police if he tried to mingle with his wife and child. He was not even allowed to reach her house to see his child. So, even according to him, he was put under acute mental agony and stress, by the cruel nature and acts of his wife and her parents.

13. Both parties are alleging cruelty against each other. The wife wants a decree of divorce. But the husband is not willing for a divorce on mutual consent, though he is aware of the fact that, for the last ten years they are living separate without any matrimonial relationship. The incidents of cruelty narrated by the wife, are sufficient to hold that it was not possible for her to lead a peaceful family life with him. When interim custody of the child

was given to him, he took the child deceitfully to U.K, without informing the mother and also without taking permission from the court, after creating fake travel documents, and the wife had to travel all the way to U.K to get an order from the U.K court to take the child back to India. Taking the minor child beyond the reach of the mother without her consent, and even violating the interim custody orders of the court, is nothing but cruelty against the wife and her motherhood.

14. In **Beena vs. Shino G Babu** (2022 (2) KLT 139), we have held that, when both the parties are unable to lead a meaningful matrimonial life due to inherent differences of opinion, and one party is willing for separation and the other party is withholding consent for mutual separation, that itself would cause mental agony and cruelty to the spouse who demands separation. There is no useful purpose served in prolonging the agony any further, and the curtain should be rung at some stage.

15. The parties are living separately for the last more than ten years. There is no chance for a reunion, as revealed from the discussions we have had with the parties. There is no merit in

preserving intact a marriage, when the marital tie becomes injurious to the parties. Therefore, we are of the view that there is no chance to save their marriage, and the decree for restitution of conjugal rights has nothing to do with their dead relationship.

16. Considering all these facts and circumstances, we have no hesitation to dissolve their marriage on the ground of matrimonial cruelties.

17. Hence Mat.Appeal Nos.836 and 849 of 2014 are allowed, setting aside the judgment and decree impugned therein. Resultantly, O.P No.1028 of 2012 is allowed dissolving the marriage between the appellant and respondent solemnised on 22.11.2008, and O.P No.302 of 2013 for restitution of conjugal rights stands dismissed.

18. Regarding the guardianship and custody of the minor child, admittedly the child was born on 04.08.2011 at N.S hospital, Palathara, Kollam, Kerala, and his mother is an Indian citizen hailing from Kollam. The father is a British National.

19. Admittedly the father was a frequent visitor of Kochi as a freelance filmmaker and he was residing at Fort Kochi. He married the respondent on 22.11.2008 at St.Francis CSI Church,

Fort Kochi followed by a love affair. After marriage, the couple were living in a flat owned by her father at Kaloor, Kochi. After birth of the child also, they continued for some time in the flat at Kaloor. When their relationship became strained, herself and her child returned to her paternal house at Kollam. The case of the appellant/father is that he was not allowed even to see or interact with the child, and he was threatened that if he reaches her paternal house to see the child, he will have to face serious consequences. So, he filed the O.P before Family Court, Ernakulam to get guardianship and custody of his child, which was later transferred to Family Court, Kollam as per orders of the High Court of Kerala. The Family Court, Kollam tried that case along with the other O.Ps which were pending between the parties, and dismissed the O.P, but granted a decree for restitution of conjugal rights in his favour. The respondent/wife did not honour the decree for restitution of conjugal rights, and for the last more than ten years, they are living separate.

20. The appellant/father is challenging the jurisdictional competence of the Family Court, Kollam, to deal with his O.P for guardianship and custody of the child, who is a British National.

According to him, he is the father and natural guardian of the child, and the domicile of the child will be that of his father. It is pertinent to note that, the question of jurisdiction was not a matter of challenge before the Family Court. Going by Section 9 of the Guardians and Wards Act, 1890, an application with respect to the guardianship of the person of the minor shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides. In the case on hand, at the time of filing the O.P, the ordinary place of residence of the minor child was at Mayyanadu, Kollam, the paternal house of the mother. The father filed the O.P (G&W) before Family Court, Ernakulam, may be because he was residing with his wife and child in a flat at Kaloor, Kochi. Subsequently, as per orders of the High Court, that case was transferred to Family Court, Kollam. Anyway the father himself filed the O.P for guardianship and custody of the child in Family Court, Ernakulam under Sections 7, 12 and 17 of the Guardians and Wards Act, fully acknowledging and endorsing the fact that the ordinary place of residence of the child was at Kaloor in Ernakulam District. So now he cannot challenge the jurisdictional competence of the court which he himself opted,

based on real facts, and the law applicable.

21. The child was born in Kerala on 04.08.2011 to an Indian citizen and since birth, he was living in Kerala along with his mother. Section 3 of the Citizenship Act, 1955, says that a person born in India on or after the commencement of the Citizenship (Amendment) Act, 2003 (3rd December 2004) is considered citizen of India by birth, if both the parents are citizens of India, or one of the parents is a citizen of India and the other is not an illegal migrant, at the time of his birth. So also, the contention of the father that since the child is a British citizen, the Family Court, Kollam was not competent to entertain the O.P (G&W), is not tenable.

22. A court exercising *parens patriae* jurisdiction is not concerned about the origin or citizenship of the child or his parents. The paramount consideration of the court is the welfare of the child. It may be true that, the minor child is holding a British passport being the son of a British National. At the same time, he was born in India to an Indian citizen, and since birth, he is living in India with his mother. It has come out in evidence that, on getting interim custody of the child, the appellant/father

deceitfully took the child to Nepal violating the orders of the court, and from there he took the child to England forging travel documents. The respondent/mother took pains to travel all the way to England, to fight for the child in an English court and got back custody of the child as per orders of that court, with permission to take the child back to India immediately. The mother has got a case that the father without her consent acquired a British passport for the child and she is taking steps to get that passport cancelled. We are not on that issue and let it be decided in accordance with law.

23. In **Rajkumar Sasidharan vs. Superintendent of Police, Trivandrum and others** (2022 (1) KHC 241, a Division Bench of this Court held that for the sole reason that the child is a U.S citizen, the jurisdiction of the Family Court at Thiruvananthapuram cannot be denied, when the minor was ordinarily residing at Thiruvananthapuram, along with his mother and maternal grandparents and close relatives.

24. In the case on hand, the child was ordinarily residing at Kollam along with his mother and maternal grandparents. By birth he has acquired citizenship of India. The citizenship or

domicile of the father of the child, or the fact that rightly or wrongly the child has acquired a foreign passport, will have no bearing in an application for guardianship of the person of the minor, where the paramount consideration is the welfare and well-being of the child.

25. In **Lahari Sakhamuri** vs. **Sobhan Kodali** (2019 KHC 6335), the Apex Court categorically held that, citizenship of the parents or the child cannot override consideration of the best interest and welfare of the child.

26. Admittedly, the appellant is the father and natural guardian of the minor child Sam. But the question posed before us is considering the welfare of the child who is more competent to become the guardian of the person of the minor child Sam with his permanent custody. Is it the father or mother?

27. Since birth, the child is living in Kerala along with his mother and maternal grandparents. It is submitted by the mother that now she is staying with the child in her flat at Ernakulam, and the child is studying in a school at Ernakulam. The mother is a freelance Journalist earning good income to look after the child. Now the child is being taken care of well by his

mother, and she is attending all his affairs including his education. The child is comfortable with his mother and there is no reason to separate the child from his biological mother, when she is competent to attend all his affairs. The child was born in Kerala and he lived in Kerala throughout, and he is accustomed to the culture and climate of this country.

28. The father is a British National, and according to him, he is a freelance filmmaker. He has no work permit in India or a permanent place of abode here. There is nothing to prove his educational or financial status to attend the affairs of the child. The wherewithals of the father in England also is not made available to find out his capacity and capability to look after the child. According to him, if the child is at England, the Government will take care of everything. That is not an assurance expected from a responsible father. So, in every respect, the welfare of the child will be more protected, if he stays with his mother.

29. There was a past incident of the father taking the child to England deceitfully violating the orders of the court. From the orders of the British court, a copy of which was made available

for our perusal, it could be seen that the father by forgery obtained travel documents from the British High Commission and flew to Britain taking the child with him, flouting the court orders. Realising the abduction of the child unlawfully by the father, the British court returned the child to his mother with permission to take the child immediately to India, finding that '*England has never been Sam's home*'. So, the British court also was of the view that, the welfare and well-being of the child will be more protected, if he stays with his mother in India where he was born and brought up. So, we find no reason to interfere with the finding of the Family Court that the appellant/father was not entitled to get guardianship or custody of the minor child Sam.

30. We are equally concerned about the love and anxiety of a father who is missing his son. Though he is living separately from his wife and child for the last ten years, he often comes down to Kerala to share love with his son. He was given interim custody of the child after receiving his passport as a security since there was a past incident of the appellant taking the child to England violating the orders of the court. We cannot keep a blind eye towards the desire of a loving father to see and interact with

his child whenever he comes down to Kerala from England. As submitted, now the mother and child are residing at Ernakulam and the child is studying in a school at Ernakulam. Whenever the appellant/father comes down to Kerala, he is also residing at Kochi, as stated by him.

31. Whenever the father is in Kerala, he can be permitted to share love with his son in weekends from 5 p.m on Saturday till 5 p.m on Sunday, on taking formal sanction from Family Court, Ernakulam with notice to the respondent, and on surrendering his passport before that court as security. During school vacations, if the appellant is in Kerala, he can have custody of the child for three days each during Onam and Christmas vacation and five days each in April and May during summer vacation, on the very same conditions. The child can be handed over and taken back at the premises of Family court, Ernakulam, and on returning the child, the Family Court has to return his passport. So reserving visitation rights of the father as aforesaid, the Mat.Appeal No.816 of 2014 is liable to be dismissed.

32. Since the Mat.Appeal itself has been disposed of

making arrangements for the appellant/father to visit his minor son whenever he is in Kerala, there need not be any review of the order passed in I.A No.2 of 2020 in Mat.Appeal No.816 of 2014. So, Review Petition No.835 of 2020 is dismissed.

33. The appellant/father filed W.P.(C) No.7321 of 2016 to issue a writ of mandamus or any other appropriate order directing the 1st respondent-Ministry of External Affairs represented by the Foreign Secretary to impound Ext.P12 Indian passport issued in the name of the minor child '*Samuel Charles Robert Peirce*', and to declare it as invalid, and also to direct respondents 2 and 5, the Ministry of Home Affairs and Unique Identification Authority of India to seize Ext.P13, the Aadhar card issued in the name of the minor child, and to declare it as invalid.

34. According to the appellant, he is a British National and his son also is a British citizen holding a valid British passport. Suppressing that fact, the 6th respondent wife obtained an Indian passport, and Aadhar card for the child which can be issued only to Indian citizens. Knowing about the issuance of an Indian passport to his minor son, he complained before the

4th respondent-Regional Passport Officer, Thiruvananthapuram, and thereafter approached this Court to impound those documents or to declare it as invalid.

35. The 4th respondent-Regional Passport Officer, Thiruvananthapuram filed a statement through learned Assistant Solicitor General of India, in which it is specifically stated that, the passport was issued to the minor child Samuel Charles Robert Peirce on 05.05.2015 as passport No.M8685901, on production of his birth certificate and passport of his mother. When an e-mail was received stating that the minor is a British citizen holding British passport, his Indian passport was impounded. That was the main prayer of the petitioner in the above W.P.(C). So, there is no scope for further impounding of the Indian passport issued in the name of the minor child.

36. In the statement filed by the 4th respondent, it is further reported that the 6th respondent, mother of the child, had approached the 4th respondent to release the passport issued in favour of her son and that matter was addressed to the Ministry, to which a reply was received, requiring the Regional Passport Officer to keep the child's passport impounded, subject to final

orders with respect to the custody of the child. Mat.Appeal No.836 of 2014 was dismissed finding that, for the welfare of the child, his guardianship and permanent custody shall be with his mother, of course subject to the visitation rights of the father. So the application submitted by the 6th respondent/mother can be disposed of by the 4th respondent, in accordance with law.

37. Regarding the prayer to seize the Aadhar card and to declare it as invalid, Section 3(1) of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, says that every resident shall be entitled to obtain an Aadhaar number by submitting his demographic information and biometric information by undergoing the process of enrolment. Section 2(v) defines a 'resident' as 'an individual who has resided in India for a period or periods amounting in all to one hundred and eighty-two days or more in the twelve months immediately preceding the date of application for enrolment'. The said Act was enacted for the correct identification of targeted beneficiaries, for delivery of various subsidies, benefits, services, grants, wages and other social benefit schemes, which are funded from the Consolidated Fund of India. In the absence of a

credible system to authenticate the identity of beneficiaries, it will be difficult to ensure that the subsidies, benefits and services reach to the intended beneficiaries.

38. In the case on hand, the minor child Sam was born in Kerala to an Indian mother and since birth, he was residing in Kerala along with his mother. Ext.P13 is the copy of the Aadhar card issued in the name of minor Sam, and it shows his address at Kollam, Kerala where he was born. The appellant is admitting that, the Aadhar card was issued in the year 2015, whereas minor Sam was born in the year 2011. So, there is no dispute with respect to the fact that, the minor child Sam was residing in Kerala for more than 182 days, preceding to the date of application for getting the Aadhar number. Since the child is continuously residing in India, and his permanent custody is given to his Indian mother, there is no question of seizing Ext.P13 Aadhar card, and there is also no reason to declare it as invalid.

39. In the result, W.P(C) No.7321 of 2016 is disposed of and the 4th respondent is directed to dispose the application of the 6th respondent-mother with respect to the Indian passport of the minor child Samuel Charles Robert Peirce, in accordance with

law, within a period of two months.

40. The respondent/wife filed M.C No.34 of 2013 before Chief Judicial Magistrate Court, Kollam under Section 12 and Form No.II of the Domestic Violence Act. Against dismissal of that M.C, she preferred Crl.Appeal No.225 of 2014 before the 6th Additional District & Sessions Court, Kollam. While upholding the impugned order, the appellate court granted an additional relief of maintenance of Rs.6,000/- per month to the minor child, against which the husband preferred Cr.R.P No.1292 of 2016.

41. The husband would submit that, in the appeal, his address was wrongly shown and so no notice was served on him. On going through the address of the husband shown in Crl.Appeal No.225 of 2014, it could be seen that, it was different from his address shown in the M.C. In the impugned judgment, there is no mention as to the service of notice on the respondent, and none is shown as appearing for him. In the O.Ps pending between parties also, the address of the husband shown is not the one shown in the Crl. Appeal. So, obviously, the appeal was filed by the wife in a wrong address, and so no notice was served on the respondent/husband. When an additional relief was

granted while upholding the impugned order, fairness demands that it should have been done after serving notice to the affected party and on affording an opportunity for hearing.

42. The revision petitioner/husband contended that in the M.C proceedings, the petitioner/wife had submitted that she was not pressing for reliefs under the head 'C' of Form No.II of Domestic Violence Act, which provides for monetary relief. That relief was withdrawn and not pressed as she had already filed M.C No.265 of 2013 before Family Court, Kollam under Section 125 of Cr.P.C.

43. In the counter to the Crl.Revision Petition, the wife admitted that she had advised her counsel, for not pressing the reliefs under the head 'B', 'C' and 'D' of Form No.II of Domestic Violence Act. But, according to her, she had no intention to not press the relief of maintenance to her child. But, it is curious to note that, she did not take any steps to restore M.C No.265 of 2013 filed by her, which was dismissed for default.

44. Since the address of the husband was wrongly shown in the Crl. Appeal, no notice was served on him. The impugned order might not have been modified by the appellate court behind

his back. If the wife seeks maintenance for her minor child from his father, either she could have taken steps to restore the M.C or else she could have proceeded afresh to claim maintenance.

45. So, the Crl.Revision Petition No.1292 of 2016 is allowed setting aside the impugned judgment in Crl.Appeal No.225 of 2014, with liberty to the respondent/wife to restore M.C No.265 of 2013, or to proceed afresh for maintenance.

In the result, above cases are disposed of as follows:

- (i) Mat.Appeal No.836 of 2014 is allowed, setting aside the impugned judgment in O.P No.302 of 2013.
- (ii) Mat.Appeal No.849 of 2014 is allowed, dissolving the marriage between the appellant and respondent solemnised on 22.11.2008, setting aside the impugned judgment in O.P No.1028 of 2012.
- (iii) W.P.(C) No.7321 of 2016 is disposed of directing the 4th respondent to conclude the proceedings with respect to the Indian passport of the minor child Samuel Charles Robert Peirce, in accordance with law, within a period of two months from today.

(iv) Crl.R.P.No.1292 of 2016 is allowed, setting aside the impugned judgment in Crl.Appeal No.225 of 2014 with liberty to the respondent/wife either to restore M.C No.265 of 2013 or to proceed afresh against the revision petitioner/father.

(v) R.P No.835 of 2020 is dismissed.

(vi) Mat.Appeal No.816 of 2014 is dismissed, bestowing guardianship and permanent custody of the minor child Samuel Charles Robert Peirce with the respondent/ mother, reserving visitation rights to the appellant/ father as follows:-

(a) When the appellant/father is in U.K, he can make phone calls or WhatsApp video calls to the child every Wednesday, Friday and Sunday for 15 minutes between 7 p.m to 7.30 p.m (IST), and the respondent/mother has to facilitate such calls to be attended by the child.

(b) Whenever the appellant/father comes down to Kerala, he can have weekend custody, to see and interact with his child, from 5 p.m on Saturday till 5 p.m on ensuing Sunday.

- (c) During Onam, Christmas and Summer vacations, if the appellant is in Kerala, he can have custody of the child for three days each during Onam and Christmas vacations, and five days each in April and May during summer vacation.
- (d) Before taking custody of the child as per clause (b) and ©, the appellant/father has to move a formal petition before the Family Court, Ernakulam and get orders specifying the date and time of custody, with notice to the respondent/ wife.
- (e) Before the child is handed over to the custody of the father, the Family Court, Ernakulam shall receive the original of the passport of the appellant/father as security and it shall be returned to him only when the custody is given back to the respondent/mother.
- (f) The place of handing over custody of the child to the appellant and back to the respondent, shall be the premises of Family Court, Ernakulam.
- (g) Whenever the child is in the custody of the appellant/father, the respondent/mother is free to

make phone calls or WhatsApp video calls to the child every day between 8 p.m to 8.30 p.m (IST) and the appellant/father shall facilitate such calls.

(h) It is made clear that, only to supervise the smooth exchange of custody of the child, direction is given to Family Court, Ernakulam, within the jurisdiction of which the parties will be available, as submitted.

(i) The parties shall suffer their respective costs.

Sd/-

**A.MUHAMED MUSTAQUE
JUDGE**

Sd/-

**SOPHY THOMAS
JUDGE**

smp

APPENDIX OF MAT.APPEAL No.816/2014

I.A No.3401/2014

ANNEXURE A1 : TRUE PHOTOCOPY OF THE PASSPORT OF THE APPELLANT.

I.A No.1659/2015

ANNEXURE A1 : TRUE COPY OF THE LEASE DEED OF THE PETITIONER DTD.1/11/14 FOR THE PERIOD FROM 1/11/14 TO 30/4/15.

ANNEXURE A2 : TRUE COPY OF THE LEASE DEED DTD.1/5/15 OF PETITIONER FOR THE PERIOD FROM 2/5/15 TO 2/11/15.

ANNEXURE A3 : TRUE COPY OF THE AUTHORISATION OF THE MONEY GRAM TRANSFER ENCASHED THROUGH MUTHOOT FINCORP LTD. DTD.9/1/15 FOR RS.18,690.69.

ANNEXURE A3 (a) : TRUE COPY OF THE AUTHORISATION OF THE MONEY GRAM TRANSFER ENCASHED THROUGH MUTHOOT FINCORP LTD DTD.21/1/15 FOR RS.32,516.72.

ANNEXURE A3 (b) : TRUE COPY OF THE AUTHORISATION OF THE MONEY GRAM TRANSFER ENCAHSED THROUGH MUTHOOT FINCORP DTD.21/1/15 FOR RS.29,259.29.

ANNEXURE A3 (c) : TRUE COPY OF THE AUTHORISATION OF THE MONEY GRAM TRANSFER ENCASHED THROUGH MUTHOOT FINCORP LTD DTD.3/3/2015 FOR RS.32,804.92/-

ANNEXURE A3 (d) : TRUE COPY OF THE AUTHORISATION OF THE MONEY GRAM TRANSFER ENCASHED THROUGH MUTHOOT FINCORP LTD DTD.21/3/15 FOR

RS.36,156.15.

ANNEXURE A3 (e) : TRUE COPY OF THE AUTHORISATION OF THE MONEY GRAM TRANSFER ENCASHED THROUGH MUTHOOT FINCORP LTD DATED 09/04/2015 FOR RS.35,510.15.

ANNEXURE A3 (f) : TRUE COPY OF THE AUTHORISATION OF THE MONEY GRAM TRANSFER ENCASHED THROUGH MUTHOOT FINCORP LTD DATED 21/04/2015 FOR RS.33,944.20.

ANNEXURE A3 (g) : TRUE COPY OF THE AUTHORISATION OF THE MONEY GRAM TRANSFER ENCASHED THROUGH MUTHOOT FINCORP LTD DATED 06/05/2015 FOR RS.34,959.78.

ANNEXURE A3 (h) : TRUE COPY OF THE AUTHORISATION OF THE MONEY GRAM TRANSFER ENCASHED THROUGH MUTHOOT FINCORP LTD DATED 18/05/2015 FOR RS.36.262.53.

ANNEXURE A3 (i) : TRUE COPY OF THE AUTHORISATION OF THE MONEY GRAM TRANSFER ENCASHED THROUGH MUTHOOT FINCORP LTD DATED 05/06/2015 FOR RS.33,546.65.

ANNEXURE A4 : TRUE COPY OF FORM NO: 16 A DATED 18/06/2010 BEING THE CERTIFICATE OF DEDUCTION OF TDS

ANNEXURE A5 : TRUE COPY OF FORM NO: 16 A DATED 14/05/2011 BEING THE CERTIFICATE OF DEDUCTION OF TDS

ANNEXURE A6 : TRUE COPY OF THE EMAIL DATED 23/06/2015 SENT BY THE PETITIONER TO THE AUSTRALIAN CONSULATE IN INDIA.

ANNEXURE A7 : TRUE COPY OF THE REPLY E MAIL DATED
07/06/2015 TO ANNEXURE A6 MAIL.

I.A No.4372/2015

ANNEXURE A1 : TRUE COPY OF THE ORDER DATED 17/9/2012
IN W.P NO 428/2012.

ANNEXURE A2 : TRUE COPY OF THE ORDER DATED 31/7/2014.
IN M.C 34/2013 BEFORE THE CHIEF JUDICIAL
MAGISTRATE, KOLLAM.

ANNEXURE P3 (a) : TRUE COPY OF EMAIL DATED 14/9/2011
SHOWING 1ST RESPONDENT WAS AWARE AND
PARTICIPATING IN THE PASSPORT
APPLICATION.

ANNEXURE P3 (b) : TRUE COPY OF EMAIL DATED 5/10/2011 FROM
APPELLANT TO THE 1ST RESPONDENT.

ANNEXURE P3 (c) : TRUE COPY OF EMAIL DATED 5/10/2011 FROM
APPELLANT TO THE 1ST RESPONDENT.

ANNEXURE P3 (d) : TRUE COPY OF EMAIL DATED 28/9/2011 FROM
THE 1ST RESPONDENT TO THE APPELLANT.

ANNEXURE A4 : TRUE COPY OF ORDER DTD.10/12/13 IN
WP (C) 19622/13

ANNEXURE A5 : TRUE COPY OF THE REPORT ON SAM PIERCE
ISSUED BY CHILD PSYCHOLOGIST DR.JANAKI
SANKARAN.

I.A. No.663/2016

ANNEXURE A1 : TRUE COPY OF THE COMPLAINT FILED BEFORE
THE COMMISSIONER OF POLICE, KOLLAM.

ANNEUXRE A2 : TRUE COPY OF THE FIR No.330/2016
DTD.17/2/2016 OF ERAVIPURAM POLICE
STATION.

ANNEXURE A3 : TRUE COPY OF THE FIR No.268/2016
DTD.24/2/16.

ANNEXURE A4 : TRUE COPY OF THE PHOTOGRAPHS OF TEH
RESPONDENT AND THE MINOR CHILD.

I.A No.1669/2016

ANNEXURE A1 : POWER OF ATTORNEY DTD.9/5/2016 EXECUTED
BY THE PETITIONER.

I.A.No.2998/2016

ANNEXURE A1 : TRUE COPY OF THE FIR.

ANNEXURE A2 : TRUE COPY OF THE CONTEMPT PETITION
No.1244/2016.

I.A No.3283/2016

ANNEXURE A1 : TRUE COPY OF THE ORDER DTD.17/9/12 IN
WP (CRL) No.428/2012.

RESPONDENT'S ANNEXURES:

I.A No.657/2015

ANNEXURE R1 (a) : TRUE COPY OF THE E-MAIL DTD.26.12.2014.

ANNEXURE R1 (b) : TRUE COPY OF THE COMPLAINT BEFORE THE
COMMISSIONER OF POLICE, ERNAKULAM FILED
BY THE PETITIONER.

ANNEXURE R1 (c) : TRUE COPY OF HTE PETITION DTD.24.10.2014
FILED BY THE PETITIONER BEFORE THE FORT
KOCHI POLICE STATION.

ANNEXURE R1 (d) : TRUE COPY OF THE LETTER DTD.3.3.2015
ISSUED BY MY EMPLOYER.

ANNEXURE R1 (e) : TRUE COPY OF THE RECEIPT DTD.15.12.2014
ISSUED BY THE SCHOOL.

ANNEXURE R1 (f) : TRUE COPY OF THE F.I.R DTD.8.2.2015 OF
THE S.I OF POLICE, FORT KOCHI.

ANNEXURE R1 (g) : TRUE COPY OF THE PROCEEDINGS

DTD.18.6.2012 OF THE FRRO, KOCHI.

I.A.No.1211/2015

ANNEXURE R1 (h) : TRUE COPY OF THE MEMORANDUM OF WRIT
PETITION IN W.P(C) No.19622/2013.

I.A No.657/2015

ANNEXURE R1 (h) : TRUE COPY OF THE SAID E-MAIL
DTD.30.4.2015.

ANNEXURE R1 (i) : TRUE COPY OF THE LETTER DTD.1.6.2012
SENT BY ME TO THE PETITIONER'S MOTHER.

I.ANo.663/2016

ANNEXURE R1 (L) : TRUE COPY OF THE COMPLAINT DTD.6/2/2016
BEFORE DISTRICT JUDGE, FAMILY COURT,
KOLLAM.

ANNEXURE R1 (M) : TRUE COPY OF THE LETTER OF THE HON'BLE
DISTRICT JUDGE DTD.6/2/2016

ANNEXURE R1 (N) : TRUE COPY OF THE FIR DTD.6/2/106.

I.A No.4371/2015

ANNEXURE J : TRUE COPY OF THE FIRST PAGE OF THE
PASSPORT OF THE CHILD SAMUEL.

ANNEXURE K : TRUE COPY OF THE AADHAR CARD ISSUED TO
THE CHILD SAMUEL.

I.A No.2805/2016

ANNEXURE R1 (a) : CERTIFICATE ISSUED BY THE FAMILY
CONSELOR.

C.M.APPLN.No.4556/2017

ANNEXURE-1: TRUE COPY OF THE FIR IN CRIME No.241/2016 BY
THE KOLLAM WEST POLICE STATION.

ANNEXURE-2: TRUE COPY OF THE RELEVANT PAGES OF THE
POSTING DONE BY THE APPELLANT IN FACEBOOK.

ANNEXURE-3: TRUE COPY OF THE JUDGMENT OF THE ORDER AND

JUDGMENT OF THE ROYAL COURT OF JUSTICE,
LONDON.

ANNEXURE-4: TRUE COPY OF THE LETTER WRITTEN BY THE
BRITISH HIGH COMMISSION TO THE RESPONDENT.

True Copy

P.S to Judge

smp

APPENDIX OF WP (C) 7321/2016

PETITIONER'S EXHIBITS

- EXT.P1: TRUE COPY OF BRITISH PASSPORT OF THE
JAMES ROBERT EDWARD PEIRCE
- EXT.P2: TRUE PHOTO COPY OF THE BRITISH PASSPORT
OF SAMUEL CHARLES ROBERT PEIRCE
- EXT.P3: TRUE PHOTO COPY OF BIRTH CERTIFICATE
ISSUED FROM THE OFFICE OF THE
REGISTRATION OFFICER, BRITISH HIGH
COMMISSION AT NE DELHI, DT 26/4/12
- EXT.P4: TRUE PHOTO COPY OF THE RECEIPT OF
DOCUMENTS RECEIVED FROM THE BRITISH HIGH
COMMISSION
- EXT.P5: TRUE PHOTO COPY OF THE RELEVANT PAGE
SHOWING ENTRY VISA ENTERED IN THE
PETITIONERS SON'S BRITISH PASSPORT BY
FRRO
- EXT.P6: TRUE PHOTO COPY OF THE RESIDENTIAL PERMIT
ISSUED FROM THE OFFICE OF THE FOREIGNERS
REGIONAL REGISTRATION OFFICER, KOCHI
- EXT.P7: TRUE PHOTO COPY OF WPC 19622/13 PENDING
BEFORE THE HON'BLE COURT OF KERALA FOR
EXTENSION OF THE PETITIONER'S SON'S VISA
- EXT.P8: TRUE PHOTO COPY OF THE INTERIM ORDER DT.
10/12/13 IN WPC 19622/13
- EXT.P9: TRUE PHOTO COPY OF WPC (CRL) 428/12 FILED
BEFORE THE HON'BLE HIGH COURT OF KERALA
- EXT.P10: TRUE COPY OF ORDER DT. 17/9/12 IN WPC
(CRL) 428/12

- EXT.P11: TRUE COPY OF COMMON ORDER DT. 19/8/14 OF FAMILY COURT, KOLLAM IN OP 302/13, OP 303/13, OP 1028/12
- EXT.P12: TRUE PHOTO COPY OF THE IMPUGNED INDIAN PASSPORT ISSUED BY THE 1ST RESPONDENT
- EXT.P13: TRUE PHOTO COPY OF IMPUGNED AADHAR CARD ISSUED TO THE PETITIONERS SON
- EXT.P14: TRUE PHOTO COPY OF COMPLAINT DT. 10/2/16 SENT TO THE REGIONAL PASSPORT OFFICER, TRIVANDRUM
- EXT.P15: TRUE PHOTO COPY OF THE EMAIL ACKNOWLEDGEMENT ISSUED BY THE REGIONAL PASSPORT OFFICER, TRIVANDRUM D.T 12/2/16
- EXT.P16: TRUE COPY OF POWER OF ATTORNEY DTD.9/5/2016 EXECUTED BY THE PETITIONER.

RESPONDENT'S EXHIBITS: NIL.

True Copy

P.S to Judge

smp

APPENDIX OF CRL.R.P No.1292 OF 2016

- ANNEXURE -1 : TRUE COPY OF THE ORDER DTD.23/09/2014 IN
M.C. 265/2013.
- ANNEXURE-2 : TRUE COPY OF THE ORDER DTD.31/07/2014 IN
M.C.34/2014.
- ANNEXURE-3 : CERTIFIED COPY OF THE ORDER DTD.20/5/2016 IN
CRL.APPEAL No.225/2014

True Copy

P.S to Judge

smp