IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF APRIL, 2018

PRESENT

THE HON'BLE MR. JUSTICE BUDIHAL.R.B

AND

THE HON'BLE MRS. JUSTICE K.S.MUDAGAL

W.P.H.C.NO.13 OF 2018

BETWEEN:

SMT.MANJU MALINI SESHACHALAM
D/O MR. R. SESHACHALAM
AGED ABOUT 37 YEARS
R/AT No.201,
J BLOCK PRIDE PRISTINE
VASUNDHARA LAYOUT
SHREE ANANTHA NAGAR
ELECTRONIC CITY
BANGALORE – 560 100 …PETITIONER

(BY MS. JAYASREE NARASIMHAN FOR
SMT. UDITA RAMESH, ADV.)

AND:

1. VIJAY THIRUGNANAM
S/O THIVUGNANAM
AGED ABOUT 41 YEARS

2. SMT.S.SHALINI
W/o VIJAY THIRUGNANAM
AGED ABOUT 35 YEARS

BOTH R/AT FLAT #1002, 16TH BLOCK,
ZING BLOCK, SUNCITY APARTMENT
IBLUR BANGALORE – 560 102

3. INSPECTOR OF POLICE
BELLANDUR POLICE STATION
37, SARJAPUR MAIN ROAD,
AMBLIPURA, PWD QUARTERS
1ST SECTOR, BELLANDUR
BENGALURU – 560 103

4. STATE OF KARNATAKA
HOME DEPARTMENT
PRINCIPAL SECRETARY (PCAS)
ROOM NO.219, II FLOOR
VIDHANA SOUDHA
BENGALURU – 560 001

5. COMMISSIONER OF POLICE
BANGLAORE CITY
INFANTRY ROAD
BENGALURU – 560 001

6. MINISTRY OF EXTERNAL AFFAIRS
PRINCIPAL SECRETARY
UNION OF INDIA
SHASTHRI BHAVAN
NEW DELHI …RESPONDENTS

(BY SRI H.S.DWARAKANATH, ADV. FOR
SRI R.S.PRASANNA KUMAR, ADV. FOR R1 & R2;
SRI A.M.SURESH REDDY, AGA FOR R3 & R5
NOTICE TO R6 IS DISPENSED WITH VIDE ORDER
DATED 21.02.2018)

THIS WPHC IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT TO RESPONDENTS TO CAUSE THE PRODUCTION OF THE PERSON OF DETENUE BABY TANISHA KAMALKUMAR, AGED ABOUT 7 YEARS BEFORE THIS HON'BLE COURT AND HANDOVER THE DETENUE TO THE LEGAL CUSTODY OF THE PETITIONER.

THIS WPHC HAVING BEEN RESERVED FOR ORDERS ON 05.04.2018 AND COMING ON FOR PRONOUNCEMENT THIS DAY, **K.S.MUDAGAL J**., PRONOUNCED THE FOLLOWING:-

ORDER

"Whether Baby Tanishka is under illegal detention of respondents 1 and 2 warranting issue of Habeas Corpus against them ?" is the question involved in this case.

2. Petitioner is the mother of Baby Tanishka aged 7 years. Respondent No.2 is the younger sister of petitioner. Respondent No.1 is the husband of respondent No.2. Respondent Nos.1 and 2 are issueless. Though the petitioner is Indian born, she has acquired the Canadian Citizenship. Baby Tanishka is born on 04.06.2010 in

Oakville in Halton region of Province of Ontario, Canada out of the wedlock of the petitioner and Sri Kamalkumar Venugopal Chenguttai. Baby Tanishka has the Canadian Citizenship and is the Overseas Citizen of India.

3. Matrimonial discord arose between the petitioner and her husband Kamalkumar Venugopal Chenguttai which led to the legal proceedings for dissolution of marriage. Ultimately the Hamilton Court of Justice, by its Order dated 18.01.2012 dissolved the marriage of petitioner and Kamalkumar Venugopal Chenguttai with effect from 21.02.2012. In those proceedings vide Order Annexure-F, the Hamilton Court has granted the sole custody of Baby Tanishka to the petitioner.

4. Baby Tanishka was diagnosed with feeding aversion since her infancy and therefore by surgical procedure G-tube was inserted and she was being fed through the same. Since the petitioner had to struggle the matrimonial litigations and take care of the child single

handedly, in the year 2011 she along with baby Tanishka flew down to India so that her mother can take care of the child.

5. On 15.07.2011, petitioner executed Annexure-G the deed of authorization, in favour of her mother Latha Seshachalam to hold custody of baby Tanishka until her return from abroad. On 30.01.2012 she has executed Annexure-H the power of attorney in favour of her mother Latha Seshachalam to act as the legal guardian of her daughter baby Tanishka to look-after her welfare.

6. The above facts are undisputed one. The contentious case of the petitioner is as follows:

Respondents 1 and 2 requested her mother Latha Seshachalam to go and stay with them and therefore she along with detenue Tanishka shifted to the house of respondent Nos.1 and 2. Since respondent Nos.1 and 2 are issueless, they enjoyed the company of baby Tanishka. In July 2012 when the petitioner came down to pickup her

child, respondent Nos.1 and 2 declined to part with the child. They requested that they be given some time as they are attached to the child. Respondent No.2 even threatened to commit suicide. Having regard to the said facts and the relationship between the parties she returned to Canada, but continued her requests to respondent Nos.1 and 2 to return the child. During her visit to Bengaluru in March 2015 and December 2015, respondent Nos.1 and 2 declined the petitioner, the opportunity to speak to the child. In March 2016 they even threw away Smt.Latha Seshachalam the legal guardian of the child out of their house detaining the child Tanishka with themselves. Thereafter the petitioner moved pillar to post visiting respondent Nos.3 to 6 for recovery of the child but in vain. Respondents 1 and 2 have illegally detained the child and welfare of the child suffers in their custody and thus she seeks writ of habeas corpus against the respondents.

7. Respondent Nos.1 and 2 in their statement of objections contest the claim of the petitioner on the following grounds:

(i) Having regard to the turmoil in her matrimonial life and the child's health condition, the petitioner was not able to look after the child. Therefore she herself left the child under the care and custody of respondent Nos.1 and 2. Having regard to such consensual act, the petitioner cannot contend that they have detained the child much less illegally.

(ii) The petitioner has given the child in adoption to them and thereby they have become the adoptive parents. On that count also their custody is lawful.

(iii) The petitioner instead of maintaining a petition under the Hindu Minority and Guardianship Act, 1956 for custody of the child before the appropriate forum, has adopted the mode of filing a petition for writ of Habeas Corpus. Therefore the petition is not maintainable.

(iv) The petitioner is a single parent, financially she is unstable. Respondent No.1 has a fabulous income. They have attended all the needs of the child for the last five years. Therefore the welfare of the child is better served by keeping the child in their custody.

(v) Since the child has got Canadian Citizenship, petitioner has to produce the child before the Canada Government and apprehending coercive action against her from the said Government, she has manipulated the present petition rather than her interest in taking back the custody of the child. All other allegations made by the petitioner against them are denied.

8. We heard both the learned counsels extensively. Ms. Jayasree Narasimhan, the learned counsel for the petitioner reiterating the grounds made out in the petition, in support of her contentions relied upon the following Judgments:

1*. *Gohar Begum v. Suggi alias Nazma Begum AIR 1960 SC 93.

2. ***S.Rama Iyer v. K.V.Nataraja Iyer***
AIR 1948 Mad 294.

3. ***Mumtaz Begum v. Mubarak Hussain***
AIR 1986 Madhya Pradesh 221.

4. ***Bhagwati Bai v. Yadav Krishna Awadhiya and others***
AIR 1969 Madhya Pradesh 23.

9. Sri Dwarakanath, the learned counsel for respondent Nos.1 and 2 reiterating the grounds made out in the statement of objections and affidavit filed by respondent No.1, in support of his contentions relied upon the following Judgments:

1. ***Rajiv Bhatia v. Govt. of NCT of Delhi and Others***
(1999) 8 SCC 525

2. ***Prateek Gupta v. Shilpi Gupta and Ors.***
MANU/SC/1537/2017

3. ***Jitender Arora and Ors. v. Sukriti Arora and Ors.***
MANU/SC/0173/2017

4. ***Sarita Sharma V. Sushil Sharma***
MANU/SC/0100/2000

REG: MAINTAINABILITY AND VALIDITY OF DETENTION:

10. There is no dispute that baby Tanishka is born out of the wedlock of the petitioner and her husband Kamalkumar Venugopal Chenguttai on 04.06.2010 in Ontario, Canada and she is a Canadian Citizen. Further it is not disputed that the parties are Hindus and governed by the Hindu Minority and Guardianship Act, 1956.

11. Section 6(a) of the said Act reads as below:

> **6. Natural guardians of a Hindu minor.-** The natural guardian of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are-
>
> (a) in the case of a boy or an ***unmarried girl***- the father, and after him, ***the mother***: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;"
>
> (Emphasis supplied)

12. The child is aged about 7 years. In a legal battle between the petitioner and the father of the child the Canadian Court vide order Annexure-F has dissolved their marriage and appointed the petitioner as the sole guardian of baby Tanishka. Therefore by virtue of Section 6(a) as well as by virtue of the Order Annexure-F, the petitioner is the natural as well as the legal guardian of the child.

13. Annexure-G the Deed of Authorization dated 15.07.2011 and Annexure-H the power of attorney dated 30.01.2012 are not disputed by respondent Nos.1 and 2. It is also not disputed that petitioner was desperately fighting her legal battle with her husband in a foreign Court and she had to manage her career, her personal life and the child with medical issues. Therefore it is quite natural that she has appointed her mother as guardian for the child during her absence in India.

14. It is the contention of the petitioner that her mother along with Tanishka lived in the house of

respondent Nos.1 and 2 on their request. Respondent Nos.1 and 2 also do not dispute that Smt.Latha Seshachalam lived with the child in their house till March 2016. That is evident from the admissions of respondent No.1 in Annexure-R the letter dated 11.03.2016 submitted by him to the PSI, HSR Police Station, Bengaluru. Therefore the contention that the petitioner herself has entrusted the child to the care and custody of respondent Nos.1 and 2 and therefore their custody has continued to be legal is unacceptable.

15. It is the contention of the petitioner that respondent Nos.1 and 2 ill-treated Smt. Latha Seshachalam and ultimately threw her out of their house detaining the child for themselves. Therefore the annexure-R supports the contention of the petitioner that the child was under the care and custody of her mother Latha Seshachalam till she was driven out of the house of respondent Nos.1 and 2.

16. Annexure-A2 the SMS (short message service) exchanged between the petitioner and the 2nd respondent as well as Annexure-R3 the e-mail series dated 10.02.2013, 15.02.2013, 22.12.2015, 25.03.2016 between them clearly show that till March 2016 they shared good relationship with each other. Those records further show that though initially the petitioner thought of giving the child in adoption because of her precarious condition, later she started requesting the respondent Nos.1 and 2 to return the child to her custody. There is nothing to show that her statement that she is willing to give the child in adoption translated into a completed act of adoption. Therefore there is no merit in the contention that the custody of Tanishka with respondent Nos.1 and 2 is consensual.

17. Respondents 1 and 2 have not even produced any adoption deed. It is contended that adoption deed is not required and customary adoption is enough. But they do not even whisper any date, place and time of adoption.

Thus the alleged adoption is a disputed question of fact. The learned counsel for respondent Nos.1 and 2 contends that whenever there is a dispute regarding custody the person claiming the custody has to take recourse to the proceedings under the Guardians and Wards Act before the Civil Court and the petition for writ of habeas corpus is not maintainable.

18. The Hon'ble Supreme Court in **Gohar Begum'**s case (AIR 1960 SC 93) referred to supra, dealing with identical issue has held as follows:

> "5. The learned Judges of the High Court observed that the case raised various controversial questions, specially as to the paternity of the child, as to whether the respondent had made the appellant live in the keeping of different persons and also as to whether she had prevented the appellant from having access to the child. ***The learned Judges observed that it was not the function of a court in an application under S.491 to record findings on such controversial facts and that, in these circumstances, the proper forum for the appellant was to move a civil court under the Guardian and Wards Act for the custody of the child.*** The learned Judges further observed that they were prima facie satisfied that the child was not illegally and improperly detained by the respondents. They, therefore, dismissed the appellant's application.

6***. We are unable to appreciate the view of the learned Judges of the High Court. It seems to us that the controversial facts referred to by them were wholly irrelevant to the decision of the application***. We have not been able to find one single fact relevant to the issue in this case which is in controversy. The facts, which are abundantly clear and beyond dispute are these. The child Anjum is the illegitimate daughter of the appellant who is a Muslim woman. The child was at the date of the application less than six years' old and now she is just over seven years old. The appellant is a singing girl by profession and so is the respondent. The appellant stated in her affidavit that the respondent was in the keeping of a man and this the respondent has not denied. It is not the respondent's case that she is a married woman leading a respectable life. In fact she admits that she allowed Trivedi to live in her flat with the appellant as his mistress and took money from him for "Lodging and Boarding Charges". Trivedi has sworn an affidavit acknowledging the paternity of the child and undertaking to bring her up properly as his own child. He is a man of sufficient means and the appellants has been for a considerable time living with him as his mistress.

7. ***On these undisputed facts the position in law is perfectly clear. Under the Mohammedan law which applies to this case, the appellant is entitled to the custody of Anjum who is her illegitimate daughter, no matter who the father of Anjum is. <u>The respondent has no legal right whatsoever to the custody of the child. Her refusal to make over the child to the appellant, therefore, resulted in an illegal detention of the child within the meaning of S.491.</u>*** This position is clearly recognized in the

English cases concerning writs of habeas corpus for the production of infants. In R.v. Clarke, (1857) 7 El. And Bl. 186: 119 ER 1217 Lord Campbell C.J. said at p.193:

"But with respect to a child under guardianship for nurture, the child is supposed to be unlawfully imprisoned when unlawfully detained from the custody of the guardian; and when delivered to him, the child is supposed to be set at liberty".

The courts in our country have consistently taken the same view. For this purpose the Indian cases hereinafter cited may be referred to. The terms of S.491 would clearly be applicable to the case and the appellant entitled to the order she asked.

8. We therefore think that the learned Judges of the High Court were clearly wrong in their view that the child Anjum was not being illegally or improperly detained. The learned Judges have not given any reason in support of their view and we are clear in our mind that view is unsustainable in law.

9. Before making the order the court is certainly called upon to consider the welfare of the infant concerned. Now there is no reason to think that it is in the interest of the child Anjum to keep her with the respondent. In this connection it is relevant to state that at some stage of the proceedings in the High Court the parties appeared to have arrived at a settlement whereby it had been agreed that the child Anjum would be in the custody of the appellant and the respondent would have access to the child. The learned Judges of the High Court, however, were not

prepared to make an order in terms of this settlement because, as they said, "It did not appear to be in the interest and welfare of the minor". Here again they give no reason for their view, Both parties belong to the community of singing girls. The atmosphere in the home of either is the same. The appellant as the mother can be expected to take better care of the child than the respondent. Trivedi has acknowledged the paternity of the child. So in law the child can claim to be maintained by him. She has no such right against the respondent. We have not been able to find a single reason how the interests of the child would be better served if she was left in the custody of the respondent and not with the appellant.

10. ***We further see no reason why the appellant should have been asked to proceed under the Guardian and Wards Act for recovering the custody of the child. She had of course the right to do so. But she had also a clear right to an order for the custody of the child under S.491 of the Code. The fact that she had a right under the Guardians and Wards Act is no justification for denying her the right under S.491. That is well established as will appear from the cases hereinafter cited.***

11. ****

12. ****

13. It is further well established in England that in issuing a writ of habeas corpus a corpus a court has power in the case of infants to direct its custody to be placed with a certain person.

In R. v. Greenhill, (1836) 4 Ad and El 624 at p.640:111 ER 922 at p.927 Lord Denman C.J. said:

"When an infant is brought before the Court by habeas corpus, if he be of an age to exercise a choice, the Court leaves him to elect where he will go. If he be not of that age, and a want of direction would only expose him to dangers or seductions, the Court must make an order for his being placed in the proper custody."

"Where, as frequently occurs in the case of infants, conflicting claims for the custody of the same individual are raised, such claims may be enquired into on the return to a writ of habeas corpus, and the custody awarded to the proper person."

Section 491 is expressly concerned with directions of the nature of a habeas corpus. The English principles applicable to the issue of a writ of habeas corpus, therefore, apply here. In fact the courts in our country have always exercised the power to direct under S.491 in a fit case that the custody of an infant be delivered to the applicant: see Rama Iyer v. Naatraja Iyer, AIR 1948 Mad 294, Zara Bibi v. Abdul Razzak, 12 Bom LR 891 and Subbaswami Goundan v. Kamakshi Ammal, ILR 53 Mad 72: (AIR 1929 Mad 834). If the courts did not have this power, the remedy under S.491 would in the case infants often become infructuous.

14. We, therefore, set aside the judgment and order of the High Court and direct the respondent other than the State of Bombay to make over the custody of the child Anjum to the

appellant. Let the child be produced by the respondents before the Registrar, Appellate Side, High Court of Bombay, and the Registrar will then make over custody to the appellant. The passport in respect of the child Anjum deposited in this Court by the respondents may be made over to the Advocate on record for the appellant. The injunction restraining the removal of the child Anjum outside Greater Bombay will continue till she is delivered to the appellant."

(Emphasis and Underline supplied)

19. Of course the said case arose out of a proceeding under S.491 of the Criminal Procedure Code, 1908. S.491 in Chapter – XXXVII Cr.P.C. 1908 dealt with the powers of the High Court to issue direction in the nature of habeas corpus and the same reads as follows:

PART VIII

SPECIAL PROCEEDINGS

CHAPTER XXXVII

DIRECTIONS OF THE NATURE OF A HABEAS CORPUS

Power to issue directions of the nature of a habeas corpus:

491.(1) Any High Court may, whenever it thinks fit, direct-

(a) that a person within the limits of its appellate criminal jurisdiction be brought up before the Court to be dealt with according to law;

(***b) that a person illegally or improperly detained in public or private custody within such limits be set at liberty;***

(c) that a prisoner detained in any jail situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court;

(d) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners for trial or to be examined touching any matter pending before such Court-martial or Commissioners respectively;
(e) that a prisoner within such limits be removed from one custody to another for the purpose of trial ; and
(f) that the body of a defendant within such limits be brought in on the Sheriff's return of *cepi corpus* to a writ of attachment.

(2) The High Court may, from time to time, frame rules to regulate the procedure in cases under this section.

Thus under the said provision, the High Court was vested with the powers to issue writ of habeas corpus on

par with Article 226 of the Constitution of India. That is stated in the said judgment also. Therefore the said Judgment is aptly applicable to the case on hand.

20. The Judgments in the cases namely, ***Rajiv Bhatia, Prateek Gupta, Jitendra Arora and others, Sarita Sharma*** referred to supra relied upon by the learned counsel for respondents 1 and 2 are rendered by a smaller Bench than the Bench which delivered the judgment in ***Gohar Begum's*** case. Therefore the ratio laid down in ***Gohar Begum's case*** has to be followed.

21. On facts also in ***Rajiv Bhatia's*** case the respondent had set up a registered adoption deed and the petitioner natural mother contended that the said adoption deed is the outcome of fraud. Having regard to that the Hon'ble Supreme Court in that case held that in a petition for habeas corpus the high court was not entitled to examine the legality of the adoption deed and come to the conclusion with regard to the custody of the child. However, still the Apex Court confirmed the order of the

Delhi High Court on the ground that the child is not willing to go to the adoptive parents and until the decision of the competent forum is obtained with regard to the validity of the adoption deed custody of the child shall be with the natural mother.

22. In this case there is not even such document. Respondent Nos.1 and 2 without even mentioning the date and place of alleged adoption, in the thin air claim themselves to be adoptive parents. As against that in Annexure-R, the letter of 1st respondent addressed to the PSI, HSR Layout Police Station has stated as follows:

" I would like to withdraw my complaint. Since me and my wife ***have mutually agreed to handover Tanishka to her natural mother Manjumalini***.

The Child's schooling and treatment will be continued in Canada by Manjumalini. ***And mother-in-law will also be moving to Canada from my house***.

Therefore, kindly withdraw my complaint as not pressed and not taken any action against the complainant by me on 08.03.2016.

We will take care of the child till her mother move to Canada and we will accompany with the child to the airport."

Therefore the Judgment in ***Rajiv Bhatia's*** case is not applicable.

23. Similarly in ***Prateek Gupta's case, Jitender Arora's case and Sarita Sharma's case*** the contest was between the natural guardians covered under Section 6 of the Hindu Minority and Guardianship Act. Except for the alleged fragile and baseless claim of the adoption, respondents 1 and 2 do not have any legal right to the custody of minor Tanishka. Therefore if at all they want to seek the custody of the child, it is for them to approach the Civil Court as contended by them and the petitioner cannot be driven to the Civil Court for that purpose.

Therefore the Judgments relied upon by the counsel for respondents 1 and 2 are not applicable. As against that, the Judgment of the Larger Bench in Gohar's case referred to supra is squarely applicable and has to be followed.

24. The moment respondents 1 and 2 refused to handover the custody of minor Tanishka to the petitioner the natural and legal guardian, the continuation of her custody with them becomes illegal detention. Such intentional act on the part of respondent Nos.1 and 2 even amounts to the offence of kidnapping punishable under S.361 of IPC. Therefore there is no merit in the contention that the writ petition is not maintainable and respondent Nos.1 and 2 are in legal custody of baby Tanishka.

Reg. Welfare of the Child:

25. The learned counsel for respondents 1 and 2 contends that respondent No.1 is earning annual income of Rs.26,00,000/-, the petitioner with her broken family and humble source cannot maintain the child to the standards himself and his wife are maintaining. It is further

contended that child has become accustomed to Indian style of living due to its stay in India for past several years, therefore if the child is shifted now to foreign country to the custody of the petitioner, the welfare of the child suffers.

26. The petitioner contends she is employed in Canada, has arranged for the schooling and health care of the child in Canada and she has also got the PR status for her mother Smt.Latha Seshachalam and therefore both of them can take good care of the child. She further contends that the 1st respondent is admittedly suffering from schizophrenia and he has a very distorted, distasteful ideas which he has posted on the social media and therefore there is imminent threat to the safety of the minor child and continuation of the custody of the child with them is totally against the welfare of the child.

27. Though the child is in a tender age, to ascertain the choice of the child and her rapport with the rival parties we interacted with the child and the parties for

about 50 minutes in the chambers. During such interaction even tried to reconcile the parties which did not materialize. Our interaction with the child revealed that she has love and affection for her mother and grand-mother and she loves to live with them.

28. Further respondent No.1 himself, in his affidavit filed before this Court, admits that he is suffering from mental health issues and the postings made by him on the social media like twitter, Qora etc. To find out whether the welfare of the child will be promoted in the company of respondents 1 and 2 it is inevitable to refer to some of those postings made by respondent No.1 which are as follows:

REG. MENTAL HEALTH OF RESPONDENT NO.1:

Of Palliatives and Indian stigma

I have symptoms of depression and mild traits of schizophrenia. From 2013, I am under medication. I have regular meetings with my psychiatrist every three months. Usually, he alters dosage of the tablets a little bit from time to time.

Initially, I did not open up about meeting a psychiatrist to anyone. I kept it to myself. But over time, I realized this is a life-long medication. The medicines fixes the symptoms and do not fix the actual problem. So, these medicines are called palliatives.

If I don't take the medicines, I have problem sleeping at night. I am awake throughout the night. ***I am a bit hyperactive at night***. I remember there was a time when I had not slept for seven days. (And my best was not sleeping for 21 days).

If I don't take the medicines, I also hear voices. The voices prompt me to talk back to the voice. And when I talk to the voice, ***I am lost***. I don't know much about the conversation I have with the voice. It may not be sensible. But I do have. My wife has noticed that I sometimes smile for no reason. And I am lost in thoughts. ***The doc says that these are traits of schizophrenia.*** The medicines ensure that I don't hear any voices or get dragged into a conversation with it.

REG. HIS HABITS AND ATTITUDE:

"Some learnings on men's health:

Alcohol: Alcohol in small quantities helps to socialize and make us feel good. But in large quantities it affects men's health."

Porn and masturbation:

Excessive of these things are also detrimental. It wires up your brain wrongly. So, when you actually do stuff, you are in a bad shape because you are wired so wrongly.

At different parts of my life, I did some of it excessively. I don't believe in moderation. But the above things should be done in moderation and preferably on the lower side."

1. ABOUT MOTHER:

"My mother (Shankari) is very possessive. She controls me via She wants me to have a voice conversation with me using Black Magic – no phone call but like a voice booming in my head to which I have to reply to. Such a freak hobby she has. She is a health hazard to me.

Mothers are not holy. Infact, if you are a son, there is a good chance that your mother plays the role of an evil witch always trying to control you. In my case, that is true. She keeps a suspicious eye on me. Keep a safe distance from your mom. And avoid her if she get closer.

My mother is possessive. She controls me via BlackMagic. Controlling me via Magic is her hobby. I am taking pills from psychiatrist to ensure that the control from my mother is less. But this

is a new area. And even my psychiatrist does not believe she can control my mind remotely.

When I was growing up, ***my mother used Magic to manipulate my willingness to learn***. It helped me to score good marks in school. Naturally, it appears that I am systematic but too lazy to learn. With my casual attitude towards anything, I am not expected to top score in schools. But I did. And I believe my mother used Magic to good degree to get me serious about studies.

During my growing up years, upto the age of 21, the Magic was only mild. But my mother had some silly ideas. Most likely, by doing ***Magic on my father***. According to my mother, men should get prone to more and more Magic as they age. So, she stepped up her Magic after I graduated. After I graduated, I moved back home. And now, I had more Magic.

I also moved to Bangalore for work. When the distance became more, my mother asked one of my relative, another lady to keep a watch on me. I assume that is a request to do Magic on me. In any case, my mother knew that distance is not a deterrent to doing Magic. She can continue to do Magic from Chennai when I was in Bangalore. And Magic works over long distances.

To be honest, the whole conversation with the psychiatrist was planted by my mother. The real symptom was that I was not happy.

Because of Magic, I was not attentive and ***I had attention deficit. And there were several other problems***. And because I was not conscious enough, I did not explain these things to the psychiatrist. Consultations with psychiatrist will work only if you are conscious enough.

My wife was patient. She helped me understand that my mother and my sister were tampering with my brain. Previously, I was not even aware that my brain was being tampered severly.

After that, for the next 10 days, I got some training on Magic. Probably, this is how they teach Magic to victims in India.

At the age of 40, I started believing that I can work towards freeing myself from my mother's Magic. ***The first steps that I did was to stop communicating with her***. I felt guilty initially.

But as I start thinking back and look at the amount of harm done, I feel that it is the right decision to shut her off from my life.

2. <u>ABOUT PARENTS:</u>

"Realized in my mid – 30s that parents don't mean well for kids. ***They are just humans. Don't understand why we have to blindly respect parents***."

3. <u>ABOUT MOTHER LAND</u>:

"My kid's Canadian passport needs to be renewed after which I will move out of India. Just a few more months.

I feel comfortable working with foreigners and non – Indians. Prefer to move to US or Europe.

Moving to developed country:-

Lack of options and entertainment is prevalent in India. So, I should have moved out of India to U.S. or Europe when I was younger so that I had more options in life. Most of my peers did just that and they have a far better life than me."

4. <u>ABOUT MOTHER-IN-LAW</u>:

"Latha, my mother –in-law is capable of influencing my brain from far away. She is in Canada Scientists should study her brain."

5. <u>ABOUT SISTER-IN-LAW</u>:

"My sister –in-law Manju Malini is a liar and a third-rate crook. No wonder she is divorced and did not find any one. She is a gold – digger.

It look my sister-in-law Manju Malini has complained to the Canadian embassy, most likely about me. She is a big liar and a ***psychopath***.

Why should Child welfare of India help a Canadian get back custody of her child who has been raised on India for 7yrs?

I wish I had a relation with *#Kamalkumar Venugopal*. This female, ***Manju Malini is a cheap third rate crook*** only he can handle.

The biggest fools on earth is Venugopal and Hema for letting their son KamalKumar to live with this female – Manju Malini who is a big liar.

Excessive of these things are also detrimental. It wires up your brain wrongly. So, when you actually do stuff, you are in a bad shape because you are wired so wrongly."

6. <u>ABOUT WIFE:</u>

"I got married when I was 32. Needless to say, I had more problems. ***Relationship problems***, yes. But more than that, severe psychological pain."

7. <u>ABOUT WOMAN:</u>

"That was a lot of non-sense. But, I felt like a victim in the middle of a terrorist camp. ***I felt a hatred for all women***."

8. <u>ABOUT HIS RELATIONSHIPS AND SELF-CONTROL:</u>

"Towards the end of 26, I got close to a girl and I kept calling her girl friend. But she kept insisting that she was just a friend. So, it was nothing serious at all. It lasted for a month. But that is when big trouble started to me.

I started hearing voices in my head. And the voices kept telling me that it was ok to hear voices in my head. And I should also communicate back.

This caused problems at work. And at work in Infosys, they advised me to consult a psychologist. The psychologist told me that hearing voices is not normal. And I need psychiatric attention.

Between 33 and 40, my life was mostly silent. I decided to focus on my work and less on Magic. I took medicines from psychiatrist and did not think about happiness or entertainment. I just kept doing work and more work.

I soon understood the symptoms that psychiatrist were looking for. Voices are a problem. When I hear voices, ***I am not in control of my self.*** My wife told me that I smile without reason. And that is when I hear voices. So, hearing voices is a problem. And it is a big problem."

9. **LEGAL SYSTEM:**

"Whether you like it or not, we the citizen who pay taxes are supporting the police and judicial system. So, the government should take steps to prevent harassment from these institutions. ***Police and judicial machinery in Indian is very insensitive."***

Shame on Indian police and judicial system to harass honest and tax paying citizens based on lies told by a Canadian

citizen a lady and who lives on government support. Protect your citizen like how the US is protecting Nirav Modi.

29. The above postings show that the first respondent has the contemptuous feelings against his own mother, motherland, mother-in-law, sister-in-law and against female. The postings further show that he has indulged in alcohol, pornography and un-healthy sexual acts. The said postings are disgraceful, contemptuous, highly distasteful and distorted. Those postings reflect the mindset of the first respondent. The thoughts of an individual translate into his actions. The quality of the action of a person depends upon quality of his thoughts. A person who has no respect and concern for his mother, motherland, parents, women and the people around him cannot extend the same to any other woman or human being nor as a parent can he cultivate those values in his word.

30. In the light the above said enormous terrific material it is very difficult to accept that the welfare of baby Tanishka is better served in the company of

respondent No.1 and 2. Admittedly respondent No.2 is working lady. In her absence from home for her work, the child has to stay in the company of respondent No.1 alone. Having regard to the admissions of respondent No.1 himself that he has no control over himself and his thought process, it is even difficult to imagine about the well-being of the child in his company.

31. In spite of such voluminous staring material, incompatible with the claim of respondents 1 and 2 about the well-being of the child in their company, the learned counsel for the respondents 1 & 2 astoundingly contended that the affluent financial condition of respondent No.1 shall be given credence to continue the custody of a child with respondents 1 & 2 as against the claim of the mother. Motherhood/parenthood requires totally different qualities and outlook than a high range ATM card. High range ATM cards are not the substitute for a natural mother. That is why our scriptures have declared ***"Janani Janma Bhoomischa Swargadapi Gariyasi"*** meaning thereby that

mother and motherland are greater than the luxuries of even the heaven.

32. An attempt was made to contend that despite the mental health issue of respondent No.1, the petitioner had left the child with respondents 1 & 2 and so far nothing has happened, as against that they have taken good care of child. Respondent No.1 in his postings himself has claimed that he did not disclose his mental health issue to others. Even in these proceedings, till the petitioner produced those postings of respondent No.1, the said fact was not revealed before the Court. There is nothing to show that respondents 1 & 2 had revealed about the same to the petitioner earlier to this petition. Apart from that the mother of the petitioner was with the child till March 2016.

33. At the fag end of the proceedings respondent No.1 produced a medical certificate purportedly issued by his psychiatric consultant certifying that his aliment is under control and his condition is not hindrance to be a

parent. Petitioner's counsel contends that the said document is got up to serve the purpose of this case.

34. The authenticity of the said certificate itself is questioned. Much is desired to be said, the way and the stage at which the same is produced. The respondents do not make any allegations of any physical, moral or legal disability of the petitioner to bring up her child. When she is alive and prepared for taking care of her child, there is no compelling circumstance to continue the child in the custody of respondents 1 & 2 on the basis of alleged certificate about the parenting ability of respondent No.1.

35. Having regard to the aforesaid facts and circumstances and the Judgment of the Hon'ble Supreme Court in ***Gohar Begum's*** case and having regard to the option of the child, we are of the considered view that the welfare of the child is better served in the custody of the petitioner.

REG REMOVAL OF THE CHILD

36. The next contention of the counsel for the contesting respondents is that if the petition is allowed, the petitioner removes child to Canada and then it becomes impossible to retrieve the child even if they pursue any litigation in the matter.

37. As already pointed out first of all, the contesting respondents have to establish their legal right over the child by approaching the Civil Court. Secondly, admittedly the child and the petitioner are Canadian citizens, therefore there is nothing illegal in the petitioner removing the child to Canada. The contesting respondents did not feel the pinch of hardship faced by the petitioner in driving her to fight this litigation all the way coming from Canada. But when it comes to them to fight a litigation against the petitioner to claim their right, they set up this hardship theory. When the detention of the child is illegal such of their apprehension in no way advances their defence.

38. The records produced by the petitioner show that at least since May 2017 she is incessantly requesting respondents 3 to 6 to help her to restore the custody of her child and they have showed a cold response. Much is desired to be said about the quality of their service to a lone helpless woman. We expect them to act promptly in accordance with law, at least in implementing the order We are going to pass.

With the above observations, the petition is allowed.

Respondents 1 & 2 are hereby directed to handover the child baby Tanishka to the petitioner forthwith. Respondents 3 to 5 shall facilitate the restoration of custody of baby Tanishka to the petitioner forthwith along with her medical records and other documents and belongings.

Sd/-
JUDGE

Sd/-
JUDGE

sac*
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