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WP(CRL.) NO. 319 OF 2026

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

THURSDAY, THE 5TH DAY OF MARCH 2026 / 14TH PHALGUNA, 1947

WP(CRL.) NO. 319 OF 2026

PETITIONER:

XXX

BY ADVS.
SMT.C.S.SINDHU KRISHNAH
SHRI.R.SANJITH

RESPONDENTS:

1 STATE OF KERALA
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM
KERALA, PIN - 695034



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- 2 STATE POLICE CHIEF
POLICE HEAD QUARTERS, VAZHUTHACAUD,
THIRUVANANTHAPURAM, KERALA, PIN - 695010
- 3 COMMISSIONER OF POLICE
POLICE COMMISSIONERATE, PARK AVENUE ROAD,
ERNAKULAM, PIN - 682011
- 4 THE STATION HOUSE OFFICER
KADAVANTHARA POLICE STATION,
NEAR KENDRIYA VIDYALAYA ELAMKULAM,
KADAVANTHRA, KOCHI, KERALA PIN - 682020
- 5 XXX
- 6 XXX

BY ADVS.
SRI.H.PRAVEEN (KOTTARAKARA)
P.NARAYANAN, SPL. G.P.
SRI.T.SETHUMADHAVAN (SR.)
SRI.SUNILNATH G.P.

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 05.03.2026, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:



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“CR”

J U D G M E N T

Devan Ramachandran, J

In the rather long stretch that this Bench has sat in this jurisdiction-being for over a year and a half, there are certain aspects that have caused us deep anguish and concern. We want to spell them out and carve a way forward, for future reference.

2. Litigation related to custody of children invariably becomes uncontrollable because of the ego and strife between their parents - creating irreparable trauma and causing manifest toll on them.

3. It is rather painful that not many parents even have the insight to comprehend what we tell them - particularly when we interact with them in our chambers, so as to provide them the necessary privacy; and continue litigation, disregarding and ignoring the tenebrious shadow their actions would cast on their children in future, and even *in praesenti*.



4. We have, in numerous occasions, obtained a ringside view of the trauma and misery caused to children, on account of litigation to which they are exposed to without any fault that can be attributed to them.

5. In ***Indu S v. Thomas @ Manoj [2025 (3) KHC 295]***, we, therefore, declared that, while children are exchanged for the purpose of custody or interim custody, the premises of courts are to be completely avoided; and our mind was forged by the express pathos voiced by children before us, in being paraded and forced to endure experiences that erode their self worth.

6. The issues we have witnessed are multitudinous; and the psychological impact and devastation, which we unfailingly notice, is something indescribable.

7. We are fully aware that this is not a case where the custody of the children is directly in issue; but it is indirectly so, because the petitioner—mother of a boy and a girl aged 10 and 12 years respectively, has approached this Court seeking that they



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be given to her, through the issuance of a writ of habeas corpus, on the allegation that they are being illegally detained by the 5th respondent–father.

8. The factual conspectus that we see in this case, is no different from what we are called upon to evaluate and answer in matters directly where custody is involved; and are, therefore, of the firm opinion that the time has come for us to speak affirmatively, lest history judge us inadequately.

9. It does not require us to expatiate that children, in custody matters, are victims who are drawn into the battle between their parents for nothing that they can comprehend, or for anything they have contributed. They are born to parents when they are in love; but when they fall out, children become the victims of their strife.

10. Parents invariably do not understand, or pretend not to do so, the immeasurable brunt their actions have on their children; and most often interpret the children's reactions - being either in their favour or against them - solely as



per individual perspective, accusing each other of tutoring them, or fostering biases, but standing oblivious to it that children are humans, conceding to emotions and needs like any adult.

11. When children are produced by one of the parents in obedience to orders, there is always an axiomatic suspicion impelled by the other that, he or she is tutored to show alienation; but, in our long experience, when we allowed the child/children to remain with the parent not in custody, for a sufficiently long time, the situation changed, with the former expressing affection, which had been long concealed or suppressed.

12. There are several cases we have seen where, children, on being produced, initially refuse to go to the parent who is not in custody; but when given enough time with them - either through deft persuasion or constant prodding - they become so attached, that they then show disinclination to go to the other. This is not the fault of children, but is the way their hearts and brains respond to arduous experiences - which they



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are still incapable of adequate comprehension, on account of their tender or young age.

13. There are other instances, where we have seen children virtually manipulating their parents – albeit and perhaps subconsciously, speaking and behaving the way the parent in custody wants, virtually imbibing their thoughts, as if a sponge and translating them into their own words.

14. We have said the above prefatorily because, we are, from our experiences interacting with large number of children, convinced that the inveterate, but stereotypical, concepts employed in matters qua custody of children, require to be given an incisive overhaul and fresh thought.

15. The *leitmotif* of litigations involving custody of children is surely edified on their welfare, as also on considerations of their requirements and desires. However, it must be borne in mind that, what the Court sees at first impression - even during interaction with the children - may not always be the actual scenario.



16. Alas, most of the Family Courts in Kerala are so burdened, that they will not, in most cases, be able to find time to interact with parents and children sufficiently. The period requisite for effective interaction is highly variable and cannot be given a standardised norm - in our experience, ranging from an hour to several hours, including in chambers; and such requires to be laced with empathy and modulated patiently.

17. This is why Hon'ble Supreme Court has cautioned that judgments cannot be delivered based on the mere statements of children - when they are brought for interaction or for meeting - but ought to be underpinned on a comprehensive evaluation of what is the best requisite for them in life, to be worthy citizens.

18. In almost all custody matters, if not all, the perspective employed is solely that of the parents, and of their "rights" over the children; and Courts, most of the time, are lost to the inevitable fallout on the latter.



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19. As said earlier, litigations regarding custody never happen on account of any contribution from the children; and they are drawn into a battle, for no fault that can be attributed to them. They are caught unawares, become totally puzzled and confused; and they then merely react to the situations to which they are exposed to, for which they are not cognitively or physically ready for.

20. It is well established scientifically that, even up to age of 22 or 23, the development of the brain of any individual is still in progress; and which is what can we say about a child - as young as 2 or 3 years, or upto 17 or 18 years - who are caught in the crossfire of litigation battles and war between their parents, of which they know precious little.

21. Unfortunately, in the din of all this, the rights of the children - also constitutionally protected as being fundamental - are wholly forgotten, since they are neither parties to the lis, nor construed capable to act for themselves in law.



22. We strongly believe that the underlying forensic philosophy in custody matters will have to now be thought of differently, with specific emphasis on the children and the imperative desideratum for them to obtain time and affection from both parents equally.

23. The parent-centric evaluation of “child custody” matters has to surely give way for “children-centric” approach; with specific emphasis to their physical, educational, social and psychological requisites and imperatives.

24. It is the womb of a mother, in which every child resides first; and he or she can hence be separated from her only for the most compelling reasons. The presence of the father in the child's life is equally unexpendable; and this is the tenet of nature.

25. We have recorded our observations rather long as afore because, this is one case where we saw that the children want to be with their parents together; and they told us very clearly that, they cannot even imagine them being separated.



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26. The children were before us on 25.02.2026 and what we saw in our chambers, while we interacted with them, made us think deeply into human behaviour and life as it is.

27. The couple in this case are fighting each other; and both of them, in fact, want custody of their children.

28. However, the children deeply desires the parents to be together; and when we made an arrangement on the 25th of February 2026, that they shall be with the mother for a brief period, they entreated us to ensure that, their parents do not separate. This was not done with a straight face, but with uncontrollable tears in their eyes, flowing like streams of water; and this took a toll on our way of looking at it also.

29. We, therefore, passed the following order on that day, under the hope that the couple will be able to find an amicable solution, in a manner befitting the childrens' desire:-

“The ‘alleged detenues’ – being the children of the petitioner and the 5th respondent – were produced before us by respondents 5 and 6.

2. We had an interaction with the children, and what came out of it is nothing short of distress and angst.



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The children were crying inconsolably, saying that they want both their parents. They were beseeching us to intervene and end the strife between their parents somehow.

3. Our hearts go out to the children; and obviously, we will have to survey the situation further, before we take a final decision.

4. We were told that the children have been with the father for some time. We, therefore, record that the father agrees that the children can be with the mother until 02.03.2026 at 3:00 p.m., when they will be again produced before us in our Chambers.

5. We further record that the mother has assured us that the children will not lose their education or classes and that she will ensure it.”

30. However, even though we considered this matter a couple of times thereafter, apart from saying that the couple were talking to each other, nothing concrete appeared to have been achieved.

31. Today also, the parties were present in the forenoon session, without the children; and we referred them to a further opportunity of mediation.

32. We then took up this matter in the afternoon session, when the learned counsel for the parties submitted that a consensus has been obtained between their clients to the effect



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that the children will continue, for the time being, in custody of their father, with the mother to have their interim custody every weekend-from 10 am every Saturday, till 5 pm the evening Sunday; while, as regards Christmas and Onam holidays, as also the Summer Vacation - all as per the school calendar - the children will be with them for equal number of days, with the first half being with the father and the second half with the mother. They added that, it is further agreed between the parties that the place of exchange for this will be in front of the residence of the mother; and it was undertaken by learned Senior Counsel, Sri.T.Sethumadhavan, instructed by Sri.Praveen-appearing for the 5th respondent, that his client will leave the children and pick them up from the afore place on the days and time above mentioned.

33. Sri.Sanjith - appearing for the petitioner, submitted that his client is fully alive to the burden the children are carrying on account of the fight that they see between their parents. He conceded that both sides should work with each



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other - even if they are unable to reconcile as husband and wife - to be good parents, so that their time can be shared equally or equitably between the children, avoiding them any impression of a void or chasm in parenting.

34. We appreciate the above, since when children say they want their parents together, it fundamentally means that they want equal time with them. Since they are school going, obviously, we cannot divide their time, except in the manner above - with one of the parents being given weekend custody; and the other, offered it on weekdays. However, when it comes to the holidays and vacations, there can be little doubt that the parties must share it equally because, this is the express desire told to us by the children themselves.

35. Our hearts go out to the children in this case and we are tormented by the stress they showed when they were before us, literally crying out aloud, requesting us to intervene and ensure that their parents are not separated. We do not know how to react to their request because, the parents appear



adamant on separate trajectories of life; but the least we can do is to step in and ensure that the children get the best in the given circumstances ensuring maximum possible company with their parents at every point of time.

36. Sri.T.Sethumadhavan, learned Senior Counsel and Sri.Sanjith, at this time, intervened to say that they affirm to our views; and requested that this Court dispose of the matter in terms of the afore consent of their clients, so that they do not have to fight out a further litigation for custody of their children before a judicial forum.

37. Thus, with the express consent of both sides we order this Writ Petition with the following directions :-

- (a) The 5th respondent-father will be in custody of the children, subject to any further arrangements between the parties or until any order is issued by a Competent Court.
- (b) The petitioner-mother will be entitled to the interim custody of the children from 10 AM on every



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Saturday henceforth, till 5 PM on the ensuing Sundays.

- (c) As regards the Christmas and Onam holidays, as also summer vacations of the children - all as per their school calendar - the first half of all such will be entitled to the 5th respondent -father; while the 2nd half to the petitioner-mother.
- (d) For the afore purposes, the place of exchange of the children will be in front of the residential gate of the petitioner-mother.
- (e) We further direct the parties to facilitate their children to call the other, who is not in custody at the relevant time, through phone, on any day and at any time they want without causing any impediment.

38. Being so ordered, we want to add a few more thoughts, as a post script.

39. Custody is not an evaluation of choice between the parents, as is now often seen to be; but recognition of the



constitutionally protected rights of the child, to have both parents. Custody is not separation or alienation from one of the parents; but entrustment in the most apposite manner, for the child to be ensured a deserving life, free of strife and anxiety.

40. The love of a parent never wanes, it only waits. A choice between a parent for a child is the most excruciating one that anyone can think of; and when it is done through forums that they fathom so little of, it makes the damage far more real and palpable.

41. In the heat of the moment and the fervor of litigation, parents rarely recognize this; but, push on relentlessly, under the self-assuaging impression that they are doing it for the best interests of their children; when, in fact, they, perhaps unwittingly, do so for themselves.

42. Custody arrangements, made judicially, depend upon the factual factors presented and established; and every court, acting in *parens patriae* is enjoined to make assessments on the underpinned “best interests standards” for children,



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without being influenced or carried away by the acrimony the parties engage in; finally to ensure that children are able to obtain a life insulated from such, with equal company assured - to the extent possible, of both their parents. This is the predominating obligation of the legal system to every child.

Sd/-

DEVAN RAMACHANDRAN, JUDGE

Sd/-

M.B. SNEHALATHA, JUDGE

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