

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

Con.Case(C).No. 824 of 2015 (S)

OP (FC) 14/2015
.....

PETITIONER(S):

**DR.NISHANTH NARAYANAN, AGED 40 YEARS,
S/O.NARAYAN SINGH, MADATHI NISHANTH HOUSE,
P.O.ARIYALLUR - 673 312, MALAPPURAM DISTRICT.**

**BY ADVS.SRI.K.RAMAKUMAR (SR.)
SRI.T.RAMPRASAD UNNI
SRI.S.M.PRASANTH
SMT.ASHA BABU
SMT.AMMU CHARLES
SRI.G.RENJITH**

RESPONDENT(S):

**SAILAJA V., AGED 35 YEARS,
D/O.SIVADASAN V., VARIYATH HOUSE,
BEHIND POLICE STATION, KOZHIKODE - 673 015.**

BY ADV. SRI. K.V.BHADRA KUMARI

**THIS CONTEMPT OF COURT CASE (CIVIL) HAVING COME UP FOR
ADMISSION ON 23-07-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**

msv/

Con.Case(C).No. 824 of 2015 (S)

APPENDIX

PETITIONER(S)' ANNEXURES:

ANNEXURE A: TRUE COPY OF THE ORDER DTD.23.1.2015 IN OP(FC) NO.14 OF 2015.

**ANNEXURE B: TRUE COPY OF THE ORDER DTD.6.4.2015 IN IA.NO.4936 OF 2015 IN
OP(FC) NO.14 OF 2015.**

**ANNEXURE C: TRUE COPY OF THE LETTER DTD.5.6.2015 ISSUED BY THE
HEADMISTRESS, INFANT JESUS ENGLISH MEDIUM SCHOOL,
THIRUVAMBADY.**

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

**ASHOK BHUSHAN, CJ
& A.M.SHAFFIQUE, J.**

Cont.Case (C) No.824 of 2015

Dated this the 23rd day of July 2015

J U D G M E N T

Shaffique, J

Petitioner has approached this Court alleging contempt of Court as against the respondent. It is contended that despite the directions issued by this Court in the interim order dated 23/01/2015 in O.P.(FC) No.14/2015 and the subsequent order dated 06/04/2015, by which directions were issued to hand over the child on alternate Fridays, the child was not handed over on 05/06/2015. Petitioner submits that he was not informed in advance about any change in situation and when he approached the School at Thiruvampady on 05/06/2015, the Principal had given a letter at Annexure C which reads as under:

*“As per the instruction of AKSHAT's grandfather,
he is not handed over to his father Mr.Nishanth from
this School.”*

2. It is submitted by the learned counsel for the petitioner that no advance information was given regarding the fact that the child will not be handed over on 05/06/2015 and that neither the Head Mistress nor the father of the respondent had any right to deviate from the directions issued by this Court. It is submitted

that the aforesaid action in not handing over the child on 05/06/2015 clearly amounts to wilful contempt and therefore appropriate action has to be taken in the matter.

3. Counter affidavit has been filed by the respondent inter alia stating that the School authorities had fixed 06/06/2015 as the date for taking measurement of uniform of the child. On 03/06/2015, father of the respondent informed the petitioner that the custody of the minor son will be handed over on 12/06/2015, which is the next Friday instead of 05/06/2015 and accordingly on 12/06/2015, custody of the minor child was given to the petitioner's father by the respondent's father. It is submitted that the respondent had not committed any wilful contempt as the child was not handed over only on account of the special circumstances and therefore the contempt case has to be dropped.

4. Having heard the learned counsel on either side, we are of the view that there is dispute between the parties regarding the question as to whether the petitioner was informed in advance on 03/06/2015 that the child will not be handed over on the said date. According to the respondent, 06/06/2015 was the date fixed by the school authorities for taking measurement of the uniform and therefore handing over of the child on the said

date might have caused inconvenience to the child. However, if there was any such change in circumstances, respondent ought to have informed the petitioner in advance and there is no material to indicate that such information had been given. Therefore, we cannot accede to the practice that had been followed by the father of the respondent in informing the school authorities that the child should not be handed over to the petitioner. But, as far as the allegation of contempt is concerned, it is apparent that the respondent was not in India during the relevant time. Though the parties involved in the matter will have to abide by the directions issued by this Court and it was not proper for the respondent's father to have informed the Principal of the School not to comply with the directions issued, we do not find any wilful disobedience to the directions issued on the part of the respondent.

Under such circumstances, we do not think that there is any necessity to proceed with this contempt case and accordingly the same is closed.

(sd/-)
(ASHOK BHUSHAN, CHIEF JUSTICE)

(sd/-)
(A.M.SHAFFIQUE, JUDGE)

jsr

