

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

Crl.Rev.Pet.No. 1677 of 2007 ()

AGAINST THE ORDER IN CMP 332/2007 of J.M.F.C.-III, KOZHIKODE

REVISION PETITIONER(S)/1ST RESPONDENT:

**E.JAMALUDHEEN, S/O IBRAHIM KUTTY,
RTD. A.E.O., F.S.COTTAGE, BADARIYA NAGAR
KUMBLA P.O., KASARAGOD DISTRICT.**

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENT(S)/PETITIONERS & STATE:

**1. HUSSAIFA, D/O MUHAMMADALI,
MODIYIL HOUSE, POONTHALA AMSOM,
KAKKADA DESOM,
ALAPPUZHA TALUK.**

2. SOUFEER, RESIDING -DO-

**3. STATE OF KERALA REP. BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI. N. SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 03-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

STK

P.D. RAJAN, J.

Crl.R.P.1677 of 2007

Dated this the 3rd day of September, 2015

ORDER

The revision petitioner challenges the order in CMP 332/07 of the Judicial First Class Magistrate-III, Kozhikode which was under Section 97 of the Code of Criminal Procedure. The above petition was filed by the 1st and 2nd respondents in CMP 332/07 for getting custody of a minor child. Accordingly, after enquiry, the learned Magistrate issued a search warrant and petitioner produced the child in the Judicial First Class Magistrate Court-III, Kozhikode. The child was handed over to the respondents 1 and 2. Being aggrieved by that order in the above CMP 332/07, the revision petitioner approached this court.

2. The revision petitioner contended that first respondent is the daughter of his wife's sister. She was employed in Saudia Arabia and in the year 2001, she brought a child aged 4 months in his house and entrusted to look after the child. The petitioner and his wife accepted that request and looked after the child till the

year 2007. They brought up the child according to the welfare of the child from the age of 6 years, now the respondent 1 and 2 approached with the above petition. The revision petitioner contended that the child is a very intelligent student and first class in her studies, without conducting any enquiry about the welfare of the child and without understanding the position to identify her mother, obtained her custody. The minor child is unable to identify or recognize his mother. In the circumstance, the order passed by the court below is illegal.

3. The revisional jurisdiction is supervisory jurisdiction to find out the illegality, irregularity in the order or sentence or proceedings of the Court below. The object of conferring revisional power is only a general supervision in order to correct any failure of justice arising from erroneous or defective orders. While exercising this power, it is justified only when there is failure of justice and not merely to rectify every error. The fact that the lower court has taken a wrong view of law or

misapprehended the evidence on record cannot be a reason to interfere unless it has resulted in grave justice.

4. According to Section 97 of the Cr.P.C., if any District Magistrate Sub-divisional Magistrate or Magistrate of the First Class has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such search warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.

It is true that, the first respondent entrusted the child to the revision petitioner and his wife. Learned Magistrate issued a search warrant directed to produce the minor child. When the child was produced as per the directions of the Magistrate, the child was entrusted to her mother as alleged by the petitioner in this revision. I find no

illegality in the order passed by the trial court and there is no merit in this revision petition and it is dismissed accordingly.

STK

Sd/-
P.D. RAJAN,
JUDGE

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P.A. TO JUDGE