

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

&

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 28TH DAY OF JANUARY 2015/8TH MAGHA, 1936

WP(Cr1.).No. 391 of 2014 (S)

PETITIONER(S)/PETITIONER:

SIYAD, AGED 24 YEARS

S/O SHAJAHAN, CHIRAYIL PUTHEN VEEDU, EDAVATTOM CHERRY
VELLIMON PO, KERALAPURAM, KOLLAM.

BY ADVS.SRI.ARUN BABU

SRI.G.HARIPRASAD

RESPONDENT(S)/RESPONDENTS:

1. COMMISSIONER OF POLICE,
OFFICE OF THE CITY POLICE COMMISSIONER, KOLLAM.
2. SUB INSPECTOR OF POLICE
ERAVIPURAM POLICE STATION, KOLLAM.
3. MUHAMMED KASIM
S/O ABDUL ASEES, MANAPURATHU VEEDU, MAHATHMA NAGAR - 7
VENDERMUKKU, VADAKKEVILA, KOLLAM.

BY ADDL.DIRECTOR GENERAL OF PROSECUTION

SRI.TOM JOSE PADINJAREKKARA

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD
ON 28-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(Crl.).No. 391 of 2014 (S)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1 : THE TRUE COPY OF THE FIR 1289/14 OF ERAVIPURAM POLICE STATION.

EXHIBIT P2 : THE TRUE COPY OF THE DEPOSITION OF THE DETENUE BEFORE THE JFCM-II, KOLLAM.

EXHIBIT P3 : THE TRUE COPY OF THE REPRESENTATION DATED 19.09.2014.

RESPONDENT(S) ' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE

ami/

V.K.MOHANAN & P.D.RAJAN, JJ.

W.P.(Crl.)No.391 of 2014

Dated this the 28th day of January, 2015.

J U D G M E N T

Mohanana, J.

The petitioner preferred the above writ petition under Article 226 of the Constitution of India claiming that the daughter of the 3rd respondent, namely Fathima Kasim is his fiancée and the 3rd respondent is not prepared to approve their affection and relationship. Thus, it is alleged in the above writ petition that the 3rd respondent and his family members harassed the said Fathima Kasim both mentally and physically and hence she was forced to leave her home and joined with the petitioner. It is also averred in the writ petition that though the petitioner tried to convince the detenué to return to her home, she frankly spoken that if she returned to her home she will be killed or will be forced to commit suicide. Accordingly, the petitioner and the detenué resided together in his family residential house for

some time and when the 3rd respondent used hired thugs to forcefully take her away, the detinue and the petitioner were forced to leave to Malappuram where they stayed at the house of one Nisamudin, one of petitioner's friends. According to the petitioner, on the basis of the complaint preferred by the 3rd respondent, Ext.P1 FIR was registered in the Iravipuram Police Station and later, through the intervention of the family members and on the assurance of the 3rd respondent that the detinue will be given in marriage to the petitioner, both the petitioner and the detinue surrendered before the court of Judicial First Class Magistrate-Kollam and after recording the statement, the detinue went along with the 3rd respondent on 20.8.2014. According to the petitioner, as per his insistence, the detinue went along with her father on the promise of her father that the marriage between the petitioner and the daughter of the 3rd respondent will be conducted. But the 3rd respondent withdrawn from his words and detained the

detenue at his residence and has not allowed her to leave the house, even to attend her college. According to the petitioner, the detenue informed over telephone that she is being physically and mentally harassed by her father and the family is forcing her to marry another man, against her wish and without her consent. According to him, his attempt to meet the detenue resulted in vain. It is under the above facts and circumstances, according to the petitioner, he is constrained to prefer the above writ petition and thus, it is prayed to issue a writ of habeas corpus or any other appropriate writ, order, directing the respondents to produce the detenue from the unlawful detention of the 3rd respondent.

2. When the above writ petition came up for admission, this Court while admitting the same issued notice to respondents 2 and 3 and the 3rd respondent was directed to produce Miss.Fathima Kasim before this Court on 29.9.2014 and another Bench of this Court interacted

with the detenue and the petitioner on 29.9.2014, as discernible from the order dated 29.9.2014. In that order, this Court directed the petitioner to file an affidavit about his financial background, his capacity to take the alleged detenue, if the marriage is conducted and the provision for any permanent residence. Thereafter, when the case was taken on 21.1.2015, no affidavit as directed above was filed and therefore we again directed the petitioner to file such an affidavit and posted the matter to this date.

3. Today, the detenue is produced and the petitioner and the 3rd respondent and his wife are present.

4. We interacted with the detenue, the daughter of the 3rd respondent and the petitioner in the open court. Considering the secret nature of deposition made by the detenue before us, we felt that the matter has to be heard in detail in our Chamber and accordingly the case is posted in the Chambers, after morning session.

5. Thus, the matter is again taken, in our Chamber after lunch and we again interacted with the detainee/the daughter of the 3rd respondent and the petitioner again. We have also interacted with the 3rd respondent and his wife.

6. During our interaction with the detainee, she submitted before us that, herself and the petitioner were in love and after surrendering before the jurisdictional Magistrate, the detainee went along with the 3rd respondent on his assurance that he will make arrangement for the marriage of the petitioner and herself. But thereafter, the 3rd respondent gone back from the above offer. She has also submitted that she is prevented from attending her college and contacting the petitioner. The petitioner during our interaction submitted that he does not want to take the detainee Fathima Kasim forcibly from her parents ; instead, he wishes to marry her with the blessings of her parents. He had also submitted before us that the 3rd respondent made unfounded allegation against his sister. He also

submitted before us that he is a driver by profession and he is having sufficient income to maintain the detainee, in case she is being send along with him.

7. After the interaction with the petitioner, the detainee volunteered to submit before us that though the 3rd respondent is not in favour of her and is not willing to approve her affair with the petitioner, at present, she is prepared to go to her parental home along with her parents. Thus, now, the stand of the alleged detainee Fathima Kasim/daughter of the 3rd respondent, as disclosed from her submission is that, she wants to marry the petitioner after obtaining a job of her own and for the time being, she is ready to go along with the 3rd respondent/her father. The above submission of the alleged detainee is recorded. She also made it clear that her father shall not insist her to marry any other person against her will and without her consent.

8. As the detenue is a 19 year old lady and as she is prepared to go along with her father/the 3rd respondent, we are of the view that this writ petition can be closed, recording the above deposition of the alleged detenue. As Fathima Kasim, the alleged detenue, is not under the illegal confinement of 3rd respondent, she is free to go along with the 3rd respondent/father. We hope that during the stay in her house, her parents or their relatives will not insist her for marrying any other person against her will or without her consent.

Accordingly, the writ petition is closed.

Sd/-

V.K.MOHANAN, Judge

Sd/-

P.D.RAJAN, Judge

ami/

//True copy//

P.A.to Judge