

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH

MONDAY, THE 23RD DAY OF NOVEMBER 2015/2ND AGRAHAYANA, 1937

WP(Crl.).No. 435 of 2014 (S)

PETITIONER(S):

GUNASHEKAR REDDY
AGED 32 YEARS, S/O.M.RAJA REDDY
RESIDING AT PLOT NO.16/B, MYTRI NAGER, ROAD NO.2
SBH COLONY, VENTRUE-III, LAL BAHADUR NAGAR
RANGA REDDY-74, RANGA REDDY DISTRICT, TELANGANA.

BY ADVS.SRI.GEO PAUL
SRI.SANU MATHEW
SRI.RADHIKA RAJASEKHARAN P.
SRI.C.R.PRAMOD
SRI.S.ASHOK KUMAR.
SRI.LENIN P. SUKUMARAN
SRI.JERRY VARGHESE

RESPONDENT(S):

1. THE STATE OF KERALA
REPRESENTED BY ITS HOME SECRETARY TO GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM, PIN-695 001.
2. THE SUB INSPECTOR OF POLICE,
ADOOR POLICE STATION, ADOOR, PATHANAMTHITTA
PIN-691 523.
3. THE SUPERINTENDENT OF POLICE,
PATHANAMTHITTA, PIN-691 523.
4. OOMMEN VARGHESE,
AGED 60 YEARS, MERIN VILLA, CHOORAKODE POST
ADOOR TALUK, PATHANAMTHITTA DISTRICT, PIN-691 551.

5. ELAMMA,
W/O.OOMMEN VARGHESE, AGED 55 YEARS, MERIN VILLA
CHORAKODE POST, ADOOR TALUK, PATHANAMTHITTA DISTRICT
PIN-691 551.

R1 -R 3 BY ADV. ADDL.DIRECTOR GENERAL OF PROSECUTION
R4,R5 BY ADV. SRI.K.C.CHARLES
R4,R5 BY ADV. SRI.M.POLY MATHAI
R BY GOVERNMENT PLEADER SRI. SHIBU

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON
23-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(Crl.).No. 435 of 2014 (S)

APPENDIX

PETITIONER(S)' EXHIBITS

P1- THE TRUE COPY OF THE BIRTH CERTIFICATE OF M.SHRADHA REDDY
ISSUED BY THE REGISTRAR OF BIRTHS AND DEATHS, CHITTOR MUNICIPAL
CORPORATION.

P2- THE TRUE COPY OF THE AADHAAR CARD ISSUED IN THE NAME OF THE
MINOR CHILD M.SHRADHA REDDY.

RESPONDENT(S)' EXHIBITS

NIL

TRUE COPY

PS TO JUDGE

C.K.ABDUL REHIM & MARY JOSEPH, JJ.

WP(CrI) No. 435 of 2014

Dated this the 23rd day of November, 2015

JUDGMENT

Abdul Rehim,J.

The petitioner is approaching this court seeking a writ of habeas corpus for directing production of his minor child viz. M.Shradha Ready @ Evana. The child was born in the wedlock between the petitioner and the daughter of respondents 4 & 5, Smt. Vincy Merine Varghese. The marriage was solemnised on 28.11.2009 and the child was born on 18.1.2011. The marriage was solemnised not with the consent of respondents 4 and 5. Allegations of the petitioner is that, his wife started misbehaving with him at the instance of respondents 4 and 5. It is conceded that, with respect to permanent custody of the minor child the petitioner had already moved the Family Court, at Ranga Reddy District in Telangana by filing OP.No.959/2013. It is averred in the writ petition that the mother of the child had entered appearance before that court through the 4th respondent, who undertook to produce the child before that court. But there

was failure on his part in this regard. It is stated that on 28.8.2014 the petitioner's wife appeared before that court with the child and an ex-parte order passed earlier was set aside. Thereafter the petitioner's wife left to Soudi Arabia during September 2014 for taking up employment and the child was left with the custody of respondents 4 and 5. It is alleged that respondents 4 and 5 are illegally keeping custody of the child by putting the petitioner in darkness about the child's place of residence. Hence the above writ petition is filed.

2. Based on the facts narrated as above we are not convinced that there exists any circumstances warranting invocation of the jurisdiction vested on this court to issue a writ of habeas corpus. Admittedly the child is in the custody of her mother at the time when the case was instituted by the petitioner /father seeking permanent custody. It is alleged that during pendency of the said case the mother had gone abroad after entrusting the child with the maternal grand parents. At any rate, custody of the child either with the mother or with the maternal grand parents cannot be found as an illegal confinement, which would constitute grounds for invoking

jurisdiction of this court. Interference by this court in such matters, especially when a properly instituted case is pending before the court having competent jurisdiction, cannot be encouraged. Therefore we are of the opinion that the parties can be relegated to seek appropriate remedy before the Family Court.

3. However we notice that, when this court considered the case on 4.11.2014 a temporary arrangement was made with respect to visitation of the child by the petitioner on the following terms:-

- i) *The respondents 4 and 5 are directed to hand over the ward viz. Matamala Shradha Reddy which is the name of the child as per Ext.P1, who is now known as 'Evana' to the petitioner between 8.30 and 9.00 a.m. on every Sunday at the house of respondents 4 and 5.*
- ii) *The petitioner is free to take out the detenu from the house of respondents 4 and 5 and to have the company of his daughter during which the petitioner is free to feed his daughter and take her to any restaurant or any toy shop etc. or park.*
- iii) *The petitioner shall return the child between 12.30 and 1.00 p.m. on the same day to*

respondents 4 and 5 at their residence.

4. We are of the opinion that, while relegating the parties to seek appropriate relief from the Family Court, the above said arrangement can be directed to be continued. It is left open to the parties to seek appropriate orders from the Family Court at Telangana, either for a final disposal of the original petition itself or with respect to arrangement of interim custody 'pendente lite'. Learned counsel appearing for respondents 4 and 5 expressed inconvenience regarding the timing of visitation stipulated in the above said arrangement made by this court. Having considered the submission made on both sides, we are inclined to modify the above arrangement by changing the time of visitation from 8.30 a.m. and 12 noon.

5. Therefore the above writ petition is hereby disposed of by relegating the parties to seek appropriate orders from the Family Court where the case regarding custody of the child is now pending. Till the Family Court passes any order, either with respect to permanent or temporary custody of the child, the visitation right permitted to the petitioner herein through order of this court dated 4.11.2014 is ordered to continue, subject to

modification regarding the timing of visitation, which will be from 8.30 a.m. to 12.00 noon.

C.K.ABDUL REHIM, JUDGE

MARY JOSEPH, JUDGE

Pmn/