

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN
&
THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936`

WP(Cr1.).No. 494 of 2014 (S)

PETITIONER(S) :

VINEESH E., AGED 29 YEARS
S/O.BASKHARAN.C., DRIVER, RESIDING AT THEJUS
THERREKKATTIL, ARANJOLI (AMSOM), VADAKKUMBAD (DESOM)
THALASSERY TALUK, KANNUR DIST-670 109.

BY ADVS.SMT.REKHA C.NAIR
SRI.R.SUDHEER
SRI.P.SAJU
SRI.R.PRATHEESH (ARANMULA)

RESPONDENT(S) :

1. THE SUPERINTENDENT OF POLICE,
KANNUR DISTRICT-670 002.
2. SUB INSPECTOR OF POLICE,
DHARMADAM POLICE STATION, KANNUR DISTRICT.
3. HANEEFA.A.V.,
BAITHUL REHMA, DOOVIKULAM, POOZHITHALA
MAHEE.
(WITHIN THE LOCAL LIMITS OF CHOMBAL POLICE STATION)

BY ADV. SRI.C.KHALID
SRI.N.A.JOSEPH
SRI.K.P.MOHAMED SHAFI
SMT.K.S.HASEENA
SRI.PHIJO PRADEESH PHILIP
SMT.K.K.NESNA
R1,R2 BY GOVERNMENT PLEADER SMT.KOCHUMOL KODUVATH

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON
03-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(Crl.).No. 494 of 2014 (S)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1: TRUE COPY OF CONVERSION CERTIFICATE ISSUED BY ARYA SAMAJ
CALICUT.

EXT.P2: TRUE COPY OF MARRIAGE CERTIFICATE ISSUED BY ARYASAMAJA MANDIR
(VEDIC CHURCH) CALICUT.

EXT.P3: TRUE COPY OF BIRTH CERTIFICATE.

EXT.P4: TRUE COPY OF THE RECEIPT ISSUED BY DHARMADAM POLICE.

RESPONDENT(S) ' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE

ami/

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

W.P.(Crl.)No.494 of 2014

Dated this the 3rd day of February, 2015.

J U D G M E N T

Mohanana, J.

Claiming that the petitioner is the lawful husband of one Vineetha @ Aseena A.V. and the father of one Vinay, he preferred the writ petition alleging that his wife and child found missing from 21.11.2014 at about 6 p.m. onwards from his residence. According to the petitioner, his marriage was a love marriage. Originally, the petitioner's wife, who is one of the alleged detenues, belonged to Muslim religion and prior to the marriage, she voluntarily converted herself to Hindu religion under the supervision of 'Bharathiya Hindu Shudhi Sabha', accepting the present name as Vineetha. According to the petitioner, after the conversion, their marriage was solemnised on the same day as per the Hindu rites and ceremonies at Arya Samaj Mandir at Calicut. To substantiate the above two claims,

the petitioner has produced Exts.P1 and P2. It is also the contention of the petitioner that, in the said wedlock, a male child was born to them as evident by Ext.P3. According to the petitioner, while the petitioner and his wife and child were residing together, the wife and the child of the petitioner found missing and accordingly he launched a complaint before the Dharmadam Police Station, on the basis of which, the Police issued Ext.P4 receipt. It is the further case of the petitioner that, after registering the complaint preferred by the petitioner, the Police has not taken any effective steps to trace out his wife and son. According to the petitioner, he had conducted an enquiry with the relatives and his friends. Thus he came to know that his wife and son are under the detention of the 3rd respondent, who is the father of his wife. It is specifically alleged that the 3rd respondent and his henchmen are preventing the petitioner from seeing or meeting his wife and child and subsequently the 3rd respondent has shifted his wife and child to some unknown place and they are

under his illegal custody. Therefore, he preferred the writ petition praying inter alia to issue a writ of habeas corpus commanding respondents 1 and 2 to trace out the detenue and produce them before this Court.

2. On 8.12.2014, when the above writ petition came up for admission and while admitting the same and issuing notice to the 3rd respondent, he was directed to produce the detenues, namely the wife and son of the petitioner before this Court on 15.12.2014 and the Police officers were directed to see that the said direction has been complied with by the 3rd respondent. Subsequently, when the detenues were appeared before us, by order dated 15.12.2014, they were referred to Kerala Mediation Center for mediation. Thus, Adv.A.R.George, the Mediator, Ernakulam Mediation Centre, has reported that the petitioner and his wife need counselling by a psychologist and only after that an attempt for settlement is possible. On the basis of the said report of the Mediator, by order dated 15.12.2014, we directed the parties to appear before

Dr.Sr.Treesa Palackal, Clinical Counselling Pscyhologist / the Director, Hrudayaram Community College of Counselling and Psychotherapy Kannur University, for counselling. Dr.Sr.Treesa Palackal, furnished a report dated 2.1.2015 to this Court, in which it is stated that the petitioner and his counsel were appeared before her ; but, 3rd respondent and his daughter were not present. Subsequently, they appeared before Dr.Sr.Treesa Palackal on 23.12.2014. Thus, it is reported that she could not conduct family counselling. Therefore, by order dated 7.1.2015, we again directed the 3rd respondent and his daughter to appear before Dr.Sr.Treesa Palackal to provide counselling to them as well as to the petitioner on 19.1.2015 at 10 a.m. We have subsequently directed the said Dr.Sr.Treesa Palackal to furnish a report after the counselling on 19.1.2015 ; but so far no report is received.

3. The petitioner as well as the daughter of the 3rd respondent along with their child are present today before this Court. On the basis of the request of the learned

counsel for the petitioner, we directed the 3rd respondent and his daughter to hand over the child to the petitioner for some time till 11.30 a.m. on today. Thereafter, the matter is again taken and we have interacted with the daughter of the 3rd respondent, who is the alleged wife of the petitioner. During our interaction with her, she submitted before us that the alleged marriage with the petitioner was without her proper consent and she had put her signature in certain documents without knowing that she was entering into a marriage with the petitioner. The learned counsel for the petitioner submitted that the said Vineetha / wife of the petitioner may be directed to permit the petitioner to visit his son in their house.

4. Having regard to the facts and circumstances involved in the case, we are of the view that, as the alleged detinue herself submitted before us that she is not under the illegal confinement of anybody, we lacks jurisdiction. If there is any dispute between the petitioner and daughter of the 3rd respondent, who is the alleged wife of the petitioner,

the proper forum is the concerned Family court. Similarly, if the petitioner wants to have the custody or visitorial right with respect to his child, for which also, the petitioner has to file appropriate petition before the Family court.

5. As the so called detenue submitted before us that she is not under the illegal confinement of anybody, we find no merit in this petition and no further orders are warranted in terms of the prayer in this writ petition.

In the result, this writ petition is dismissed.

Sd/-
V.K.MOHANAN, Judge

Sd/-
P.D.RAJAN, Judge

ami/

//True copy//

P.A.to Judge