

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.T. SANKARAN
&
THE HONOURABLE MR. JUSTICE K. ABRAHAM MATHEW

MONDAY, THE 16TH DAY OF FEBRUARY 2015/27TH MAGHA, 1936

WP(Crl.).No. 509 of 2014 (S)

PETITIONER:

P.J. JILTON, AGED 39 YEARS
S/O. LONAPPAN, RESIDING AT PULLOOKKARA HOUSE
VALLANGALLUR P.O., VELAYANAND, THRISSUR 680 662.

BY ADV. SRI. P. PAULOCHAN ANTONY

RESPONDENTS:

1. CIRCLE INSPECTOR OF POLICE
KODUNGALLUR POLICE STATION - 680 664.
2. JOSHMA T.J., AGED 24 YEARS
D/O. T.P. JOSE, RESIDING AT THOZHUTHUNGAL HOUSE
CHAPPAPARA, PULLUT P.O., THRISSUR - 680 663.

R1 BY ADDL. DIRECTOR GENERAL OF PROSECUTION
SHRI. K.I. ABDUL RASHEED

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON
16-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBITS

- EXT.P1: COPY OF THE MARRIAGE CERTIFICATE BEARING NUMBER PH2-14218/14 DATED 20/11/2014 ISSUED BY THE REGISTRAR OF MARRIAGE, KODUNGALLUR MUNICIPALITY.
- EXT.P2: COPY OF THE PHOTOGRAPH OF THE 2ND RESPONDENT
- EXT.P3: COPY OF THE BIRTH CERTIFICATE OF THE CHILD OF THE PETITIONER
- EXT.P4: COPY OF THE PHOTO OF THE DETENUE (CHILD OF THE PETITIONER)
- EXT.P5: COPY OF THE PETITION DATED 31/10/2014 PREFERRED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXT.P6: COPY OF THE RECEIPT DATED 31/10/2014 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

AHZ/

**K.T.SANKARAN &
K. ABRAHAM MATHEW, JJ.**

W.P.(Crl) No.509 of 2014 (Habeas Corpus)

Dated this the 16th day of February, 2015

JUDGMENT

K.T.Sankaran, J.

The petitioner is the husband of the second respondent. The petitioner was working abroad. Egnal John is the son born in that wedlock. It is alleged that the second respondent took the child and eloped with her paramour by name Jithin. The Writ Petition is filed to issue a writ of Habeas Corpus directing respondents 1 and 2 to produce Egnal John (the detenu) and to hand over the detenu to the petitioner. The petitioner claims his right as the legal guardian.

2. On a reading of the Writ Petition itself, it is clear that the petitioner does not want to have the company of his wife but he wants custody of his child.

3. The second respondent is brought before Court today along with her son. The second respondent stated that she was in love with Jithin. She also stated that the petitioner is fifteen years' elder to her and that fact was suppressed at the time of marriage.

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The second respondent stated that she does not want to live with the petitioner. She further stated that she is now residing with Jithin at Mangalore, Karnataka State. She does not want to go with the petitioner.

4. The proper remedy of the petitioner to get custody of the child is to make an application before the Family Court having jurisdiction. The jurisdiction under Article 226 cannot be used to gain custody of the child. The adjudication on the question as to whether the petitioner is entitled to get custody of the child or whether the second respondent is entitled to custody cannot be had in a Writ Petition. That is a matter exclusively within the jurisdiction of the Family Court.

In these circumstances, reserving the liberty of the petitioner to move the appropriate Family Court, the Writ Petition is closed.

(K.T.SANKARAN)
Judge

(K. ABRAHAM MATHEW)
Judge

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