

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

WP(Cr1.).No. 13 of 2015 (S)  
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PETITIONER(S) :  
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NAZER AGED 36 YEARS  
S/O.MUHAMMED IBRAHIM, KODIVILA HOUSE, EZHIPURAM  
PARIPPALLY P.O., KOLLAM.

BY ADV. SRI.UNNI. K.K. (EZHUMATTOOR)

RESPONDENT(S) :  
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1. STATE POLICE CHIEF  
POLICE HEAD QUARTERS, VAZHUTHAKKADU  
THIRUVANANTHAPURAM - 695 001.
2. DISTRICT POLICE CHIEF  
KOLLAM - 694 002.
3. DISTRICT POLICE CHIEF  
MALAPPURAM - 670 001.
4. SUB INSPECTOR OF POLICE  
KUTTIPIPURAM POLICE STATION  
MALAPPURAM DISTRICT - 670 001.
5. SUB INSPECTOR OF POLICE  
PARIPPALLY POLICE STATION -694 176.
6. ANSARI  
VAZHAVILA SHAH COTTAGE  
PAYYAKODE, OYOOR POST,  
KOLLAM - 694 182.
7. MUHAMMED SHAH  
VAZHAVILA SHAH COTTAGE  
PAYYAKODE, OYOOR POST, KOLLAM - 694 182.
8. NAZEER SHAH  
VAZHAVILA SHAH COTTAGE, PAYYAKODE, OYOOR POST  
KOLLAM - 694 182.

BY SRI.K.V.ANIL KUMAR, R6 TO 8  
PUBLIC PROSECUTOR SRI.P.S.ABDUL KAREEM

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD  
ON 22-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(Crl.).No. 13 of 2015 (S)

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APPENDIX

PETITIONER(S) ' EXHIBITS

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EXT.P-1: TRUE COPY OF THE MARRIAGE CERTIFICATE ISSUED BY THE JAMA-  
ATH.

EXT.P-2: TRUE COPY OF THE BIRTH CERTIFICATE OF MUHAMMED NADHIM

EXT.P-3: TRUE COPY OF THE FIR NO.749/2014 OF KUTTIPURAM POLICE

EXT.P-4: TRUE COPY OF THE COMPLAINT DATED 16.12.2014

RESPONDENT(S) ' EXHIBITS

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NIL

//TRUE COPY//

P.A.TO JUDGE

ami/

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

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**W.P.(Crl.)No.13 of 2015**  
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**Dated this the 22<sup>nd</sup> day of January, 2015.**

**J U D G M E N T**

**Mohanana, J.**

The petitioner claimed that he is the husband of one Naziya K. and father of one Muhammed Nadhim and he prefers this writ petition under Article 226 of the Constitution of India alleging that his wife and child are under the illegal custody of respondents 6 to 8 and therefore prayed to issue a writ of habeas corpus directing respondents 1 to 5 for the production of the wife of the petitioner, namely Naziya K. and his son Muhammed Nadhim before this Court and direct to release them forthwith to the petitioner from the illegal custody of respondents 6 to 8.

2. In terms of our earlier orders dated 8.1.2015 and on 15.1.2015, today, Naziya along with her son Muhammed Nadhim are produced before us by the Police. We

interacted with Naziya and we have heard the learned counsel appearing for the petitioner as well as respondents 6 to 8.

3. The learned counsel for the petitioner vehemently submitted that the petitioner's wife has eloped with 7<sup>th</sup> respondent with the child and their whereabouts were not known even to the Police. So, the learned counsel submits that the petitioner may be permitted to interact with the son of the petitioner and Naziya, his wife, has no authority to take his son from him.

4. During our interaction with Naziya, the wife of the petitioner, she submitted before us that she volunteered to go with the 7<sup>th</sup> respondent, when a job was offered by the 7<sup>th</sup> respondent and she is also giving education to her son Muhammed Nadhim. To a specific question as to whether she is under the illegal confinement of respondents 6 to 8, she answered negatively and submitted that she left the company of the petitioner

according to her desire and decision.

5. In this proceedings filed under Article 226 of the Constitution of India, where the allegation is that the persons produced as the detenues are under the illegal custody of respondents 6 to 8, the only question to be considered is whether such allegation is correct or not. When the so called detinue herself submitted before us that, she is not under the illegal confinement of anybody, the jurisdiction of this Court dearths. If there is any dispute between the petitioner and his wife Naziya, including the dispute regarding the custody of their child, it is for the petitioner or his wife to approach the concerned Family court for resolution of such dispute. In this proceedings, this Court is not expected to take any decision as to who is entitled to get the custody of the child etc.

6. In the light of the above facts and circumstances, we find no merit in this petition and accordingly the same is dismissed, especially when the wife of the petitioner

submitted that she is not under the illegal custody of anybody.

Sd/-  
**V.K.MOHANAN, Judge**

Sd/-  
**P.D.RAJAN, Judge**

ami/

//True copy//

P.A.to Judge