

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

&

THE HONOURABLE MR. JUSTICE P.D.RAJAN

FRIDAY, THE 16TH DAY OF JANUARY 2015/26TH POUSHA, 1936

WP(Crl.).No. 15 of 2015 (S)

PETITIONER:

SUMESHKUMAR S AGED 26 YEARS
S/O.SURENDRAN PILLAI, SUNIL BHAVANAM, NEENDAKARA
KOLLAM - 691 582.

BY ADV. SRI.SUNNY ZACHARIAH

RESPONDENT(S):

1. STATE OF KERALA
REPRESENTED BY THE SUB INSPECTOR OF POLICE
SAKTHIKULANGARA POLICE STATION, KOLLAM DT - 691 003.

2. GIREESH BABU,
INCHAVILA, MARUTHADI, KOLLAM - 691 003.

R1 BY ADV.TOM JOSE PADINJAEKKARA, ADDL.DIRECTOR GENERAL OF
PROSECUTION

R2 BY ADV. SRI.N.DHARMADAN (SR.)

R2 BY ADV. SMT.D.P.RENU

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON
16-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(Crl.).No. 15 of 2015 (S)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1: TRUE COPY OF THE MARRIAGE CERTIFICATE

EXT.P2: TRUE COPY OF DEPOSITION OF THE DETENUE

EXT.P2(A): TRUE COPY OF THE STATEMENT OF THE DETENUE ENDORSED WITH
THE ORDER OF THE MAGISTRATE.

RESPONDENT(S) ' EXHIBITS : NIL

//TRUE COPY//

PS TO JUDGE

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

.....
WP(CrI) No.15 of 2015

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Dated 16th JANUARY, 2015

JUDGMENT

V.K.MOHANAN, J

The petitioner, who claims that he is the legally married husband of one Gouri Gireesh, the daughter of the second respondent, preferred this writ petition under Article 226 of the Constitution of India, alleging that his wife is kept under illegal custody by the second respondent. It is the further case of the petitioner that himself and the said girl were in love and such affairs further developed and resulted in their marriage, which was solemnised on 27.8.2014 as per the customary rites of Hindu religion at Kalavamkodam Saktheeswaram Temple, Kalavamkodam, Cherthala and thereafter, the said marriage was registered under Rule 11(1) of the Kerala Registration of Marriages (Common) Rules, 2008 as evident by Ext.P1 Certificate. According to him, the marriage was conducted without the consent and knowledge of the parents of the detenue and after the

marriage, she went back to her house and continued with the coaching in Palai, Kottayam. It is also averred that during the Christmas vacation, the detenue came along with the petitioner and resided with him and on knowing the said fact, second respondent had filed a complaint before the S.I of Police, Sakthikulangara Police Station, consequent to which Crime No.1869 of 2014 was registered under Section 57(A) of Kerala Police Act, pursuant to which the detenue was taken from the residence of the petitioner and produced before the jurisdictional Magistrate, from where she was permitted to go along with the second respondent, after recording her statement.

2. It is specifically averred by the petitioner in this writ petition that after sending the detenue along with the second respondent, she was in constant touch with the petitioner over mobile phone till the evening of 30.12.2014 and thereafter, he could not contact her and he is not aware of the whereabouts of his wife. However, it is stated that on further enquiry, the petitioner learnt

that the second respondent has kept the detenue in his custody at his residence and she is not permitted to contact anybody. So, in substance, the allegation is that second respondent has illegally detained the wife of the petitioner and therefore in the above writ petition, it is prayed to issue a writ in the nature of habeas corpus or any other appropriate writ, order or direction commanding the first respondent to produce the body of the detenue, namely, Gouri Gireesh, before this court and to enquire into the matter of illegal detention of the detenue by the second respondent.

3. When the above writ petition came up for consideration, by order dated 9.1.2015, we directed the second respondent to produce his daughter Gouri Gireesh before this court on this day and the first respondent was directed to see that the second respondent has complied with the above direction.

4. Accordingly, today the detenue is produced before this court. We interacted with the detenue and also the petitioner. We have heard Sri N.Dharmadan, learned

senior counsel appearing for the second respondent, on behalf of whom a counter affidavit has already been filed. We have heard the learned counsel for the petitioner as well as Sri Tom Jose Padinjarekkara, learned Additional Director General of Prosecution.

5. The learned senior counsel appearing for the second respondent advanced several legal and factual contentions and submitted that the above writ petition itself is not maintainable, especially when the second respondent being the father and guardian of Gouri Gireesh is entitled to have the custody of his daughter. It is also the contention of the learned senior counsel that Ext.P1 Marriage Certificate is not sufficient to prove and establish a valid marriage in accordance with the provisions of the Hindu Marriage Act. We have not proposed to consider the merit or demerit of all such contentions, in view of the stand taken by the detinue during our interaction with her. Learned counsel for the petitioner submitted that the detinue is now produced from the custody of the second respondent and she is

under mental stress and their influence and what all deposed by the detinue before this court is only at the instance of the second respondent and therefore the learned counsel requested this court that the petitioner may be permitted to have a talk with the daughter of the second respondent, who is his wife.

6. During our interaction with Gouri Gireesh, she submitted that she has completed 18 years of age on 13.07.2014 and she had passed Plus Two Course and now she is preparing for Entrance Examination, which is scheduled to be held during the month of April, 2015. To a specific question, she submitted that the petitioner is her husband and she also submitted that she gave a statement before Judicial First Class Magistrate-I, Karunagappally when she was produced before the said Magistrate on 29.12.2014 and she stick on such statement. She submitted before us that she wants to prepare for the Entrance Examination and for the time being, she wants to go to her house along with the second respondent. When we put to her, on the basis of

the request made by learned counsel for the petitioner as to whether she is interested to talk with the petitioner, she submitted that at present, she does not want to talk with the petitioner. She also submitted before us that the entire allegation in the petition is not correct and she is not under the illegal custody of anybody including the second respondent.

7. When the so called detainee herself deposed before us that she is not under the illegal custody of anybody including the second respondent, we lack jurisdiction to proceed with the enquiry in this proceedings. Since the detainee is not under the illegal custody or detention, no further orders are warranted. Accordingly, this writ petition is closed.

V.K.MOHANAN, JUDGE

P.D.RAJAN, JUDGE

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