

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.T.SANKARAN
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

WP(Crl.).No. 21 of 2015 (S)

PETITIONER:

ADV.BABY JOHN, AGED 34 YEARS
AGED 34 YEARS, S/O JOHN ,AMABLLOOR HOUSE
AMBALAKKARA P.O., KOTTARAKKARA, KOLLAM DISTRICT
PINCODE-691 532

BY ADVS.SRI.M.KANNAN
SRI.AJEESH S.BRITE

RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO HOME DEPARTMENT
THIRUVANANTHAPURAM. 695 001.
 2. SUPERINTENDENT OF POLICE, KOLLAM RURAL, KOTTARAKKARA,
691 506.
 3. SUB-INSPECTOR OF POLICE
KOTTARAKKARA. 691 506
 4. SAMUEL KUTTY,
AGED 55 YEARS, KUNNUVILA VEEDU, NELLIKUNNAM P.O.
KOTTARAKKARTA, KOLLAM DISTRICT, PINCODE 691 520
 5. SHAJI ALIAS KOCHUMON, AGED 40 YEARS
L.P.SCHOOL ASSISTANT ST. MARRY'S SCHOOL
KIZHKKKARA, KIZHAKKETHERUVU, KOTTARAKKARA
KOLLAM DISTRICT PIN CODE 691 531
- R1 -R 3 BY ADDL.DIRECTOR GENERAL OF PROSECUTION
MR. K.I. ABDUL RASHID

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON
17-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(Crl.).No. 21 of 2015 (S)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT A1: COPY OF COMPLAINT BY THE PETITIONER TO THE 3RD RESPONDENT

EXHIBIT P2: COPY OF S.S.L.C. CERTIFICATE OF LEENA SAM

EXHIBIT P3: COPY OF ENROLLMENT CERTIFICATE OF PETITIONER

EXHIBIT P4: COPY OF HALL TICKET OF B.A. DEGREE EXAM TO LEEENA SAM.

RESPONDENT(S)' EXHIBITS

NIL

ks.

True copy

P.S. (Hr.Gr.)To Judge

**K.T. SANKARAN
&
BABU MATHEW P. JOSEPH, JJ.**

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W.P.(Crl.)No. 21 of 2015

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Dated this the 17th day of March, 2015

JUDGMENT

K.T. Sankaran, J.

The petitioner is an Advocate by profession. He states that he is in love with Leena Sam, daughter of the 4th respondent. He also alleged that Lena Sam was under the illegal detention of the respondents 4 and 5.

2. A Division Bench of this Court passed orders dated 20.1.2015, 5.2.2015 and 10.2.2015. For the sake of convenience, these orders are extracted below:

1. Order dated 20th January, 2015

"In terms of our order dated 13.1.2015, Ms.Leena Sam, the daughter of the fourth respondent is produced before us. The petitioner is present. The fourth respondent is also present. We have interacted with them. We have also heard counsel appearing for the petitioner as well as respondents 4 and 5.

2. The learned counsel appearing for the petitioner submitted that the petitioner was constrained to approach this Court on the basis of the information furnished by the detinue that she was forcefully taken to Little Flower Convent, Thrippilazhikom for four days and according to the learned counsel, the detinue is still under the illegal custody of respondents 4 and 5. On the other hand, the learned counsel appearing for respondents 4 and 5 submitted that though there was a proposal for marriage between the petitioner and the daughter of the fourth respondent, subsequently, on their enquiry, it is revealed that the petitioner is a divorcee and therefore, respondents 4 and 5 and their relatives are not interested in proceeding with the proposal and the detinue is not under the illegal custody of anybody.

3. As the detinue is produced before us, we have interacted with her to ascertain the real fact.

4. During our interaction with the detinue, she submitted before us that she is aged 25 and she is an Engineering Graduate. According to her, herself and the

petitioner were in love and the petitioner and his relatives approached the fourth respondent/her father towards the marriage proposal and thereafter, the relatives of the detainee visited the house of the petitioner. However, after their return from his house, the fourth respondent, who is her father and all the relatives changed their attitude and she had overheard about their talk to send her to a mental asylum. Thereafter, she was admitted in the Little Flower Convent, Thrippilazhikom on 10.1.2015 and thereafter, she was taken to the house on 15.1.2015. In an unequivocal language, she deposed before us that she wants to go along with the petitioner, as she had no freedom in her house.

5. During our interaction with the father of the detainee/the fourth respondent, he submitted before us about the conduct of the petitioner and according to him, he is not prepared to send his daughter along with the petitioner. He had also submitted before us that if she wants to go along with the petitioner, let them go and have a lawful marriage. But, he has also made clear that himself and his family members are not inclined to approve the said relationship and he is not amenable to any claim of the detainee connected with the family property.

6. As the detainee wanted to go along with the petitioner, we are of the view that it is not proper to compel her to go along with the fourth and fifth respondents. It is equally important to note that though

there was a proposal, no marriage is solemnized between the petitioner and the daughter of the fourth respondent/the detainee. During our interaction with the petitioner, he submitted before us that he proposes to conduct the marriage in accordance with the religious customs for which he is likely to get an order from the appropriate religious head. We do not know how far it can be materialised. However, at present, in the absence of any proper marriage, we are of the view that the detainee can be lodged in a hostel at Ernakulam till a formal marriage is conducted between the petitioner and the detainee and the petitioner shall meet all the expenses for her accommodation and the incidental expenses.

7. In the result, we direct the third respondent to lodge the daughter of the fourth respondent in the SNV Sadanam Hostel at Ernakulam and the Matron of the said hostel, though she is not a party to this proceedings, is directed to accommodate Ms. Leena Sam, the detainee in their hostel and the petitioner will meet all the expenses connected with the accommodation of the detainee in that hostel.

8. As undertaken by the petitioner, we direct him to take appropriate steps to conduct the customary marriage and if the same is possible, the petitioner is free to take the detainee from the hostel for solemnising the marriage as and when requested by the petitioner. Accordingly, the Matron of the said hostel is directed to permit the petitioner for the same. The petitioner is further directed

to take steps to register the marriage between the petitioner and the detinue as per the provisions of the Special Marriage Act, in the mean while. The petitioner is free to approach the Matron of the S.N.V.Sadanam Hostel for obtaining the signature of the detinue for the said purpose. After giving the notice and on the date fixed for registering the marriage, the petitioner is free to take the detinue from the hostel for the purpose of registering the marriage and the Matron of the said hostel is directed to permit the petitioner to take the detinue for the above purpose as well. At the time of customary marriage, if any, and at the time of registering the marriage, the third respondent is directed to afford sufficient protection by deputing Woman Police Officers and Constables in mufti. The petitioner is free to visit the detinue during her stay in the said hostel. The fourth respondent is also free to visit the detinue in the said hostel, if he so desires. The permission of both the petitioner and the fourth respondent will be subject to the rules and regulations of the said hostel. Post on 5.2.2015. On the above date, the detinue need not be appeared before this Court.

Hand over the order to the Additional Director General of Prosecutions and the petitioner and the petitioner is directed to hand over a copy of this order to the Matron of the above hostel.”

2. Order dated 5th February, 2015

“The learned Government Pleader submitted that in

terms of the order dated 20.1.2015, the detainee namely Miss. Leena Sam was accommodated in the SNV Sadanam Hostel at Ernakulam. The learned counsel for the petitioner submitted that the petitioner has made arrangement to conduct marriage on 9.2.2015 at Jubilee Mandiram Chappel at Kottarakara in accordance with the religious custom prevailing among the Christian community and also submitted that a joint application to register the marriage under the provisions of the Special Marriage Act has already been issued on 28.1.2015 as evidenced by the receipt dated 28.1.2015 issued from the Sub Registrar office, Kottarakara. Accordingly, the learned counsel requested this Court that the petitioner may be permitted to take the detainee from the SNV Sadanam Hostel at Ernakulam, to conduct the marriage on 9.2.2015 as per their religious custom and also for registering their marriage.

2. At this juncture, it is relevant to note that in our order dated 20.1.2015, particularly in paragraph 5, we have specifically recorded that the 4th respondent / the father of the detainee, is not prepared to send his daughter along with the petitioner and he had already submitted that if his daughter wants to go along with the petitioner, he has nothing to say, but there must be a lawful marriage among them. He had also submitted before us that, as himself and his family members are not inclined to approve the relationship between his daughter and the petitioner, he would not be amenable to any claim of the detainee

connected with their family property.

3. That being the approach of the 4th respondent/the father of the detainee and as the detainee wants to go along with the petitioner to solemnise their marriage, we are of the view that, the petitioner can be permitted to take Miss. Leena Sam from the SNV Sadanam Hostel at Ernakulam where she is now accommodated as per the order of this Court on 20.1.2015. Accordingly, there will be a direction to the Matron of SNV Sadanam Hostel, Ernakulam, to permit the petitioner to take Miss. Leena Sam from the hostel at 6.30 a.m. on 9.2.2015 for the purpose of conducting their marriage at Jubilee Mandiram Chappel at Kottarakara. After the marriage ceremony, the petitioner is directed to bring back the detainee to the hostel and accommodate her there. It is also made clear that on the expiry of one month time from 28.1.2015, the petitioner is free to take the detainee from the said hostel for registering their marriage in pursuant to the joint application filed by them before the Marriage Officer, Sub Registrar office, Kottarakara and thereafter also, the detainee shall be accommodated in the same hostel. The 3rd respondent Sub Inspector of Police, Kottarakara, is directed to provide Woman Police Officers and Woman Police Constables in mufti for the up and down journey of the detainee for the purpose of conducting her marriage on 9.2.2015 at Jubilee Mandiram Chappel at Kottarakara and also on a date after 28.2.2015 for registering the marriage before the Marriage Officer, Sub Registrar office,

Kottarakara. The expenses connected there with will be met by the petitioner.

Post on 10.2.2015, on which date the detenue shall be produced before this Court.

Hand over a copy of this order to the learned Government Pleader as well as to the learned counsel for the petitioner."

3. Order dated 10th February, 2015

"Pursuant to the order dated 5.2.2015, the detenue is produced before us. The petitioner is also present. We interacted with them and both of them deposed before us that customary marriage between them was solemnized at Jubilee Mandiram Chappel at Kottarakara on 9.2.2015 and thus, they became man and wife.

2. The learned counsel for the petitioner handover to us a Certificate of Marriage solemnized at Mar Thoma Episcopal Jubilee Mandiram, Kottarakara dated 9.2.2015 signed by the Vicar Rev. Anish Thomas Thomas. Thus, it is evident from the above Certificate that the marriage was solemnized at Jubilee Mandiran Chappel at Kottrakara on 9.2.2015 in accordance with the religious custom prevailing among the Christian community. Therefore, we are of the view that it is only just and proper to send the detenue, namely, Miss. Leena Sam along with the petitioner and it is for the petitioner and the said detenue, Miss Leena Sam to appear for registering their marriage in

pursuance of the notice issued on 28.1.2015 under the Special Marriage Act. After registration of the marriage, the petitioner is directed to produce the Marriage Certificate before this Court on 9.3.2015. The detinue is free to go along with the petitioner.

Post on 9.3.2015."

3. Today the petitioner and Leena Sam are present. They produced before us for perusal the original of the Certificate of Marriage showing that the marriage between the petitioner and Leena Sam was registered before the Marriage Officer, Kottarakkara on 5.3.2015. Thus, the petitioner has complied with the order dated 10.3.2015.

No further orders are required in this writ petition. Accordingly, the writ petition is closed.

Sd/-
K.T. SANKARAN
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

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True copy

P.S. (Hr.Gr.)To Judge

