

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

&

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

WP(Cr1.).No. 64 of 2015 (S)

PETITIONER(S)/PETITIONER:

SAJITH KUMAR, AGED 27 YEARS
S/O.UNNIPILLAI, SAJITHA BHAVAN, MIYYANNOOR P O
KOLLAM

BY ADV. SRI.AJAYA KUMAR G

RESPONDENT(S)/RESPONDENTS:

1. STATE OF KERALA
REP BY THE SECRETARY, HOME DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN-695001.
2. THE SUPERINTENDENT OF POLICE RURAL
OFFICE OF THE SUPERINTENDENT OF POLICE,
KOTTARAKKARA, PIN-691506.
3. THE SUB INSPECTOR OF POLICE,
POOYAPALLY POLICE STATION, KOLLAM.
4. SUJATHA BAI, AGED 46 YEARS
W/O.SUBHASHITHAN, VILAYIL PUTHENVEETIL
PADINJATTINKARA MURIYIL, VELIYAM VILLAGE, VELIYAM P O
KOLLAM

R1-R3 BY GOVERNMENT PLEADER SRI.SHIBU JOSEPH

R4 BY ADV. SRI.K.V.ANIL KUMAR

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON
18-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(Crl.).No. 64 of 2015 (S)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1:-TRUE COPY OF THE CERTIFICATE ISSUED BY THE SECRETARY
ATTUVASSERY SHRI RUDHRABHAYANKARI TEMPLE SAMRAKSHANA SAMITHY.

EXT.P2:-PHOTOGRAPHS SHOWING THE MARRIAGE FUNCTION AT ATTUVASSERY SHRI
RUDRABHAYANKARI TEMPLE.

EXT.P3:-TRUE COPY OF THE PETITION FILED BY THE PETITIONER BEFORE THE
2ND RESPONDENT DTD 2/2/2015.

RESPONDENT(S) ' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE

ami/

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

W.P.(CrI.)No.64 of 2015

Dated this the 18th day of February, 2015.

J U D G M E N T

Mohanan, J.

The petitioner, who is a driver by profession, preferred the above writ petition claiming that one Subi, the daughter of 4th respondent is his wife and their marriage was solemnised on 29.1.2015 at Attuvassery Shri Rudrabhayankari Temple, Mavadi P O, Kottarakkara, as evident by Exts.P1 and P2 documents. According to the petitioner, the 4th respondent and her family members were against the affair between the petitioner and the alleged detainee Subi and they did not co-operate with the marriage. However, they launched a complaint before the 3rd respondent. Consequently, the petitioner was summoned to the Pooyapally Police Station on 29.1.2015 and from there, the petitioner's wife was forcibly taken by

the 4th respondent. It is the further case of the petitioner that, he was threatened by the police that, for the time being, no action was taken and that, if he tries to contact the daughter of the 4th respondent, the petitioner will be implicated in criminal case. It is also the grievance of the petitioner that whenever he tried to contact his wife Subi, the 4th respondent and her relatives threatened him and thus according to the petitioner, his legally wedded wife Subi - the daughter of the 4th respondent is under the illegal custody of 4th respondent and accordingly prayed to issue a writ of habeas corpus directing the respondents 2 and 3 to produce the said Subi - the daughter of the 4th respondent before this Court and to set her at liberty.

2. By order dated 10.2.2015, when the above case came up for admission, while issuing notice to 4th respondent, we directed her to produce her daughter Subi before this Court on this date.

3. Thus when the matter is taken up today, the learned Government Pleader submitted that the detainee Subi was traced out on 30.1.2015 and produced before the Judicial First Class Magistrate court-II, Kottarakara, and after recording her statement, the learned Magistrate sent her along with the 4th respondent - the mother of Subi. The learned Government Pleader also submitted that the detainee is present today.

4. We interacted with the alleged detainee Subi - the alleged wife of the petitioner. During our interaction, she submitted before us that, she is now aged 19 years and at present, she is a 2nd year B.A.(Economics) student and she was in love with the petitioner and their marriage was solemnised on 29.1.2015. She has also deposed before us that now she is coming from her house along with the 4th respondent. According to her, she requested the 4th respondent and her family members to give her in marriage to the petitioner, but her parents are not willing

for the same and therefore she wants to go along with the petitioner. Thereafter, we interacted with the 4th respondent. She submitted that the petitioner has not even a proper place of residence and there is no electric connection in their residence. It is also her stand that if her daughter goes along with the petitioner, her daughter is not entitle to get any share from their assets and properties, as they are not interested in their relationship. The learned counsel for the 4th respondent submitted that there is no valid marriage between the parties and therefore, it is not proper to send the daughter of the 4th respondent along with the petitioner. We have also interacted with the petitioner and he submitted that he is a driver by profession and he is getting Rs.700/- per day. According to him, his sole sister was given in marriage and at present he is residing along with his parents. According to him, he had already married the daughter of the 4th respondent, but she was kept under the illegal confinement

of the 4th respondent, since they are reluctant to approve the relationship between himself and the alleged detainee. The learned counsel for the petitioner, after taking us through Exts.P1 and P2 submitted that the marriage between the petitioner and Subi was solemnised on 29.1.2015 in accordance with the religious custom and rites.

5. Having regard to the facts and circumstances involved in the case and particularly when the allegation is that the wife of the petitioner is under illegal confinement, what this Court expected to enquire is, whether such allegation is correct or not. The so called detainee herself submitted before us that, she wants to go along with the petitioner, as the 4th respondent and her parents are not willing to approve the relationship between herself and the petitioner. Thus what the daughter of 4th respondent indirectly revealed is that she has no mental freedom in their house. Hence, we will not be justified in sending

Miss.Subi along with the 4th respondent. The daughter of the 4th respondent being major, she is at liberty to go along with the petitioner or according to her wish and desire.

In the result, the writ petition is disposed of and accordingly the daughter of 4th respondent is free to go according to her will and wish.

Sd/-
V.K.MOHANAN, Judge

Sd/-
P.D.RAJAN, Judge

ami/

//True copy//

P.A.to Judge