

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR.JUSTICE K. RAMAKRISHNAN

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

WP(Cr1.).No. 69 of 2015 (S)

PETITIONER:

ZEENATH, AGED 29 YEARS,
W/O. JAMSHEER, KUTTIKANDI HOUSE, CHETTAPPALAM,
NOW RESIDING AT KAITHAKKAL, PANAMARAM,
WAYANAD DISTRICT - 670 721.

BY ADV. SRI.E.C.BINEESH

RESPONDENTS:

1. SUB INSPECTOR OF POLICE,
ALAKODE, KANNUR DISTRICT - 670 571.

2. SUNEERA, AGED 24 YEARS,
W/O. RASHID, KALLINGAL VEETIL, ERUMATHERUV,
MANANTHAVADY P.O., WAYANAD DISTRICT - 670 645.

3. SALIM, AGED 34 YEARS,
AYISHA QUARTERS, ERUMATHERUV, MANANTHAVADY P.O.
WAYANAD DISTRICT - 670 645.

4. THE POLICE CHIEF,
WAYANAD DISTRICT, KALPETTA,
WAYANAD DISTRICT - 673 122.

R1 & 4 BY GOVERNMENT PLEADER SRI. P.S. ABDUL KAREEM
(WITH DIRECTOR GENERAL OF PROSECUTION)

R3 BY ADV. SRI.SHANAVAS.S
R3 BY ADV. SRI.SALIM V.S.
R3 BY ADV. SRI.H.NUJUMUDEEN
R3 BY ADV. SRI.P.V.JEEVESH

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON
01-06-2015, ALONG WITH WPCR. 92/2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT.P1 - A TRUE COPY OF THE MARRIAGE CERTIFICATE ISSUED BY THE
GENERAL SECRTARY, NOORUL ISLAM MAHAL JUMA DATED NIL.

EXHIBIT.P2 - A TRUE COPY OF THE COMPLAINT PREFERRED BY THE PETITIONER
BEFORE THE 1ST RESPONDENT DATED. 11.12.14.

EXHIBIT.P3 - A TRUE COPY OF THE COMPLAINT REFERRED BY THE PETITIONER
BEFORE THE POLICE CHIEF, WAYANAD DISTRICT DT. 01.2.15.

RESPONDENTS' EXHIBITS: NIL

/TRUE COOPY/

P.S TO JUDGE

C.K. ABDUL REHIM & K. RAMAKRISHNAN, JJ.

.....
W.P.(Crl.)No.69 of 2015

&

W.P.(Crl.)No.92 of 2015
.....

Dated this the 1st day of June, 2015.

JUDGMENT

Abdul Rehim, J:

W.P.(Crl.)No.69/2015 is filed by Smt. Zeenath seeking a writ of habeas corpus directing production of her husband Sri.Jamsheer before this Court, based on an allegation that he is under illegal detention of one Smt. Suneera, who is the wife of the petitioner in W.P.(Crl)No.92/2015 Sri. Rashid and one Sri.Salim, 3rd respondent in the said case.

2. W.P.(Crl)No.92/2015 is filed by the above said Sri. Rashid seeking a writ of habeas corpus for directing production of Smt. Suneera (his wife) and Master. Rayan (his son), who are allegedly in the illegal custody of Sri. Jamsheer, who is the alleged detainee in W.P.(Crl.)No.69/2015.

3. While considering the above two cases, this Court had passed various interim orders. On 4.3.2015 Sri. Jamsheer appeared before this Court and informed that Smt.Suneera is in advanced stage of pregnancy and hence she is not in a

position to travel to appear before this Court. Therefore, a direction was issued to respondents 1 and 3 in W.P.(CrI.) No.92/2015 to get a statement of Smt. Suneera through a Senior Woman Police Officer, as to whether she is under illegal custody of anybody. When the matter was again posted on 19.3.2015 Smt. Zeenath, the petitioner in W.P.(CrI.) No.69/2015 and Sri. Rashid, the petitioner in W.P.(CrI.) No.92/2015 were present. Sri. Jamsheer stated that he is at present residing at Srikalahasti in Hyderabad along with Smt. Suneera and the minor Master. Rayan. But Sri. Jamsheer had not produced Smt. Suneera or the minor child Master. Rayan. But the report of the District Police Chief had indicated that Smt. Suneera had a love affair with Jamsheer and had eloped with him on 31.8.2013, along with her son Master. Rayan, on her own will. It is mentioned that in a criminal case registered with respect to missing of Smt. Suneera and Master. Rayan, as Crime No.997/203 of Mananthavady Police Station, they were produced before the Judicial First Class Magistrate Court-II, Mananthavady. The learned Magistrate released Smt. Suneera and Master. Rayan with a direction to the Sub Inspector of police, Mananthavady to produce the minor child

before the Child Welfare Committee. It is reported that Smt. Suneera had taken custody of the child - Master. Rayan from the Child Welfare Committee on giving specific undertaking with respect to care and protection of the minor child. But it is reported that she had violated the condition incorporated in the undertaking, not to take the minor child out of the jurisdiction of the Child Welfare Committee, and taken the minor child to Bangalore and thereafter to Andhra Pradesh. However, the police authorities have reported specifically that Smt. Suneera and the minor child - Master. Rayan are not under illegal custody of anybody as alleged in W.P.(CrI). 92/2015.

4. Sri. Rashid, the petitioner in W.P.(CrI)No.92/2015 claimed that he is entitled to get custody of his minor son - Master. Rayan and that life of the minor son is not safe with Sri. Jamsheer. Therefore, this Court directed the District Police Chief, Kalpatta, Wayand to ensure that the minor is produced before this Court on 31.3.2015. Pursuant to that, Smt. Suneera as well the minor child appeared before this Court on 31.3.2015. She said that she is now residing in Andhra Pradesh with Sri. Jamsheer along with the child. According to Smt.

Suneera, she left Wayand for Hyderabad after obtaining permission from the Child Welfare Committee. Having found that Smt. Suneera is the mother of the minor child, this Court was not inclined to pass any order depriving custody of the minor child with her.

5. While considering the claims in W.P(CrI).No.92/2015, we are of the considered opinion that Smt. Suneera and the minor child Master. Rayan are not kept under any illegal confinement of Sri. Jamsheer or anybody else, as alleged. Therefore, interference of this Court for issuance of any writ of habeas corpus does not arise in the said case. However, we make it clear that Sri. Rashid, the petitioner in the said case, is entitled to move before the appropriate court seeking custody of the minor child Master. Rayan. It will be appropriate for him to seek interim custody if any such proceeding is instituted, if so advised. It will be left open to the Family Court concerned to pass appropriate orders, if any such proceeding is instituted.

6. The allegations in W.P.(CrI)No.69/2015 is that the husband of the petitioner, Sri.Jamsheer, is in illegal detention by Sri. Suneera and Sri. Salim. In view of the circumstances

mentioned in the foregoing paragraphs, it is evident that Sri. Jamsheer had settled in Andra Pradesh on his own will, along with Sri. Suneera. He is not under any illegal confinement. Therefore, we are also convinced that interference of this Court is not warranted to order production or release of Sri. Jamsheer, based on any of the allegations contained there.

7. Therefore W.P.(CrI)No.69/2015 also deserves no merit and is liable to be dismissed. There also we make it clear that the spouses Smt. Zeenath and Jamsheer will be at liberty to approach the appropriate court with respect to any of the matrimonial dispute including custody of the children.

Consequently, both the writ petitions are hereby dismissed.

Sd/-
C.K. ABDUL REHIM, JUDGE.

Sd/-
K. RAMAKRISHNAN, JUDGE.

cl

/true copy/

P.S to Judge

W.P.(CrI.)No.69 of 2015
&
W.P.(CrI.)No.92 of 2015