

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 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

WP(Crl.).No. 95 of 2015 (S)

PETITIONER(S) :

NINU MATHEW AGED 29 YEARS
S/O. MATHEW, MARIPURATHU HOUSE, KAYALUMPARA PO
MANNAMKUNDU, ERUVESSI VILLAGE, KANNUR DISTRICT
PIN-670 632

BY ADV. SRI.C.K.PRASAD

RESPONDENT(S) :

1. STATE OF KERALA
REPRESENTED BY THE SUPERINTENDENT OF POLICE
KANNUR DISTRICT-670 631
2. THE CIRCLE INSPECTOR OF POLICE, ALAKODE CIRCLE,
KANNUR DISTRICT 670631
3. THE STATION HOUSE OFFICER,
KUDIYANMALA POLICE STATION, KANNUR DISTRICT 670 582
4. JOHN PHILIPOSE
CHIRAKKAKATHU, NEDIYENGA PO, NEAR KODIKANDI CRUSHER
CHEPARAMBA, KANNUR DISTRICT, PIN-670631
5. ANNIE, W/O.PHILIPOSE, CHIRAKKAKATHU, NEDIYENGA PO
NEAR KODIKANDI CRUSHER, CHEPARAMBA, KANNUR DISTRICT
PIN-670631

R1 -R 3 BY ADV.SRI. SHIBU JOSEPH - GOVERNMENT PLEADER

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION
ON 04-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(Crl.).No. 95 of 2015 (S)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1: A TRUE COPY OF THE COMPLAINT FILED BEFORE THE 3RD
RESPONDENT DATED 25.2.2015

RESPONDENT(S) ' EXHIBITS

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NIL.

TRUE COPY

PS TO JUDGE.

acd

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

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WP(crl) No.95 of 2015

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Dated 4th March 2015

JUDGMENT

V.K.MOHANAN, J

The petitioner, claiming that he is the husband of one Feba and further alleging that she is under illegal confinement, preferred this writ petition under Article 226 of the Constitution of India.

2. According to the petitioner, the marriage between himself and the said Feba was held on 11.10.2014 with all religious flavours and blessings of both the families and they belonged to "Pendacosth faith". After the marriage, they have been staying in the petitioner's house. It is also averred that prior to the marriage, his wife Feba was employed at Ernakulam as Customer Care Executive of mobile companies. It is stated in the writ petition that the grievance of the petitioner is that ever since the marriage, their marital relationship has been continuously destroyed by the intervention of one Jayaram Sajeev near to St.Francis Church, Ponekkara in Ernakulam and

one Haris presently working at Kollam. Jayaram Sajeev makes the inducement from his mobile Nos, 8606442679 and 9946755404 and Haris makes it from the mobile No.9048221537.

3. It is also averred that 4th and 5th respondents have now yielded to the illegal and immoral designs of the said two persons and Feba left the petitioner's house on 24.1.2015 and thereafter she is neither available at the residence of 4th and 5th respondents nor any information is given by them. It is also averred that the petitioner's wife is under the illegal custody and detention of the above persons somewhere else in Delhi supported by the 4th and 5th respondents.

4. Along with the OP, petitioner has also produced Ext.P1, which is a complaint dated 25.2.2015 filed before the Station House Officer, Kudianmala police station. But in the third page of the above complaint, it is specifically stated that on 23.1.2015, after compelling Feba, the petitioner and the said Feba and the mother returned to the house of the petitioner but Feba was not

prepared to reside in his house. At present, she is not seen in the house of the said Feba. It is also specifically stated in Ext.P1 that the parents of Feba, yielded to the demand and compulsion of the said Feba and they approved and recognized the affairs between Feba and the opposite parties 3 and 4 in Ext.P1. Thus it is crystal clear that the specific allegation contained in Ext.P1 is totally against the averments in the writ petition. As pointed out by the learned Government Pleader though it is stated in paragraph 1 of the writ petition that the petitioner's wife is under the illegal custody of Jayaram Sajeev and Haris, they are not made as necessary parties in the writ petition.

5. In this juncture, it is pertinent to note the averments contained in paragraph 2 of the above writ petition and for convenience, the relevant portion of the same is extracted, which reads as follows.

“Immediately after the marriage, she wanted to go back to her job and was in frequent touch with the above said Jayaram Sajeev and Haris

over mobile phone, facebook and whats app applications. She often behaved as a follower of Muslim religion and was practising its rituals. Over the days and nights she continued her talk and chattings with the above said persons and expressed her anger against the petitioner and his parents in intervening and introspecting such relations. Hence the petitioner and her family had well earlier informed such habit to her parents”.

Paragraph 3 is also relevant and the averments therein are as follows:-

“Induced by the said two persons, Feba left petitioners house on 15-01-2015 and on 19-01-2015 she left to Ernakulam from her house. The petitioner was also constrained to accompany her. The petitioner was surprised to see that the said Jayaram Ramesh had arranged a house for her. She engaged in long talk and discussions with them in person and over mobile phone”.

In ground C it is stated that “ the petitioner shall have no fear or responsibilities if the detenue expresses her will to depart the petitioner”.

6. From the averments and facts disclosed by the petitioner, beside the contents of Ext.P1, which we have already referred above, it appears that even according to the petitioner his wife has some affairs with the above referred person and his wife volunteered to quit the company of the petitioner and she has no interest to reside along with the petitioner.

7. Moreover, though we have meticulously perused the averments contained in the writ petition and the averments raised thereon, we failed to find out any specific averments or assertion that she is forcibly detained by any person against her will or without her consent. Such pleadings are absent, obviously is the reason that she volunteered to abandon the company of the petitioner as evident from the factual inputs contained in the writ petition and Ext.P1. Thus, in the light of the averments contained in the writ petition and as discernible from the contents of Ext.P1, we are of the view that even according to the petitioner, his wife has taken her own decision to quit the company of the

petitioner and volunteered to abstain herself joining with the petitioner or her parents. If that be so, we find no jurisdiction to proceed further with the above writ petition filed under Article 226 of the Constitution particularly wherein the prayer is to issue a writ of habeas corpus directing the respondents to produce Feba, aged 23 years before this court and to set her free. As the petitioner miserably failed to make out a cause of action and grounds warranting intervention of this court under Article 226 of the Constitution of India, we find no merit in this writ petition and accordingly, the same is dismissed.

V.K.MOHANAN, JUDGE

P.D.RAJAN, JUDGE

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