

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

WP(Crl.).No. 154 of 2015 (S)

PETITIONER:

**SAINABA BEEVI,
AGED 52 YEARS, D/O. NAGUR RAVUTHER,
RESHMA BHAVAN, CHHEVODU
PIRAVANTHOOR P.O., PATHANAPURAM
KOLLAM DISTRICT-689 696.**

RESPONDENTS:

- 1. STATE POLICE CHIEF/DIRECTOR GENERAL OF POLICE,
POLICE HEAD QUARTERS,
THIRUVANANTHAPURAM-695 001.**
- 2. DISTRICT POLICE CHIEF,
MALAPPURAM-679 331.**
- 3. THE STATION HOUSE OFFICER
EDAKARA POLICE STATION,
MALAPPURAM DISTRICT-679 331.**
- 4. THOMAS ABRAHAM @ RAJU
PAMBAKAKANNIL VEEDU,
PERUMKULAM, EDAKKARA, MALAPPURAM-679 331.**
- 5. SUSY
W/O. THOMAS ABRAHAM @ RAJU, PAMBAKAKANNIL VEEDU
PERUMKULAM, EDAKKARA, MALAPPURAM-679 331.**
- 6. JOHN K.U.
KALAPURACKAL, THONYKAI, PERUMKULAM
THEYYATHUMPADOM P.O., EDAKKARA-679 331.**

7. JIBY ABRAHAM

**PLAMTHOTTATHIL, THONYKAI, PERUMKULAM
THEYYATHUMPADOM P.O., EDAKKARA-679 331.**

**BY ADVS.SRI.C.M.KAMMAPPU
SRI.MANSOOR.B.H.**

**R1-R3 BY DIRECTOR GENERAL OF PROSECUTION SRI. T. ASAF ALI.
& GOVT PLEADER SMT. KOCHUMOL KODUVATH**

R4,R5 BY ADV. SRI.SURIN GEORGE IPE

R6, R7 BY ADV. SRI.BINNY THOMAS

**THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON 30-06-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(Crl.).No. 154 of 2015 (S)

APPENDIX

PETITIONER(S)' EXHIBITS

**P1 : COPY OF THE COMPLAINT SUBMITTED BY THE PETITIONER TO THE 2ND
RESPONDENT DTD.10.3.2015 AND POSTAL RECEIPT.**

RESPONDENTS' EXHIBITS

NIL

True copy

P.A. To Judge

AMG

**C.K. ABDUL REHIM, J.
&
K. RAMAKRISHNAN, J.**

W.P (Crl.) No. 154 OF 2015

DATED THIS THE 30th DAY OF JUNE, 2015

J U D G M E N T

C.K. Abdul Rehim, J:

The petitioner is seeking a writ of Habeas Corpus directing for production of the corpus of her brother, Sri. Basheer, aged 53 years, and to set him at liberty.

2. Allegation is that the alleged detinue, Sri. Basheer is in illegal custody of respondents 4 to 7. It is stated that the petitioner's brother was working as servant in the house of respondents 4 & 5 for the last several years. Respondents 6 & 7 are the Managers of respondents 4 & 5. It is alleged that the petitioner's brother, Sri. Basheer is missing from the house of respondents 4 & 5 and the petitioner and her family members suspect that he is under illegal detention at the instance of respondents 4 to 7. It is alleged that, eventhough a complaint was made to the police authorities no action was taken.

3. Pursuant to consecutive orders issued by this court, learned Government Pleader appearing for

respondents 1 to 3 had informed that, with respect to missing of the alleged detainee a case has already been registered as Crime No.363/2015 at Edakkara Police Station and the investigation is under progress. This court specifically directed respondents 1 to 3 to file an affidavit enumerating the steps taken with respect to progress of the investigation.

4. The 3rd respondent had filed an affidavit dated 26-06-2015. It is stated that the investigation conducted in the case registered had revealed that, Sri. Basheer is not under any illegal detention of respondents 4 to 7, as alleged. It is stated that, despite earnest efforts made, no photograph of the missing person is available. Therefore 'crime card' or 'lookout notice' could not be prepared and published with the photograph of missing person. It is mentioned that the petitioner had seen her brother lastly only in the year 2009 and she had no idea about his whereabouts thereafter. It is further mentioned that the investigation conducted had revealed that Sri.Basheer was

last seen at his home town in 2009. He was married to a woman named Majida and a daughter was born out in that wedlock. Later the marital relationship got divorced, and it is learned that Sri. Majida is at present in some Gulf country. It is revealed that, after the divorce Sri. Basheer went to Edakkara seeking a job. He used to visit home town very rarely. The affidavit filed by the 3rd respondent would reveal that, during the investigation it had come to notice that Sri. Basheer worked as a servant of one Sri.T.T. Cheriyan @ Thalakkavil Babu, a resident of Edakkara during the year 2000. But nobody has seen Sri. Basheer at Edakkara, after the year 2000. The police authorities have taken statement of various relatives and other persons. It is revealed that Sri. Basheer had worked as a servant of Sri. T.T. Cherian before the year 2000. But Sri. T.T. Cherian, when questioned, had deposed that Sri. Basheer had worked as servant of respondents 4 & 5 from the year 2007 to 2009. It was alleged that Sri. Basheer was manhandled by the 4th respondent. But respondents 4 & 5 when

questioned had stoutly denied the allegation that Sri. Basheer had employed at their residence. They deposed that there exist rivalry between them and Sri.T.T. Cherian with respect to construction of a pathway through their land. When the police conducted a detailed enquiry it was revealed that Sri. Basheer had never worked as servant of the 4th respondent and he was never manhandled by the 4th respondent, as alleged. It is revealed that there exists a lot of disputes between Sri. T.T. Cherian and respondents 4, 6 & 7, touching upon the issues related to the property and pathway and cases were registered in that respect. According to the 3rd respondent, the petitioner was persuaded and compelled by Sri. T.T. Cherian in filing complaint against respondents 4 to 7 due to revenge he has maintained against respondents 4 to 7. However it is submitted by the 3rd respondent that the investigating team is pursuing comprehensive efforts to trace out the missing person and that all possible steps will be taken to continue vigorous investigation and to trace out him.

5. From the facts enumerated as above, we are convinced that there is no substance in the allegation that the alleged detainee Sri. Basheer is under illegal confinement of respondents 4 to 7. On the other hand, it is revealed that Sri. Basheer is missing from 2009 onwards. However, it is for the police authorities to take earnest efforts to intensify the investigation in the crime case already registered in order to find out the missing person and to trace out his whereabouts, at the earliest possible. At any rate, there is absolutely no materials available before this court to presume that interference under Article 226 of the Constitution is warranted for issuing a writ of Habeas Corpus, because the missing person is not under any illegal confinement of anybody as alleged. The petitioner will be at liberty to seek appropriate remedy if the investigation now conducted is not yielding in any positive result within a reasonable time.

6. Learned counsel appearing for respondents 4 & 5 contended that they were only falsely implicated in this writ

petition. Frivolous and baseless allegations were made against them and they were unnecessarily dragged to this court. He made an appeal to this court to dismiss the writ petition against them, by awarding compensatory cost. However, from the facts and circumstances narrated as above, we do not think that this is a fit case to impose cost against the petitioner, with respect to implication of respondents 4 & 5.

7. Therefore the writ petition is hereby disposed of subject to the above observations.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

AMG

True copy

P.A. to Judge