

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

WP(Crl.).No. 158 of 2015 (S)

PETITIONER(S):

**SHABU A.H., AGED 42 YEARS,
S/O.A.M.HYDROSE, ALLEDATH HOUSE, TOLL GATE,
EDAPPALLY, KOCHI - 682 024.**

BY ADV. SMT. J.SHEEBA MARIAM

RESPONDENT(S):

- 1. SUPERINTENDENT OF POLICE,
OFFICE OF THE SUPERINTENDENT OF POLICE,
KANNUR DISTRICT - 670 001.**
- 2. SUB INSPECTOR OF POLICE,
NEW MAHE POLICE STATION, THALASSERY - 673 312.**
- 3. BEENA,
AGED 32 YEARS, W/O.SHABU A.H., 'BEENAS',
PERINGADI P.O., NEW MAHE, THALASSERY,
PIN - 673 312.**
- 4. BEEBI K.K.,
W/O.ALI, 'BEENAS', PERINGADI P.O.,
NEW MAHE, THALASSERY, PIN - 673 312.**

**R3 & R4 BY ADV. SRI.V.BINOY RAM
R1 & R2 BY DIRECTOR GENERAL OF PROSECUTION
GOVERNMENT PLEADER SMT. KOCHUMOL KODUVATH.**

**THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON
28-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

:2:

WP(Crl.).No. 158 of 2015 (S)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXT.P1: TRUE COPY OF COMPLIANT SUBMITTED BEFORE THE 2ND
 RESPONDENT.**

RESPONDENT(S)' EXHIBITS

NIL

//True Copy//

P.A. to Judge

SS

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

W.P.(Crl.) No. 158 of 2015

Dated this the 28th day of May, 2015

JUDGMENT

C.K. Abdul Rehim, J

Petitioner is the father of a minor child, namely Snehal Shabu, aged 4 years. This writ petition is filed seeking a writ of Habeas Corpus for directing production of the minor child and to set him free from the alleged illegal and unauthorized custody of respondents 3 and 4.

2. It is stated that the minor child was born out of wedlock between the petitioner and the 3rd respondent, the marriage being conducted on 30.11.2008. During the year 2010 the 3rd respondent went to her parental home without consent of the petitioner and there was a litigation with respect to restoration of cohabitation before the Family Court, Ernakulam as O.P.No.502/2010. Based on the directions issued by this court, cohabitation between the petitioner and 3rd respondent was restored and the minor

child was born thereafter, during the year 2011. But shortly thereafter there arose difference of opinion and 3rd respondent left company of the petitioner along with the new born baby and settled at her parental house at New Mahe.

3. It is stated that all attempts made by the petitioner to bring back the 3rd respondent along with the new born baby ended in vain. It is alleged that the petitioner was restrained from visiting the child at the house of respondents 3 and 4, and he was manhandled when such an attempt was made on 27.07.2014. It is stated that the petitioner had arranged admission for the child at a kindergarten school at Thalassery. But he is not in a position to contact the child and to have any acquaintance with the child. It is mentioned that the petitioner had filed O.P.No.1707/2014 before the Family Court, Ernakulam, seeking restitution of conjugal rights. It is further stated that in the said petition an interlocutory application was

filed as I.A.No.1072/2015 seeking temporary custody of the minor child. It is also mentioned that at the instance of the 3rd respondent, a criminal case has been registered against the petitioner alleging offences punishable under Section 498A of the Indian Penal Code. The 3rd respondent had also filed O.P.Nos.106/2015 and 124/2015 before the Family Court, Thalassery, seeking divorce and also seeking injunction restraining the petitioner from taking custody of the minor child.

4. The petitioner alleges that the 3rd respondent is intending to take the minor child to abroad and to stay there along with relatives of respondents 3 and 4, who were residing in U.A.E. This writ petition is filed on the basis that respondents 3 and 4 have no authority to take the child abroad without permission of the petitioner.

5. From the very averments contained in the writ petition it is evident that there exists various litigations touching on the matrimonial disputes between the

petitioner and the 3rd respondent. It is further evident that an application filed by the petitioner seeking interim custody of the minor child is also pending before the Family Court, Ernakulam. When the case came up on an earlier occasion, this court made a reference to the Ernakulam Mediation Centre for exploring possibility of a settlement. Report is to the effect that the mediation could not succeed. This court have also made an interim arrangement permitting the minor child to have a visit to the paternal grandfather, who is undergoing treatment at Lourde's Hospital, Ernakulam on a particular day.

6. However, from the factual scenario prevailing, as enumerated above, we are not at all convinced that there exists any material to hold that the minor child, Snehal Shabu, is under illegal detention of the 3rd respondent. Therefore this court cannot interfere with the matter in any manner to issue any writ of habeas corpus. Entitlement for custody of the minor child by either

of the parents is a matter which need to be adjudicated by the Family Court having jurisdiction. It is evident that litigations to the above effect are already pending. Therefore we make it clear that the parties will be at liberty to seek appropriate remedy from the Family Court in this regard.

Under the above mentioned circumstances, the writ petition is hereby closed reserving liberty to the petitioner to pursue appropriate remedy before the Family Court concerned.

Sd/-
C.K. Abdul Rehim, Judge

Sd/-
K. Ramakrishnan, Judge

// True Copy//

P.A. to Judge