

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 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

WP(Crl.).No. 169 of 2015 (S)

PETITIONER(S) :

SANKARA NARAYANAN.K.N., AGED 25 YEARS,
S/O.K.S.NATARAJAN, KUNNAMPULLY HOUSE, KALARI ROAD
VALLANGHY, NENMARA PO, CHITTUR TALUK
PALAKAD DISTRICT.

BY ADVS.SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P

RESPONDENT(S) :

1. THE SUPERINTENDENT OF POLICE, PALAKKAD-678 001.
2. THE CIRCLE INSPECTOR OF POLICE,
KOLLENGODE POLICE STATION, CHITTUR TALUK,
PALAKKAD DISTRICT 678 101.
3. THE SUB INSPECTOR OF POLICE,
KOLLENGODE POLICE STATION, CHITTUR TALUK,
PALAKKAD DISTRICT - 678 101.
4. DAWOOD,
C.T.PALAYAM STREET, NEAR BALU MEMORIAL AUDITORIUM,
KOLLENGODE, CHITTUR TALUK, PALAKKAD DISTRICT-678 507.
5. THAJUNNISSA,
W/O.DAWOOD, C.T.PALAYAM STREET,
NEAR BALU MEMORIAL AUDITORIUM, KOLLENGODE,
CHITTUR TALUK, PALAKKAD DISTRICT-678 507.

R1-R3 BY SRI.K.I. ABDUL RASHEED
ADDL.DIRECTOR GENERAL OF PROSECUTION
R4, R5 BY ADV.SRI.BINDU SREEKUMAR
GOVERNMENT PLEADER SRI.P.S.ABDUL KAREEM

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON
20-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

:2:

WP (Cr1.) No. 169 of 2015 (S)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT P1 : TRUE PHOTOGRAPH OF THE PETITIONER AND SHAMNA.

RESPONDENT(S) ' EXHIBITS

: NIL

// True Copy //

P.A. to Judge

SS

C.K. ABDUL REHIM &

K. RAMAKRISHNAN, JJ.

W.P.(Crl.) No.169 of 2015

Dated this the 20th day of July, 2015

JUDGMENT

C.K. Abdul Rehim, J

Brief facts stated in the writ petition are that, the petitioner was working as a Physical Education Teacher in a Senior Secondary School at Palakkad and he had occasion to get acquainted with the alleged detainee Miss.Shamna, daughter of respondents 4 and 5, who was studying for 'Plus Two' Course at the Government Boys Higher Secondary School, Nenmara. The alleged detainee is now aged 22 years and she is studying at the College of Applied Sciences, Vadakkenchery. It is stated that, when the affair between the petitioner and the alleged detainee was known to the family of both the parties, the petitioner's parents expressed willingness to accept Miss.Shamna as their daughter-in-law, even though she belongs to a different

religion. But parents of the alleged detainee had compelled the petitioner to get himself converted into their religion, for agreeing to the proposed marriage. Even though the petitioner does not have any personal objection, he could not concede for the demand, since he is specialized as a percussionist and plays instruments for different functions, especially in connection with festivals at temples and he is the leader of a percussion troupe consisting of more than 30 members. Under such circumstances, the respondents 4 and 5 started harassing the alleged detainee to withdraw from the relationship and she was compelled to keep away the petitioner. Subsequently the alleged detainee was confined under illegal custody by her parents and the petitioner was denied to have any interaction with her. Therefore this writ petition is filed seeking a writ of Habeas Corpus for directing production of the alleged detainee and to set her at liberty, based on the allegation that she is being illegally detained by respondents 4 and 5 against her free will.

2. Based on orders issued by this court, the alleged detenue was produced before this court on 12.05.2015. When we interacted with the alleged detenue she expressed her mind that she has not fully decided to have marital tie up with the petitioner. Therefore she was permitted to go along with her parents and the case was adjourned to 20.05.2015. On 20.05.2015, when produced, the alleged detenue said that she is determined to marry the petitioner and is not willing to withdraw from the relationship. Since there existed no legally valid marriage established between the alleged detenue and the petitioner, we insisted upon the alleged detenue to go along with the parents and to stay with them, till a valid marriage is solemnized under the Special Marriage Act. The 4th respondent was directed to hand over the proof of identity of the alleged detenue to the petitioner in order to take steps for submitting notice of intention of the marriage to the Sub Registrar Office concerned. The matter was posted thereafter on 29.06.2015.

3. On 29.06.2015, it was reported to this court that, on the basis of a complaint submitted by the petitioner before respondents 2 and 3, the Station House Officer of Kollengode police station had summoned the petitioner, the alleged detainee and her parents and compelled the parents of the alleged detainee to send her along with the petitioner to the Sub Registrar's Office, for completing formalities with respect to submitting notice of the intention of marriage. Thereafter the alleged detainee went along with the petitioner. Since we noticed that such an action was violative of and contrary to the directions issued by this court, we directed the Station House Officer, Central Police Station, Ernakulam, to take custody of the alleged detainee from the court and to admit her at S.N.V. Sadanam Working Womens' Hostel, Ernakulam, until further orders. However, the petitioner was directed to complete the formalities with respect to solemnization of the marriage on the parties appearing before the Marriage Officer (Sub Registrar) Nenmara on 16.07.2015. The alleged detainee was

permitted to appear before the said officer on 16.07.2015, under protection of a women police officer to be deputed from the Central Police Station, Ernakulam.

4. Today when the case is taken up for consideration, learned counsel appearing for the petitioner had produced the Certificate of Marriage issued by the Marriage Officer, Nenmara, dated 16.07.2015. It would indicate that a valid marriage under provisions of the Special Marriage Act, 1954 was solemnized between the petitioner and the alleged detainee, on 16.07.2015. Both the alleged detainee and the petitioner are personally present before this court. They expressed their desire to live together as husband and wife in the parental house of the petitioner.

5. Under the above mentioned circumstances, the writ petition is hereby disposed of by setting the alleged detainee at liberty to live together along with the petitioner as husband and wife, at any place of their choice.

6. When the case was taken up for

consideration on 29.06.2015, this court noticed that the 3rd respondent had unauthorisedly interfered in the subject matter and had taken a high handed action contrary to terms of the order issued by this court on 20.05.2015, by permitting the alleged detenue to go along with the petitioner. By virtue of order passed by this court on 20.05.2015, the alleged detenue was entrusted with the custody of her parents (respondents 4 and 5) till 29.06.2015. This court only directed the 4th respondent to hand over proof of identity of the alleged detenue to the petitioner, for the purpose of taking steps for giving notice of intention of the marriage to the Marriage Officer concerned. But it is evident that Sri.V.Haridasan, Sub Inspector of Police, Kollengode, had interfered in the matter contrary to the above said order and summoned the alleged detenue and respondents 4 and 5 to the station house and permitted the alleged detenue to go along with the petitioner to the Sub Registrar's Office, Nenmara, on 15.06.2015. When this court interacted with the alleged

detenue on 29.06.2015, the alleged detenue had categorically stated that the said officer had called to her house over telephone and requested her parents to appear in station along with her on 15.06.2015. It is further said that, when they appeared on the said day the said officer had permitted the petitioner to take the alleged detenue to the Sub Registrar's Office. It is admitted that thereafter the alleged detenue went along with the petitioner in violation of the order issued by this court on 20.05.2015.

7. When the above facts were brought to notice of this court, through an order passed on 29.06.2015, we directed personal appearance of the above said officer, Sri.Haridasan before this court on 01.07.2015 to offer his explanations if any, and to show cause as to why appropriate action shall not be directed against him. The said officer appeared in person and filed an affidavit dated 03.07.2015. In the affidavit it is stated that the petitioner had submitted a complaint to the Superintendent of Police, Palakkad, with copy endorsed to the Circle Inspector of

Police, which was forwarded to him on 01.06.2015 for necessary action. Therefore he contacted the father of the alleged detainee and requested to provide the proof of identity required for registration of the marriage. But he never responded to that. Therefore he insisted the 4th respondent to come to the station on 15.06.2015. On that day respondents 4 and 5 along with the alleged detainee came to the police station. He described about the consequences of a love marriage and also about importance of executing the order of this court. Since the alleged detainee took an adamant stand, he instructed her and the petitioner to get married as per the court order under the Special Marriage Act and to go back to their respective homes. Thereafter all the parties had left the police station. He pleaded that he has not willfully disobeyed the order issued by this court and it was only in his earnest efforts to comply with the directions, such action was taken.

8. We notice that, for the purpose of submitting notice of intimation of the marriage under the Special

Marriage Act, personal presence of both the parties are not required before the Marriage Officer. It is on that basis that this court had passed the order on 20.05.2015 directing the alleged detainee to stay along with her parents. The petitioner was directed to take necessary steps for giving notice of intimation of the marriage. This court directed the 4th respondent only to handover the proof of identity. It was totally unwarranted on the part of any police officer to interfere in the matter, even if any complaint was received from any of the parties, since the matter was in seizine of this court. If any complaint was received from the petitioner, the officer could have advised him to seek appropriate remedy from this court. Instead the above said police officer had summoned the parties to the station house and permitted the alleged detainee to go along with the petitioner in violation of the order passed by this court and in contrary to the terms of the arrangement made by this court through its order dated 20.05.2015 with respect to custody of the alleged detainee. Further, the officer has

not taken any steps to ensure that the alleged detainee is taken back to her parental house and entrusted to the custody of respondents 4 and 5, after appearance before the Sub Registrar. Prima facie, we are convinced that, the above said police officer had interfered in the subject matter of the case which was pending before this court and had acted in a manner by himself and directed the parties to act in a manner violating the terms of the order issued by this court. Evidently he had interfered in the process of dispensation of justice in a high handed and unauthorised manner.

9. However, we are not proposing to initiate any proceedings under the Contempt of Courts Act in this matter. On the other hand, we direct the Registry of this court to forward a copy of this judgment to the Director General of Police (State Police Chief), Police Head Quarters, Thiruvananthapuram. The said authority will look into the matter based on the facts and circumstances as narrated and based on the conclusion arrived as above and shall take

an appropriate decision as to whether any disciplinary action need be initiated against the above said police officer, Sri.V.Haridasan, Sub Inspector of Police, Kollengode. An appropriate decision in this regard shall be taken, after collecting materials if any required from the records of the above case, and if necessary after affording a further opportunity to the delinquent officer.

10. The decision taken in this regard as well as further action if any pursued shall be reported to this court, at the earliest, at any rate within a period of two months from the date of receipt of copy of this judgment.

11. The Registry will post the case further for consideration of such report.

Sd/-
C.K. Abdul Rehim, Judge

Sd/-
K. Ramakrishnan, Judge

// True Copy //

P.A. to Judge