

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 25TH DAY OF MAY 2015/4TH JYASHTA, 1937

WP(Crl.).No. 180 of 2015 (S)

PETITIONER(S) :

**NAVEEN CHAND, AGED 31 YEARS,
S/O.RAMACHANDRAN NAIR, KARTHIKAKAKKAT HOUSE,
THENHIPPALAM POST, PIN-673 636,
WORKING AS OPERATION MANAGER,
SONY AUTHORIZED SERVICE CENTRE, KOZHIKODE.**

**BY ADVS.SRI.P.S.SREEDHARAN PILLAI
SRI.T.K.SANDEEP
SRI.ARJUN SREEDHAR
SRI.JOSEPH GEORGE(MULLAKKARIYIL)
SRI.ARUN KRISHNA DHAN**

RESPONDENT(S) :

- 1. MANJU.N.NAIR, AGED 28 YEARS,
D/O.P.V.NARAYANAN NAIR, AUDIOLOGIST,
R/AT "MANJULA" HOUSE, OLAKARA AMSOM, DESOM AND POST,
PIN-676 306.**
- 2. P.V.NARAYANAN NAIR, AGED 62 YEARS,
FATHER'S NAME NOT KNOWN, R/AT "MANJULA" HOUSE,
OLAKARA AMSOM, DESOM AND POST, PIN-676 306.**
- 3. THE SUB INSPECTOR OF POLICE,
THIRURANGADI POLICE STATION, MALAPPURAM DISTRICT,
PIN-676 306.**
- 4. THE DISTRICT SUPERINTENDENT OF POLICE,
MALAPPURAM, PIN-676 505.**

**R1 & R2 BY ADV. SRI.C.PUSHPODARAN
R3 & R4 BY GOVERNMENT PLEADER SRI.JOBY JOSEPH**

**THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD
ON 25-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

WP(Crl.).No. 180 of 2015 (S)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: A TRUE COPY OF THE ORDER DATED 21.04.2015 IN I.A.NO.665/2015 IN O.P.NO.127/2015 BEFORE THE FAMILY COURT, TIRUR.**
- P2: A TRUE COPY OF THE REPRESENTATION DATED 23.04.2015 SUBMITTED BEFORE THE 3RD RESPONDENT BY THE PETITIONER.**
- P3: A TRUE COPY OF THE ORDER DATED 23.04.2015 IN I.A.NO.416/2015 IN O.P.NO.127/2015 BEFORE THE FAMILY COURT, TIRUR.**

RESPONDENT(S)' EXHIBITS

- EXT.R1(A): TRUE PHOTOCOPY OF THE TREATMENT CERTIFICATE OF R1 DATED 22.04.2015.**
- EXT.R1(B): TRUE PHOTOCOPY OF THE MEDICAL CERTIFICATE OF R1 DATED 23.04.2015.**
- EXT.R1(C): TRUE PHOTOCOPY OF THE TREATMENT CERTIFICATE OF R2 DATED 10.01.2015.**

//TRUE COPY//

P.S.TO JUDGE.

Msd.

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

WP(CRL).NO. 180 of 2015

Dated this the 25th day of May, 2015

JUDGMENT

Abdul Rehim,J.

The petitioner seeks a writ of habeas corpus directing production of his minor child Miss. Gayathri Naveen, who is alleged to have been detained by respondents 1 and 2 against Exts.P1 and P3 orders issued by the Family Court, Tirur. The 1st respondent is the wife of the petitioner and the 2nd respondent is his father-in-law. The petitioner and the 1st respondent are living separately due to matrimonial disputes.

2. The petitioner had filed OP.No.127/2015 before the Family Court, Tirur seeking for custody of the minor child. An interlocutory application was filed in the said case as I.A.No.665/2015. Ext.P1 order was passed by the Family Court in the above said I. A. on 21.4.2015. Ext.P1 would indicate that the Family court directed the 1st respondent to appear with the child on 16.4.2015. But on 16.4.2015 she failed to appear or to

produce the child. The 1st respondent had filed a counter affidavit stating that the child was taken to Mookambika Temple and that she is ready to produce the child on 23.4.2015. But the Family Court directed the respondent to appear along with the child on 20.4.2015, which respondent failed to comply with. Having found that there is no valid explanation for not producing the child on 16.4.2015 and on 20.4.2015, the Family Court allowed IA.No.665/2015 and directed the 1st respondent to hand over custody of the minor child to the petitioner, on 22.4.2015 at 11.00 a.m. from that court. It was made clear in Ext.P1 order that, if the 1st respondent fails to produce the child on the said date, direction will be issued to the police authorities to obtain custody of the minor child from her and to handover custody to the petitioner, till 27.4.2015. The petitioner was directed to entrust back custody of the minor child on 27.4.2015, if the order is implemented. Despite Ext.P1 order, interim custody of the child was not handed over on 22.4.2015. Therefore the petitioner filed another application, I.A.No.416/2015. When the said application came up for consideration before the Family Court on 23.4.2015, Ext.P3 order was passed allowing the said

application and directing to handover custody of the minor child to the petitioner. Since the said order was also not complied with, the petitioner had filed this writ petition .

3. This court had issued notice to respondents 1 and 2 through Special Messenger and posted the case to 15.5.2015. Respondents 1 and 2 entered appearance through counsel and submitted that the 1st respondent is undergoing treatment and therefore the child could not be produced before the Family Court. Thereafter a counter affidavit was filed producing certain documents regarding the Ayurvedic treatment undergone by the 1st respondent. When the matter came up for further consideration on 21.5.2015, this court issued specific direction to respondents 1 and 2 to produce the child on today. Accordingly the minor child Miss Gayathri Naveen is produced before this court on today.

4. When the matter is taken up for consideration in the forenoon session we directed the 1st respondent to handover the minor child to the petitioner. The petitioner was allowed to retain custody of the child for some time. We have noticed that the child seems to be quite comfortable and happy with the petitioner

and she is enjoying the presence of the petitioner.

5. It is evident that interim custody ordered by the Family Court in favour of the petitioner was continuously violated by the 1st respondent. The petitioner being the father of the minor child cannot be denied to have any acquaintance with the child. We notice that the child is of tender age and hence permanent custody is given with the mother, the 1st respondent herein. What was permitted by the Family Court is only an interim custody of the child for few days with the petitioner herein. Respondents 1 and 2 cannot be permitted to have an illegal custody or detention of the child in flagrant violation of orders passed by the Family Court. It is pertinent to note that the 1st respondent had not even cared to challenge the orders passed by the Family Court under Exts. P1 and P3. Therefore we have no hesitation to order granting of interim custody of the minor child to the petitioner, for few days, in order to ensure compliance of the interim order passed by the Family court.

6. Under the above mentioned circumstances, we order that the minor child Miss. Gayathri Naveen be handed over under interim custody to the petitioner till 28.5.2015. The petitioner

shall produce the minor child before the Family Court , Tirur at 11 .00 a.m. on 28.5.2015. The Chief Ministerial Officer of that court shall handover custody of the minor child to the 1st respondent herein, who is her mother, under proper record.

7. It will be left open to the petitioner or the 1st respondent to approach the Family Court, Tirur with respect to interim custody of the minor child on any subsequent occasion. The parties will also co-operate for expeditious disposal of OP.No.127/2015.

The writ petition is disposed of with the above observations and directions.

C.K.ABDUL REHIM, JUDGE

K.RAMAKRISHNAN, JUDGE

Pmn/

