

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

WP(Cr1.).No. 196 of 2015 (S)

PETITIONER(S) :

SHABNAM K. ,
SURABHI, PRA 82, KAMALAESHWARAM,
THIRUVANANTHAPURAM.

BY ADVS.SRI.SUMAN CHAKRAVARTHY
SMT.K.R.RIJA.

RESPONDENT(S) :

1. THE DISTRICT POLICE CHIEF,
THIRUVANANTHAPURAM.
2. THE CIRCLE INSPECTOR OF POLICE,
NEDUMANGAD, THIRUVANANTHAPURAM - 695 541.
3. THE SUB INSPECTOR OF POLICE,
ARUVIKKARA P.S., THIRUVANANTHAPURAM - 695 564.
4. SURABHI,
SREEMURUKA MANDIRAM, NILAMI, INIKKARA,
KARAKULAM, PEROORKADA P.O.,
THIRUVANANTHAPURAM - 695 005.
5. THULASEEDHARAN,
SREEMURUKA MANDIRAM, NILAMI, INIKKARA,
KARAKULAM, PEROORKADA P.O, THIRUVANANTHAPURAM -695 005.

R1-R2 BY ADV. ADDL.DIRECTOR GENERAL OF PROSECUTION,
R4&5 BY ADV. SRI.K.J.SAJI ISAAC,
R4&5 BY ADV. DR.ELIZABETH VARKEY &
BY SENIOR GOVERNMENT PLEADER SRI. SHIBU JOSEPH.

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD
ON 22-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXHIBIT P1. COPY OF THE BIRTH CERTIFICATE OF DEVIKA.

EXHIBIT P2. COPY OF THE REPORT IN MALAYALA MANORAMA DAILY
DATED 31.1.15.

EXHIBIT P3. COPY OF THE PETITION NUMBER PL 7033/15 DATED
21.03.15.

EXHIBIT P4. COPY OF THE COMPLAINT BEFORE THE 3RD RESPONDENT.

RESPONDENT(S) ' EXHIBITS :

EXHIBIT R4 (A) : THE CONSENT DOCUMENT GIVEN BY BIJU.

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

W.P (CrI.) No. 196 OF 2015

DATED THIS THE 22nd DAY OF MAY, 2015

J U D G M E N T

Abdul Rehim, J:

This petition is filed seeking a writ of Habeas Corpus to produce body of the petitioner's daughter, Miss.Devika, who is at present in the custody of respondents 4 & 5. Allegation in the writ petition is that Miss. Devika was born out of wedlock between the petitioner and one Biju @ Purandaran Biju. Averments in the writ petition is to the effect that the above said Sri. Biju was a notorious goonda and he was murdered by a rival gang on 29-01-2015. It is alleged that during his lifetime itself Sri.Biju had relationship with another lady named Smt. Sreemol and another child was born out of the said relationship. The 4th respondent herein is the sister of Biju and the 5th respondent is her husband. According to the petitioner, after death of Sri.Biju she made attempts to take the child along with her, which was

prevented by respondents 4 & 5. It is mentioned that the petitioner had approached the Legal Service Authority, Thiruvananthapuram seeking release of her daughter and had also filed a complaint before the 3rd respondent, both of which had no effective outcome. Allegations are raised to the effect that the child is kept in an inhumane condition and that the petitioner being the biological mother has got every right to have the child in her custody. Hence it is prayed that the child may be released from the illegal custody of respondents 4 & 5.

2. In the counter affidavit filed by the 4th respondent it is mentioned that the petitioner was not having any legal marital relationship with deceased Sri. Biju. It is alleged that the petitioner was earlier living with another goonda and she had joined Sri.Biju after leaving him. It is further alleged that he had left the company of Sri. Biju even before his death and is now living along with another goonda, with whom she was living earlier. According to the 4th

respondent the petitioner had left the child when the child was having the age of 2½ years and started living with another person, and that she had never made by visit to the child. It is mentioned in the counter affidavit that the child was entrusted with the 4th respondent by deceased Sri.Biju on executing an undertaking to the effect of authorising the 4th respondent to have custody of the child. Copy of the said document is produced as Ext.R4 (a). It is denied that the petitioner had paid school fees or other amenities to the child, Miss.Devika.

3. The petitioner, the 4th respondent and the child are present before this court on today. We have interacted with the petitioner as well as with the 4th respondent. We have also collected informations from the 3rd respondent, who is personally present.

4. The petitioner stated that she is living along with her mother and brother in her parental house. But the 3rd respondent reported that such a version is not correct and

she is living with another person, which the petitioner had stoutly disputed. According to the petitioner she was prevented from visiting the child after death of Sri. Biju, which allegation was denied by the 4th respondent. The child is now aged 7 years. The 4th respondent said that the child is now promoted from Std.I to Std.II in Cotton Hill School, Thiruvananthapuram. Allegation of the 4th respondent is that the petitioner had never enquired about the child nor had taken any steps to have custody of the child since she had left company of Sri. Biju and the child when the child was 2½ years.

5. From the above narrated factual aspects, with respect to which the parties are in serious dispute, we are of the considered opinion that the question regarding guardianship and custody of the minor child is a matter which need to be adjudicated by the appropriate Family Court having jurisdiction. As far as this writ petition is concerned we need only to examine whether the alleged

detenue, Miss.Devika, is in illegal confinement of the 4th respondent, as alleged. Even the petitioner has not disputed the fact that she had left company of Sri.Biju before his death, and since then the child is not in her custody. Evidently the child was staying with respondents 4 & 5 since the last so many years. Therefore we are convinced that the present custody of the minor child with respondents 4 & 5 cannot in any manner be termed as an illegal confinement. Hence we are not convinced that there exists any material to issue a writ of Habeas Corpus.

6. If the petitioner has got any claim with respect to the guardianship or custody of the minor child, she being the biological mother, it is appropriate for her to approach the court having jurisdiction under the relevant statute. It is also left open to her to seek appropriate relief for having interim custody, if any such proceedings is instituted before the appropriate Family Court. Needless to observe that, the petitioner will be always at liberty to initiate such

proceedings. It is further observed that if any approach is made by the petitioner in this regard the court having jurisdiction shall consider the merits of such claim independently, untrammelled by any of the observations contained herein above.

7. Subject to the above observations, this writ petition is dismissed.

Sd/-
C.K. ABDUL REHIM, JUDGE.

Sd/-
K. RAMAKRISHNAN, JUDGE.

AMG

True copy

P.A. to Judge