

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM  
&  
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937

WP(Crl.).No.203 of 2015 (S)

PETITIONER :

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BLESSY PAPPACHAN, AGED 31 YEARS,  
D/O.PAPPACHAN, PUNTHALA KIZHAKKETHIL PUTHEN VEEDU,  
KIZHAKKEKARA, THEVALAKARA P.O., KOLLAM.

BY ADVS.SRI.K.SHAJ  
SRI.SAJJU.S

RESPONDENTS :

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1. STATE OF KERALA  
REPRESENTED BY THE SECRETARY, DEPARTMENT OF HOME,  
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM-695001.
  2. THE DIRECTOR GENERAL OF POLICE, KERALA,  
THIRUVANANTHAPURAM, PIN-695 014.
  3. THE DISTRICT POLICE CHIEF,  
KOTTAYAM DISTRICT, PIN-686 001.
  4. CIRCLE INSPECTOR OF POLICE,  
ETTUMANOOR, KOTTAYAM DISTRICT, PIN-686 631.
  5. SUB INSPECTOR OF POLICE,  
ETTUMANOOR POLICE STATION, KOTTAYAM DISTRICT,  
PIN-686 631.
  6. R. SRINIVAS, S/O.V.K.RAVI, AGED 38 YEARS,  
VATTAMALA VEEDU, THELLAKAM P.O., KOTTAYAM,  
PIN - 686 630.
  7. V.K. RAVI,  
AGED ABOUT 65 YEARS, VATTAMALA VEEDU, THELLAKAM P.O.,  
KOTTAYAM, PIN - 686 630.

WP(Crl.).No.203 of 2015 (S)

8. VALSAMMA,  
AGED ABOUT 58 YEARS, VATTAMALA VEEDU, THELLAKAM P.O.,  
KOTTAYAM, PIN – 686 630.

9. THE COMMANDANT,  
BSF 139 BATTALION,  
KISHANGANJ (UNDER FRONTIER NORTH BENGAL), BENGAL,  
PIN –855107.

R9 BY ADV. SRI.R.PRASANTH KUMAR, CGC  
R6 TO R8 BY ADV. SRI.M.K.NOUSHAD  
R6 BY ADV. SMT.MIJI JOHN  
R3 BY GOVERNMENT PLEADER SRI.JOBY JOSEPH  
BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON  
26-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(Crl.).No. 203 of 2015 (S)

APPENDIX

PETITIONER'S EXHIBITS :-

- P1 - TRUE COPY OF COMPLAINT DATED 07/04/2015 FILED BY THE PETITIONER BEFORE THE THIRD RESPONDENT.
- P2 - TRUE COPY OF RECEIPT DATED 07/04/2015 ISSUED BY THE OFFICE OF THE THIRD RESPONDENT TO THE PETITIONER.
- P3 - TRUE COPY OF THE RECEIPT DATED 07/04/2015 ISSUED BY THE OFFICE OF THE CI OF POLICE, VANITHA CELL, KOTTAYAM TO THE PETITIONER.
- P4 - TRUE COPY OF PETITION OP(G&W)NO.458/2015 FILED BY THE PETITIONER UNDER THE GUARDIAN AND WARDS ACT BEFORE THE FAMILY COURT, KOTTAYAM AT ETTUMANOOR.
- P5 - TRUE COPY OF INTERLOCUTORY APPLICATION FILED BY THE PETITIONER IN OP(G&W) NO.458/2015 BEFORE THE FAMILY COURT, KOTTAYAM AT ETTUMANOOR.

RESPONDENTS' EXHIBITS :- NIL.

True copy

P.A to Judge

**C.K.ABDUL REHIM & ANIL K.NARENDRA, JJ.**

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**W.P.(CrI.)No.203 of 2015**  
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**Dated this the 26<sup>th</sup> day of June, 2015**

**JUDGMENT**

**Abdul Rehman, J.**

This petition is filed seeking a writ of habeas corpus directing for production of the minor son of the petitioner, Master Ethan before this Court and to set him at liberty. The 6<sup>th</sup> respondent herein is the father of the child and respondents 7 and 8 are parents of the 6<sup>th</sup> respondent. The 6<sup>th</sup> respondent is working under the 9<sup>th</sup> respondent. Averments in the Writ Petition would indicate that the petitioner and the 6<sup>th</sup> respondent are living separated due to strained matrimonial relationship. Admittedly the petitioner was working in Gulf countries and the child was in the custody of the 6<sup>th</sup> respondent. Allegation is to the effect that when the petitioner returned from Gulf countries during April, 2015, she made a visit to the house of respondents 6 to 8. But the child was not seen in the house. It is alleged that respondents 7 and 8 have not allowed the petitioner to enter the house. Further it is alleged that, even though the petitioner made attempts to see the child in Orissa, where the

6<sup>th</sup> respondent is working, the child could not be found out. The petitioner made various complaints before the police authorities. She had also approached the Family Court, Kottayam at Ettumanoor by filing O.P.(G & W)No.458 of 2015 seeking custody of the child. She had also filed an application seeking for production of the child before the Family Court. Allegation is that, after filing of the case before the Family Court, the respondents 6 to 8 had threatened the petitioner and that the child is being illegally detained at some undisclosed place and there is an apprehension with respect to life of the child. On the basis of the above said allegations, this Writ Petition is filed seeking for release of the child from the alleged illegal custody of respondents 6 to 8.

2. When the Writ Petition came up for consideration on 20.5.2015 this Court directed the 4<sup>th</sup> respondent to make an enquiry with respect to whereabouts of the child and to furnish a report to this Court as to whether the child is in the custody of respondents 7 and 8 as alleged and if not to make enquiry to trace out whereabouts of the child. On 28.5.2015 when the matter was taken up it was reported on behalf of the 4<sup>th</sup> respondent that enquiry made

so far revealed that the child is in Delhi with the custody of the younger sister of the 6<sup>th</sup> respondent, Smt.Reshmi. But it was informed that the police authorities could not contact the said person. Therefore this Court directed further enquiry to be made to trace out exact whereabouts of the child. The 9<sup>th</sup> respondent was also directed to get instructions with respect to availability of the 6<sup>th</sup> respondent and with respect to the whereabouts of the child. Subsequently, on 12.6.2015 this Court issued notice to respondents 6 to 9.

3. Today when the case is taken up respondents 6 to 8 appeared through counsel. It is submitted that respondents 6 to 8 are personally present along with the child before this Court. We noticed the presence of the child in the Court on today. It is admitted that the proceedings pertaining to granting custody of the child is pending consideration before the Family Court, on the basis of an Original Petition instituted by the petitioner. It is submitted by learned counsel appearing for the petitioner that the case before the Family Court stands advanced to 3.7.2015, from its original posting date of 23.7.2015. The learned counsel appearing for respondents 6

to 8 have undertaken that the child will be produced before the Family Court on the next posting date. Needless to observe that it is for the Family Court to deal with the matter and to take appropriate decision with respect to custody of the child or with respect to visitation right to be provided to the parents, considering all factual circumstances and other relevant factors to be considered.

4. As far as this Writ Petition is concerned, this Court is of the considered opinion there is no circumstances warranting interference under Article 226 of the Constitution of India. It would be totally inappropriate for this Court to decide the question regarding custody/interim custody of the child in this proceedings, which is instituted under Article 226 of the Constitution. The alleged detenu, the minor child, Master Ethan is at present in the custody of respondents 6 to 8, his father and paternal grand parents. There is no material available before this Court to hold that the custody of the minor child at present with respondents 6 to 8 will in any manner amount to an illegal confinement. Therefore, the Writ Petition is dismissed with liberty reserved to the parties to agitate the issue regarding custody of the child before the Family Court.

It is made clear that the Family Court shall decide the matter independently, untrammelled by any of the observations contained herein above.

**C.K.ABDUL REHIM, JUDGE**

skj

**ANIL K.NARENDRA, JUDGE**