

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 29TH DAY OF MAY 2015/8TH JYAISHTA, 1937

WP(Crl.).No. 215 of 2015 (S)

PETITIONER(S):

- 1. RATHEESH, AGED 32 YEARS,
S/O.KRISHNANKUTTY, THOTTATHILMAPPILA PARAMBIL,
THIRUMOOLAPURAM (P.O.), THIRUVALLA,
PATHANAMTHITTA DISTRICT.**
- 2. MATHAI, AGED 73 YEARS,
KARIYELIL, PADIKAPPU P.O., ADIMALI,
IDUKKI DISTRICT.**
- 3. MINI, AGED 37 YEARS,
D/O.MATHAI, KARIYELIL, PADIKAPPU P.O.,
ADIMALI, IDUKKI DISTRICT.**

**BY ADVS.SRI. S.SHANAVAS KHAN
SMT .S.INDU**

RESPONDENT(S):

- 1. THE SUPERINTENDENT OF POLICE
IDUKKI - 685 602.**
- 2. THE SUB INSPECTOR OF POLICE,
ADIMALI, IDUKKI - 685 602.**
- 3. SANOoba, AGED 25 YEARS,
C/O.JAMES MATHAI, KOLENCHERIYIL HOUSE, VALARA P.O.,
14TH MILE, ADIMALI, IDUKKI - 685 602.**

**R1 & R2 BY ADV. TOM JOSE PADINJAREKKARA / ADDL.DIRECTOR GENERAL
OF PROSECUTION.**

**THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON
29-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

:2:

WP(Crl.).No. 215 of 2015 (S)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT-P1: TRUE COPY OF THE COMPLAINT PREFERRED BY THE THIRD
RESPONDENT BEFORE THE 2ND RESPONDENT.**

**EXHIBIT-P2: TRUE COPY OF THE UNDERTAKING SIGNED BY THE 3RD
RESPONDENT BEFORE THE 2ND RESPONDENT INDICATING THE
FACTUM OF CUSTODY OF CHILDREN.**

RESPONDENT(S)' EXHIBITS

// True Copy //

P.A. to Judge

SS

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

W.P.(Crl.) No.215 of 2015

Dated this the 29th day of May, 2015

JUDGMENT

C.K. Abdul Rehim, J

Father of two minor children, namely Vishnu and Vysakh, aged 8 years and 6 years respectively, is the first petitioner herein. The children were born out of the relationship between the petitioner and the 3rd respondent. The 2nd and 3rd petitioners are the father and sister of the 3rd respondent.

2. Allegations in the writ petition is that the petitioner and 3rd respondent are living separated. Thereafter the 3rd respondent was living with petitioners 2 and 3. But she developed relationship with another person and went along with him. During March 2015, the 3rd respondent came back with the said person along with a child of a tender age, alleged to have been born in the

relationship between the 3rd respondent and the said person. She demanded the petitioners to give back the minor children. When they refused, the 3rd respondent approached the 2nd respondent with a complaint, on the basis of which the parties were summoned to the station by the 2nd respondent.

3. It is alleged in the writ petition that the children were given custody to the 3rd respondent pursuant to the parties arriving at an understanding, which was recorded in Ext.P2. According to the petitioners, custody of the children was given to the 3rd respondent on the understanding that after a period of ten days the petitioner will be permitted to see the children. But thereafter the 3rd respondent was not seen and the whereabouts of the 3rd respondent as well as the children were not revealed to the petitioners. Without the knowledge of the petitioners, Transfer Certificate of the children were obtained from the school where they were studying. It is stated that, the

petitioners have got information to the effect that the children are made to join a circus company in which the person having relationship with the 3rd respondent is working.

4. Under the above mentioned circumstances alleging that the children are under illegal detention of the 3rd respondent, the petitioners are seeking a writ of habeas corpus for directing their production and to restore their custody to the petitioners.

5. The 3rd respondent is personally present before this court on today, along with the children namely Vishnu and Vysakh. We interacted with the 3rd respondent. It is admitted that both the children are born out of relationship of the 3rd respondent with the first petitioner. But she denied that there existed any legal marriage between the first petitioner and the 3rd respondent. The 3rd respondent submitted that she is now living with another person namely Sri.Jayaraj in the following address:

Mrs.Snooba
C/o. Jayaraj
Kariyelil House,
(In the building of James Mathai,
Kolencheriyil House)
Thokkupara P.O.,
Ambazhachal,
Kunjithanni Village.

6. It is conceded that another child was born out of the relationship with Sri.Jayaraj. The above said Sri.Jayaraj and the new born child are also present before this court on today. The 3rd respondent asserted that both the minor children are staying along with her on the basis of Ext.P2 understanding and that she is living along with Sri.Jayaraj in the above said address. It is further mentioned that both the children are intended to be put to Fathima Matha Girls High School, Koombanpara at Idukki for pursuing their studies.

7. From the circumstances mentioned as above, we are of the considered opinion that present custody of the minor children, namely Vishnu and Vysakh, with the 3rd

respondent cannot be termed as an illegal detention. The 3rd respondent being the mother of the minor children is entitled to keep them with her. Further we notice that custody of the children was given with the 3rd respondent on the basis of Ext.P2 understanding. Under such circumstances a writ of habeas corpus cannot be issued on the premise that the minor children are under illegal detention in any manner.

8. However, the petitioners will be at liberty to approach the appropriate court having jurisdiction seeking custody of the minor children, if so advised. They will be also at liberty to seek for interim custody of the minor children pending disposal of any such proceedings if instituted. Needless to observe that the court having jurisdiction in the matter shall deal with any such proceedings if instituted, untrammelled by any of the observations contained herein above.

9. Since this court is of the opinion that a writ

of habeas corpus cannot be issued in the matter, the above writ petition is disposed of subject to the observations contained herein above.

Sd/-
C.K. Abdul Rehim, Judge

Sd/-
K. Ramakrishnan, Judge

// True Copy //

P.A. to Judge

SS