

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

WP(Crl.).No. 230 of 2015 (S)

PETITIONER:

MINIKUMARI, AGED 34 YEARS,
W/O. K.R.SAJGAYAN, KRISHNA BHAVAN,
KOTTIYAM PO, THAZHUTHALA, KOLLAM.

BY ADVS.SRI.C.RAJENDRAN
SRI.K.R.RANJITH

RESPONDENTS:

1. CITY POLICE COMMISSIONER,
KOLLAM CITY, KOLLAM DISTRICT 691001.

2. SUB INSPECTOR OF POLICE,
KOTTIYAM POLICE STATION, KOLLAM DISTRICT 691571

3. DISTRICT POLICE CHIEF,
ALAPPUZHA DISTRICT 688001.

4. THE SUB INSPECTOR OF POLICE,
KINDANGARA POLICE STATION,
ALAPPUZHA DISTRICT 686507.

5. KR. SAJGAYAN
AMRITHALAYAM, VALLIKUNNAM PO,
KAMPISSERY, VADKKUMUKKU,
ALAPPUZHA 690 501

R1-R4 BY SRI. T. ASAF ALI-DIRECTOR GENERAL OF PROSECUTION
R1-R4 BY GOVERNMENT PLEADER SMT. KOCHUMOL KODUVATH

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON
10-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1: A TRUE PHOTOCOPY OF THE BIRTH CERTIFICATE OF THE DETENUE
DATED 9.3.2005 ISSUED BY THE PUNALUR MUNICIPALITY

RESPONDENTS' EXHIBITS: NIL

/TRUE COPY/

P.S TO JUDGE

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

.....
W.P.(Crl).No.230 of 2015
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Dated this the 10th day of June, 2015.

JUDGMENT

Abdul Rehim, J:

Petitioner is the mother of a minor child Anjana, aged 13 years. She is the wife of the 5th respondent. Two children were born out of the wedlock. Allegation is that the 5th respondent deserted the petitioner and the minor children and the petitioner became constrained to file M.C.No.64/2010 under the Protection of Women from Domestic Violence Act, 2005. Interim maintenance was allowed to the minor children in this case and it is alleged that the 5th respondent had failed to pay any amount. On 17.5.2015 the 5th respondent came to the house of the petitioner and took away the child Miss. Anjana and thereafter neither the petitioner nor the elder child were permitted to see Anjana. It is stated that the child was studying in Std.VIII in MGO School, Kundara and she had joined for tuition at Kundara. Because of the illegal detention of the child by the 5th respondent, she cannot go to school.

2. This writ petition is filed on the premise that the child

Anjana is being illegally detained by the 5th respondent. Therefore the petitioner is seeking a writ of habeas corpus compelling production of the alleged detainee and to release her from the custody of the 5th respondent.

3. We are of the considered opinion that this writ petition filed under Article 226 of the Constitution of India invoking jurisdiction of this Court for issuance of a writ of habeas corpus, is totally misconceived. We cannot in any manner hold that the custody of the alleged detainee with the 5th respondent will amount to an illegal detention, he being the father of the alleged detainee. It is evident that there exists disputes relating to matrimonial relationship between the petitioner and the 5th respondent. There is also a dispute with respect to entitlement for custody of the children. These are all matters which need be agitated between the parties before the appropriate court. Unless this court is convinced that custody of the alleged detainee by the 5th respondent will amount to an illegal confinement, no writ of habeas corpus can be issued.

4. Despite the above situation, we have referred the matter for mediation for exploring the possibilities of a settlement, atleast with respect to the arrangement regarding

custody of the children. But report of the mediator would show that the matter could not be settled.

Under the above mentioned circumstances, this writ petition is dismissed, reserving liberty to the parties to approach the appropriate court seeking relief with respect to custody of the alleged detainee.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

cl

/true copy/

P.S to Judge

