

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 16TH DAY OF JUNE 2015/26TH JYAISHTA, 1937

WP(Crl.).No. 247 of 2015 (S)

PETITIONER:

**SHEPHER JOHNSON VAIRAMON,
S/O. YOHANNAN, VIRAMON HOUSE,
THEKKUMPURAM MURI, PUTHOOR VILLAGE,
KOTTARAKKARA TALUK, KOLLAM DISTRICT.**

**BY ADVS.SRI.D.KISHORE
SMT.MINI GOPINATH**

RESPONDENTS:

- 1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY, HOME DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.**
- 2. THE CIRCLE INSPECTOR OF POLICE,
HARIPPADU POLICE STATION, ALAPPUZHA DISTRICT-688001.**
- 3. THE SUB INSPECTOR OF POLICE,
HARIPPADU POLICE STATION, ALAPPUZHA DISTRICT-688001.**
- 4. SHINI THOMAS,
VIRUPPLA KIZHAKKETHIL HOUSE, VETTUVENI MURI
KARTHIKAPPALLY VILLAGE, HARIPPADU
ALAPPUZHA DISTRICT-688001.**
- 5. Y. THANKACHAN,
VIRUPPLA KIZHAKKETHIL HOUSE, VETTUVENI MURI
KARTHIKAPPALLY VILLAGE, HARIPPADU
ALAPPUZHA DISTRICT-690516.**
- 6. SUSAMMA THANKACHAN,
VIRUPPLA KIZHAKKETHIL HOUSE, VETTUVENI MURI
KARTHIKAPPALLY VILLAGE, HARIPPADU,
ALAPPUZHA DISTRICT-690516.**

R1-R3 BY GOVERNMENT PLEADER SRI. SHIBU JOSEPH.

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON 16-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AMG

APPENDIX

PETITIONER(S)' EXHIBITS

- P1- TRUE COPY OF THE MARRIAGE CERTIFICATE ISSUED BY THE ST.KURAKOSE CYRIAN ORTHODOX CHURCH.
- P2- TRUE COPY OF THE CERTIFICATE OF ENTRY OF BIRTH ISSUED BY THE CONSULATE GENERAL OF INDIA DATED 12.2.2009.
- P3- TRUE COPY OF THE EMPLOYMENT VISA ISSUED TO THE 4TH RESPONDENT.
- P4- TRUE COPY OF THE COMPLAINT DATED 7.6.2015 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.
- P4 (a)- TRUE COPY OF THE ACKNOWLEDGEMENT RECEIPT DATED 7.6.2015 ISSUED BY THE OFFICE OF THE 3RD RESPONDENT.

RESPONDENTS' EXHIBITS

NIL

True copy

P.A. To Judge

AMG

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

W.P (Crl.) No. 247 OF 2015

DATED THIS THE 16th DAY OF JUNE, 2015

J U D G M E N T

Abdul Rehim, J:

The petitioner is approaching this court invoking jurisdiction vested under Article 226 of the Constitution of India seeking a writ of Habeas Corpus directing for production of his minor daughter Shekinah Shepherded Johns, aged 6 years, and to set her at liberty.

2. Allegations in brief is that, the child was born out of the wedlock between the petitioner and the 4th respondent and both of them along with child were living at Dubai. The marital relationship got estranged and the 4th respondent took the alleged detainee and came to India on 26-04-2015. Thereafter when the petitioner came to India on 04-06-2015, he was not allowed to meet the alleged detainee. It is further alleged that the petitioner came to know that the 4th respondent obtained a job at Dubai and

she had decided to leave the alleged detainee in India, because she is not permitted to take the minor detainee along with her to Dubai. It is averred that respondents 5 and 6 are attempting to take the alleged detainee to some place in Delhi to prevent the petitioner from having any access. It is also averred that respondent 5 & 6 are not revealing whereabouts of the alleged detainee. This writ petition is filed on the premise that the alleged detainee is being detained illegally in the custody of respondents 4 to 6.

3. Through an order passed on 09-06-2015 this court directed the 2nd respondent to conduct a discrete enquiry with respect to whereabouts of the 4th respondent and the minor child, and to submit report. Today, learned Government Pleader appearing on behalf of respondents 1 to 3 submitted that there exist a dispute between the petitioner and the 4th respondent regarding custody of the alleged detainee and both parties have approached the police authorities more than one occasion. However it is revealed that at present the 4th respondent had entrusted

custody of the minor child with respondents 5 & 6, who are the maternal grand parents and the 4th respondent is working at Delhi. It is stated that the child is living peacefully along with respondents 5 & 6 at their residence at Viruppla Kizhakkethil House, Vettuveni muri, Karthikapally village, Haripad.

4. From the facts enumerated as above it is evident that the alleged detainee, who is the minor daughter of the petitioner and the 4th respondent is now in the custody of respondents 5 to 6, who are the maternal grand parents of the child. This court do not find any material to hold that custody of the minor child at present will in any manner amount to an illegal detention. However, dispute with respect to entitlement for custody of the minor child is a matter which need to be adjudicated by the appropriate court under the relevant law. Hence we do not find any circumstances warranting issuance of a writ of Habeas Corpus. The parties will be at liberty to agitate the issue before appropriate court. Needless to observe that if any

such proceedings is initiated before the Family Court having jurisdiction in the matter, the same shall be adjudicated independently on its merit, untrammelled by any of the observations contained herein above.

5. The writ petition is disposed of subject to the above observations.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

AMG

True copy

P.A. to Judge