

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. 264 of 2015 (S)

PETITIONER :

DHANYA M., AGED 26 YEARS,
D/O.MOHANDAS, THADATTARIKATHU VEEDU, KOLLAYIL,
KOLLAYIL P.O, CHITHARA PANCHAYATH, KOTTARAKKARA TALUK,
KOLLAM DISTRICT -691 541

BY ADV. SRI.VINOY VARGHESE KALLUMOOTTILL

RESPONDENT(S):

1. SUPERINTENDENT OF POLICE(RURAL),
THIRUVANANTHAPURAM- 695 001
2. CIRCLE INSPECTOR OF POLICE,
PANGODU, THIRUVANANTHAPURAM DISTRICT -695 001
3. SUB INSPECTOR OF POLICE, PANGODU POLICE STATION,
THIRUVANANTHAPURAM DISTRICT-695 001
4. SHIJU,
SHIJU BHAVAN, K.T.KUNNU, KALLARA P.O.,
KALLARA PANCHAYATH, NEDUMANGADU TALUK,
THIRUVNANTHAPURAM DISTRICT- 695 001
5. SHIBU,
SHIJU BHAVAN, K.T.KUNNU, KALLARA P.O.,
KALLARA PANCHAYATH, NEDUMANGADU TALUK,
THIRUVNANTHAPURAM DISTRICT -695 001

R1 TO R3 BY GOVERNMENT PLEADER SRI.JOBY JOSEPH

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

sts

WP(Crl.).No. 264 of 2015 (S)

APPENDIX

PETITIONER(S)' EXHIBITS

P1: TRUE COPY OF THE COMPLAINT FILED BEFORE THE WOMEN COMMISSION

P2: TRUE COPY OF THE COMPLAINT FILED BEFORE TEH 3RD RESPONDENT

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.S.TO JUDGE

sts

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

WP(CrI).No. 264 of 2015

Dated this the 16th day of June, 2015

JUDGMENT

Abdul Rehim,J.

The petitioner herein who is the mother of a 4 year old child namely Akhilesh S. is approaching this court seeking a writ of habeas corpus for directing production of the child and to pass necessary orders and in the interest of justice to grant custody of the child to her.

2. It is alleged that the 4th respondent, who is the husband of the petitioner and the father of the child, was away in Gulf countries and he returned on 18.5.2015. The petitioner along with the child, who were since then residing with the parents of the petitioner, went to the house of the 4th respondent on 18.5.2015. According to the petitioner, there occurred a quarrel between the petitioner and the 4th respondent on 19.5.2015 and she was sent out from the house of the 4th respondent. But she was not permitted to take back the child along with her. It is

alleged that the 5th respondent, who is the brother of the 4th respondent, has taken custody of the child and he is not entitled to keep the child in custody. Contention is that from 19.5.2015 onwards the petitioner is prevented from seeing the child, which had caused serious mental agony and sufferings to her. It is also alleged that the child is having some problems in taking food and that the 4th respondent is having hearing impairment and will be difficult to have interactions with the child. The petitioner had raised a complaint before the State Women Commission as well as before the 3rd respondent seeking custody of the child, which went in vain. Hence the petitioner is approaching this court.

3. From the averments contained in the writ petition it is evident that custody of the minor child, Akhilesh S. is with the 4th respondent. Eventhough it is alleged that the 5th respondent had taken custody of the child it is not in dispute that the 5th respondent is staying along with the 4th respondent. Therefore it is to be presumed that the minor child, who is the alleged detenu, is now staying along with his father, the 4th respondent herein. Question as to who among the petitioner and the 4th respondent is the proper persons entitled to have custody of the

child, is not a matter which can be adjudicated in this writ petition. Learned counsel for the petitioner raised vehement contentions that prime interest and welfare of the child will be affected if the child is allowed to continue in the custody of respondents 4 and 5. We are of the considered opinion that the attempt made for invoking jurisdiction of this court to issue a writ of habeas corpus is highly misconvinced. There is no material before this court to hold that the minor child is under illegal confinement of the 4th respondent, the father. We are not in a position to hold that the 4th respondent is illegally detaining the minor child. It is evident that despite the allegation that the petitioner was deprived of custody of the child since 19.5.2015 onwards, she has not resorted to any remedy available under the relevant statute before the appropriate court for seeking custody of the child or to have interim access to the child. Since we are not convinced that there exists any exceptional circumstances to direct production of the child before this court in exercise of the extra ordinary discretionary jurisdiction vested on this court, the writ petition is liable to be dismissed. However, we make it clear that the petitioner will be

at liberty to seek appropriate remedy before the court having jurisdiction in the matter.

4. Needless to observe that if the petitioner moves for in any urgent orders in the matter, such court wherein the proceedings is instituted will take necessary immediate steps considering urgency of the issue. It is made clear that such proceedings if any instituted shall be adjudicated independently, untrammelled by any observations contained hereinabove.

In the above mentioned circumstances the petition is dismissed subject to liberty reserved and observations contained hereinabove.

C.K.ABDUL REHIM, JUDGE

K.RAMAKRISHNAN, JUDGE

Pmn/

