

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 18TH DAY OF AUGUST 2015/27TH SRAVANA, 1937

WP(Crl.).No. 281 of 2015 (S)

PETITIONER(S) :

MANOJ GOPI,
AGED 47 YEARS, S/O. K.N. GOPI,
KRISHNA VILASOM(MEDAYIL VEEDU), AYATHIL.P.O.,
VADAKKEVILA VILLAGE,
PRESENTLY RESIDING AT HARI VIHAR, MANAKKARA,
SASTHAMCOTTA.P.O., KUNNATHUR TALUK, KOLLAM DISTRICT.

BY ADVS.SRI.JOHNSON GOMEZ
SRI.S.BIJU (KIZHAKKANELA)
SRI.S.SREEKUMAR (KOLLAM)
SRI.ANIL ELGIN
SRI.S.VINCENT
SRI.S.JOSE

RESPONDENT(S) :

1. THE DISTRICT POLICE CHIEF,
OFFICE OF THE DISTRICT SUPERINTENDENT OF POLICE
KOLLAM DISTRICT-691 001.
2. THE SUB INSPECTOR OF POLICE, KAVANAD POLICE STATION,
KOLLAM-691 003.
3. G.S. MANJU,
W/O. P.AJITHKUMAR, HOUSE NO. 158, ARSHA NAGAR,
KAVANADU.P.O., KOLLAM DISTRICT, PIN-691 003.
4. AJITH KUMAR,
S/O. PADMANABHA PILLAI, HOUSE NO. 158, ARSHA NAGAR,
KAVANADU.P.O., KOLLAM DISTRICT, PIN-691 003.

R1 & 2 BY SRI. TOM JOSE PADINJAREKKARA,
ADDL.DIRECTOR GENERAL OF PROSECUTION
ADV. COMMISSIONER SRI.J. SUNIL
R3-R4 BY ADV.SRI.C.UNNIKRISHNAN (KOLLAM)
GOVERNMENT PLEADER SRI.SHIBU JOSEPH

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON
18-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

:2:

WP (Cr1.) .No. 281 of 2015 (S)

APPENDIX

PETITIONER(S) ' EXHIBITS

:

P1 - A TRUE COPY OF THE COMPLAINT DT. 26.6.15 SUBMITTED BY THE
PETITIONER BEFORE THE FIRST RESPONDENT.

RESPONDENT(S) ' EXHIBITS

:

EXT.R3 (a) COPIES OF THE TREATMENT DETAILS AND BILLS

// True Copy//

P.A. to Judge

SS

C.K. ABDUL REHIM &

K. RAMAKRISHNAN, JJ.

W.P.(Crl.) No.281 of 2015

Dated this the 18th day of August, 2015

JUDGMENT

C.K. Abdul Rehim, J

Petitioner is the son of the alleged detainee, Sri.K.N.Gopi @ Gopinathan Nair, who is aged 86 years. The petitioner is employed in Australia since the last 7 years. The alleged detainee is a Mechanical Engineer retired from KSRTC. It is stated that the alleged detainee was leading a peaceful life in his 'tharavadu' house situated at Ayathil, Kollam. The 3rd respondent is the daughter of the alleged detainee and the 4th respondent is her husband. Allegation in the writ petition is that respondents 3 and 4 took the petitioner to their house from the 'tharavadu', under the pretexts that he needs urgent medical checkup and care. On the same day itself they sold the cattle and pets maintained by the alleged detainee in the 'tharavadu' house.

When the petitioner returned to Kerala in January, 2015 he was restrained by the 4th respondent from seeing the alleged detainee. He had to return to Australia on 10.01.2015. Thereafter he again came back during April 2015 and visited his father. At that time the alleged detainee had settled 15 cents of property in favour of the petitioner. The above said act on the part of the alleged detainee had infuriated the respondents 3 and 4, and they started illtreating and abusing the alleged detainee. It is stated that, on 20.06.2015 the alleged detainee insisted on meeting his nephew, one Dr.Radhakrishnan, on account of stomach pain. When met by the said Dr.Radhakrishnan the alleged detainee pleaded to the Doctor to seek interference of the petitioner for releasing him from detention of respondents 3 and 4, raising complaints that they are depriving proper medical care and attention to the alleged detainee. It is also mentioned that the alleged detainee was locked up in a room. But at this juncture the 3rd respondent interfered and forcefully took the alleged detainee from the clinic of

Dr.Radhakrishnan. But Dr.Radhakrishnan had informed the petitioner about the sad plight of the alleged detainee and insisted for his interference. Accordingly the petitioner returned to Kerala on 25.06.2015. Attempts made by the petitioner thereafter to meet his father was resisted. Under such circumstances, he submitted a complaint before the 1st respondent. But no effective steps were taken by the police authorities. Under such circumstances, the petitioner is approaching this court seeking a writ of Habeas Corpus for directing production of the corpus of the alleged detainee and to release him from the illegal detention of respondents 3 and 4.

2. Pursuant to notice issued from this court, the respondents 3 and 4 entered appearance through counsel and filed detailed counter affidavit denying all the allegation. The petitioner submitted an interim application seeking for appointment of an Advocate Commissioner to interact with the alleged detainee. This court passed an order on 07.07.2015 appointing Sri.Sunil.J, Advocate as

Commissioner to make a visit to the house of respondents 3 and 4 and to have interaction with the alleged detainee, independently. The Advocate Commissioner was directed to ascertain whether the alleged detainee is under any illegal confinement against his wish.

3. The Advocate Commissioner had filed a report on 14.07.2015 stating that the alleged detainee is under illegal detention of respondents 3 and 4 against his wish and will and that he expressed desire to escape from that house. It was reported that the alleged detainee is able to walk without help of anyone, but he appeared to be very weak. However, it is reported that, he is mentally sound. The Advocate Commissioner reported that the detainee requires medical treatment immediately. It is also reported that the alleged detainee told that he wants freedom to meet all his children and to interact with them. It is also reported that he expressed desire to have a free life according to his will and wish.

4. On the basis of the report of the Advocate

Commission, as consented by counsel appearing on both sides, this court passed an order on 15.07.2015 directing for shifting of the alleged detainee to Dr.Nair's Hospital, Kollam, for necessary treatment. The Hospital authorities was directed to submit a report to this court through police, with respect to his physical conditions. Accordingly a report was submitted on 24.07.2015, wherein it is indicated that the alleged detainee had undergone a surgery, 'Inguinal Hernioplasty' on 23.07.2015. We directed the hospital authorities to discharge the alleged detainee only after obtaining permission from this court. The progress of his treatment was directed to be reported to this court. Permission was also granted to make arrangements to provide nursing care to the alleged detainee by engaging any competent person. On 03.08.2015, it was informed to this court that a person by name, Sri.Chandramohan Pillai is taking care of the alleged detainee in the hospital, as bystander. We directed the police authorities to get further detailed certificate from the hospital authorities, as to when

he will be fit for discharge and also with respect to his general conditions and details of continuous treatment if any required, for other health problems. A treatment certificate was produced before this court on 07.08.2015, issued from Dr.Nair's Hospital. It indicated that the alleged detainee is fit for discharge. Therefore we directed the 2nd respondent to produce the alleged detainee before this court on 10.08.2015, after getting him discharged from Dr.Nair's Hospital. But on 10.08.2015 the learned Government Pleader reported that, while taking the alleged detainee from Dr.Nair's Hospital to this court, he developed hypertension and was admitted at Valiyath Institute of Medical Sciences, Karunagappally. A certificate issued by the Cardiologist of that hospital was also produced. It is indicated that the alleged detainee is admitted at the above said hospital in the 'Choronary Care Unit' and is under observation. On that basis, the case was again adjourned to today. The alleged detainee was permitted to continue treatment in the said hospital and the hospital authorities

were permitted to refer him for better treatment to any major hospital, if required.

5. Today when the case is taken up, the alleged detainee is produced before this court. It is reported that the alleged detainee was shifted from Valiyath Institute of Medical Sciences, Karunagappally to the Medical Trust Hospital, Ernakulam. He was discharged from the said hospital on 13.08.2015 and thereafter he was staying with some of his relatives at Ernakulam. We have a detailed interaction with the alleged detainee. He raised various complaints against his daughters and their husbands. According to him, the respondents 3 and 4 in connivance with the younger daughter, Smt.Bindu, are taking him to various hospitals based on false allegations of illness, with some oblique motives. It is said that they have created some documents with respect to settlement of his remaining properties. According to the alleged detainee, he is now physically fit, at least to take care of himself. Therefore he expressed strong desire to be with the petitioner herein,

who is his son. It is said that arrangements are already been made by the petitioner to take him to Australia for a short period of about 6 months to provide proper treatment. It is stated that the petitioner had agreed to bring back the alleged detainee and to settle him here, by providing proper care and protection. The alleged detainee pleaded before this court to permit him to live at any place of his own choice, as arranged by the petitioner. He said that, at present he is intending to stay along with one of his relatives, Sri.Sinu L.R., S/o. Raghavan Nambiar, Kuzhivilaputhen veedu, Santhi Nagar-219, Ayathil P.O., Kollam-21. It is stated that the above said person is now looking after the alleged detainee. Sri.Sinu L.R. is personally present before this court. When we have interacted, he said that he is prepared to take care of the alleged detainee and that he is making all arrangements under instructions of the petitioner. According to the alleged detainee, the respondents 3 and 4 and his younger daughter and her husband are not taking appropriate care and protection and

their intention is not genuine in the matter of providing treatment to him.

6. We do not think it is necessary for this court to have any adjudication with respect to veracity of the allegations and counter allegations between the parties with respect to disputes relating to property of the alleged detainee, for the purpose of a disposal of the above writ petition. From the report of the Advocate Commissioner as well as based on the direct interaction made with the alleged detainee, we are convinced that the alleged detainee is not intending to have his residence at the house of respondents 3 and 4. It is evident that he was staying in the house of respondents 3 and 4 against his free will and wish. At present the alleged detainee seeks indulgence of this court to release him and to permit him to live at place of his own choice. He had expressed desire to go along with Sri.Sinu L.R., and to reside in his house, for the time being. It is also expressed that he is intending to go along with the petitioner to Australia for a short visit.

7. Under the above mentioned circumstances, this writ petition is disposed of by setting the alleged detenue Sri.K.N.Gopi @ Gopinathan Nair, at liberty to go along with the above said Sri.Sinu L.R., S/o. Raghavan Nambiar, for a short period and subsequently to go along with the petitioner to Australia and thereafter to reside at any place of his own choice, as desired by him.

Sd/-

C.K. Abdul Rehim, Judge

Sd/-

K. Ramakrishnan, Judge

// True Copy//

P.A. to Judge