

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 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

WP(Crl.).No. 297 of 2015 (S)

PETITIONER(S) :

GIBIN BABY, AGED 29 YEARS,
S/O.BABY, CHERUSERRYKALAM, T.M.R JUNCTION,
PAKKIL P.O., KOTTAYAM - 2.

BY ADVS.SRI.JOY GEORGE
SRI.C.X.ANTONY BENEDICT
SMT.TANYA JOY

RESPONDENT(S) :

1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.
2. THE STATE POLICE CHIEF,
POLICE HEAD QUARTERS, THIRUVANANTHAPURAM-695 001.
3. THE SUPERINTENDENT OF POLICE,
KOTTAYAM - 686 001.
4. THE SECRETARY,
INDIAN EMBASSY, VILLA NO.19, STREET NO.828,
AREA NO.42, WADI AL NEEL, OLD HILAL AREA,
P.O.BOX: 2788, DOHA, QATAR.
5. SACHARIA KURIAKOSE, AGED 66 YEARS,
AALUNGAL HOUSE, BEHIND INDRAPRASTAM HOTEL,
KOTTAYAM - 686 001.
6. SHIKHA JACOB,
QAPCO MAIN, P.O.BOX NO.50155 DOHA, QATAR.

R1-R3 BY SRI. TOM JOSE PADINJAREKKARA,
ADDL.DIRECTOR GENERAL OF PROSECUTION
R4 BY ADV.SRI.BABU P.L., CGC
ASSISTANT SOLICITOR GENERAL, SRI.N.NAGARESH.
GOVERNMENT PLEADER SRI.SHIBU JOSEPH

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON
29-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

:2:

WP (Cr1.) .No. 297 of 2015 (S)

APPENDIX

PETITIONER(S) ' EXHIBITS

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P1: THE PHOTOCOPY OF THE DIVORCE PETITION OP(DIV) NO.236/2015.

P2: THE PHOTOCOPY OF THE RECEIPT SHOWING THE ACCEPTANCE OF THE COMPLAINT BY THE DIRECTOR GENERAL OF POLICE.

P3: THE PHOTOCOPY OF THE RECEIPT SHOWING THE ACCEPTANCE OF THE COMPLAINT BY THE SUPERINTENDENT OF POLICE.

P4: THE PHOTOCOPY OF THE PETITION FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

RESPONDENT(S) ' EXHIBITS

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//True Copy//

P.A. to Judge

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

W.P.(Crl.) No.297 of 2015

Dated this the 29th day of July, 2015

JUDGMENT

C.K. Abdul Rehim, J

The father of a minor child, Miss.Angelina Gibin, aged 4 years, is the petitioner herein. This petition is filed seeking a writ of Habeas Corpus for directing production of the said minor child from the alleged illegal custody, and to hand over her custody to the petitioner.

2. Averments are to the effect that, the petitioner married the 6th respondent on 05.04.2010 and the minor child was born out of the said wedlock. There arose difference of opinion between them and the 6th respondent went to Doha in Qatar to join her parents, leaving matrimonial company of the petitioner, during December, 2014. According to the petitioner, the 6th respondent had left the petitioner by abandoning the matrimonial

relationship and the petitioner had already preferred Ext.P1 petition for dissolution of the marriage, as O.P.(Div.) No.236/2015, before the Family Court, Ettumanoor at Kottayam. It is stated that, on getting notice from the Family Court, the 6th respondent came back from Doha and she came to the residence of the petitioner on 30.04.2015. Allegation is that the 6th respondent had took the minor child into custody from the petitioner, on that day. Thereafter the 6th respondent appeared before the Family Court on 02.05.2015 and the case was adjourned to 02.06.2015 for conducting counselling of the parties. Meanwhile, some friends and relatives had intervened in the dispute and attempted for an amicable settlement. It is alleged that the 6th respondent and her parents have repretended that they are ready for filing a joint petition for divorce, provided other matters relating to custody of the minor child etc., are settled. Accordingly the petitioner and

his father were invited for a compromise talk on 15.05.2015 to the residence of the 5th respondent, who is a relative of the 6th respondent. But it is alleged that the petitioner and his father were attacked at the residence of the 5th respondent by some goondas arranged by the 6th respondent. It is stated that the 6th respondent had left Kerala thereafter and the petitioner was not informed about the whereabouts of the minor child. According to the petitioner, from 15.05.2015 onwards he has no knowledge or information about the child. The petitioner submitted Exts.P2 and P3 complaints before respondents 2 and 3. It is mentioned that the petitioner came to know that the minor child is under illegal custody of some strangers. Therefore he had submitted Ext.P4 complaint before the 3rd respondent. The petitioner had also approached the Family Court in a petition instituted as O.P.(G&W)No.634/2015, seeking custody of the minor child. This writ petition is filed

based on a specific allegation that the minor child Miss.Angelina Gibin is being illegally detained by respondents 5 and 6.

3. When the above writ petition came up for admission on 08.07.2015, this court was not inclined to admit the matter because it is prima facie found that the alleged detainee, who is a minor child of tender age is in the custody of her mother, the 6th respondent herein. This court expressed the view that, who among the petitioner and the 6th respondent is the best person suitable to be given custody of the minor child, is not a matter which can be adjudicated in a proceedings under Article 226.

4. However, learned counsel for the petitioner expressed an apprehension that the minor child is not even in the custody of the 6th respondent, but she is kept under the custody of somebody else in some unknown place. On that basis, we directed the Government Pleader to get

instructions from the 3rd respondent with respect to the action if any taken based on Ext.P4 complaint and to report as to whether any enquiry was made to ascertain the availability of the child with respondents 5 and 6. On 16.07.2015, it was reported on behalf of the 3rd respondent that, during the enquiry conducted it was revealed that the minor child had left to Doha along with her mother on 19.05.2015 and the child is at present in Qatar. This court issued further direction to the 3rd respondent to submit a report regarding the above aspect, after making further verification from the Immigration Department regarding details of the travel of the child abroad along with her mother.

5. Today when the case is taken up, the 3rd respondent had submitted a report to the effect that on verifying details available with the Immigration Department, it is revealed that the 6th respondent and the

child Miss.Angelina Gibin have left India through Cochin International Airport on 20.05.2015 by Flight No.QR-517. Details furnished in this regard by the Assistant Director, Bureau of Immigration, Cochin International Airport, is also produced to show that both of them had left the country on 20.05.2015 by the above said flight. Therefore it is evident that the minor child is now in the custody of the 6th respondent at Doha, Qatar.

6. Learned counsel for the petitioner raised vehement contentions to the effect that, the minor child was illegally taken into custody by the 6th respondent from the petitioner's house and that she is being illegally detained by denying access to the petitioner. According to the learned counsel, under such circumstances it is fit for this court to invoke its jurisdiction to ensure that the minor child is given back custody to the father and the 6th respondent should be directed to seek appropriate remedy through legal

proceedings, if she is desirous of getting custody of the minor child and in taking the child outside the country, in a manner denying access of the petitioner. But as already observed, we are of the considered opinion that, who among the petitioner and the 6th respondent is the most suitable parent to have custody of the minor child and as to whether the minor child can be permitted to be stayed along with the mother abroad, are all questions to be dealt with by the Family Court having jurisdiction, under provisions of the Guardian and Wards Act. It is evident that the petitioner had already invoked jurisdiction vested on the competent court in this regard. Family Court is the appropriate court where all such contentions can be considered and an adjudicated based on factual aspects and evidence. An appropriate decision with respect to custody of the child, either permanent or interim, can be taken by that court.

7. Since this court is not in a position to arrive

at any conclusion that custody of the minor child in this case with the 6th respondent will amount to an illegal confinement, it is not proper to have interference of this court for issuance of any writ of Habeas Corpus.

Therefore the above writ petition is hereby dismissed. Liberty to the petitioner to pursue remedies from the Family Court in the pending proceedings instituted for custody of the minor child is hereby reserved.

Sd/-

C.K. Abdul Rehim, Judge

Sd/-

K. Ramakrishnan, Judge

//True Copy//

P.A. to Judge