

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

WP(Crl.).No. 304 of 2015 (S)

PETITIONER :

NIZAMUDEEN, AGED 45 YEARS,S/O.JAMALUDEEN,
(P.B.NO.9943, RIYADH-11423), RAZI MANZIL, CHORAKKAL,
AYIRAKUZHI, KADAKKAL VILLAGE, KOLLAM DISTRICT,
REPRESENTED BY HIS POWER OF ATTORNEY HOLDER
THAJUDEEN,AGED 60 YEARS, S/O.JAMALUDEEN, ZAINABA MANZIL,
THALAVILAMUKKU, P.C.MUKKU.P.O., KARAVARAM VILLAGE,
KALLAMBALAM-695 605.

BY ADVS.SRI.T.M.ABDUL LATHEEF
SRI.A.ABDUL LATHEEF

RESPONDENT(S):

1. ABDUL KAHAR, CHORAKKAL HOUSE,
AYIRAKUZHI, KADAKKAL VILLAGE,
KOLLAM DISTRICT-691 536.
2. SABOORA, W/O.ABDUL KAHAR,
CHORAKKAL HOUSE, AYIRAKUZHI, KADAKKAL VILLAGE,
KOLLAM DISTRICT-691 536.
3. CIRCLE INSPECTOR OF POLICE, KADAKKAL,
KOLLAM DISTRICT-691 536
4. SUPERINTENDENT OF POLICE, KOLLAM DISTRICT-691 001

R3 & R4 BY ADDL.DGP SRI.K.I.ABDUL RASHEED
BY GOVERNMENT PLEADER SRI.P.S.ABDUL KAREEM

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION
ON 10-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

sts

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE FEES RECEIPT DATED 20/04/2013 ISSUED BY MARKAZ ENGLISH MEDIUM SENIOR SECONDARY SCHOOL KARANTHUR.**
- P2 COPY OF THE LETTER ISSUED BY THE PRINCIPAL OF MARKAZ ENGLISH MEDIUM SENIOR SECONDARY SCHOOL, KARANTHUR, DATED 08/06/2015**
- P3 COPY OF THE FEES RECEIPT DATED 10/06/2013 ISSUED BY ST. CHARLES BORROMEO CONVENT SCHOOL, THYRIKKANNAPURAM, KADAKKAL**
- P4 COPY OF THE FEES RECEIPT DATED 10/06/2013 ISSUED BY ST. CHARLES BORROMEO CONVENT SCHOOL, THYRIKKANNAPURAM, KADAKKAL**
- P5 COPY OF THE PRESCRIPTION DATED 25/03/20002 ISSUED BY DR.K.RAMACHANDRAN**
- P6 COPY OF THE PRESCRIPTION DATED 22/07/2010 ISSUED BY DR.K.RAMACHANDRAN**
- P7 COPY OF THE COMPLAINT DATED 27/05/2015 ALONG WITH CONVERING LETTER NO.RIY/CW/415/2201 56(093) DATED 27/05/2015 OF THE EMBASSY OF INDIA, RIYADH**
- P8 COPY OF THE COMPLAINT DATED 20/06/2015 SUBMITTED BEFORE THE 3RD RESPONDENT**

RESPONDENT'S EXHIBITS:

NIL

/TRUE COPY/

PA.TO JUDGE

sts

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

W.P (Crl.) No. 304 OF 2015

DATED THIS THE 10th DAY OF JULY, 2015

J U D G M E N T

C.K. Abdul Rehim, J:

The petitioner is approaching this court seeking a writ of Habeas Corpus for directing production of 3 minor children born to him in the wedlock with his deceased wife Mrs. Rajeeana, and to release them from the illegal detention of respondents 1 & 2. Averments in the writ petition are to the effect that the petitioner is working in Saudi Arabia and the children along with their deceased mother was residing at Kadakkal in Kollam district, near to the residence of respondents 1 & 2, who are parents of the deceased wife. It is stated that 1st son was studying at Markaz English Medium Senior Secondary School, Karanthoor, Kozhikode from 2013 onwards and he is now promoted the 10th standard. The 2nd son as well as the 3rd daughter are studying at St. Charles Borromeo Convent School,

Thrikkannapuram, Kadakkal. According to the petitioner he is meeting all the expenses for study of the children. It is stated that the petitioner's wife was undergoing psychiatric treatment from the year 2002 onwards and on 20-05-2015 she died under mysterious circumstances. It is admitted that, from that date onwards all the 3 minor children are in the custody of respondents 1 & 2, who are their maternal grand parents. With respect to death of the petitioner's wife, he had raised a complaint through the Embassy of India, seeking necessary investigation. Allegation raised in this writ petition is that now the minor children are illegally detained by respondents 1 & 2 and they are not being send to school. It is also alleged that the petitioner was not permitted to contact respondents 1 & 2 and whereabouts of the minor children is not revealed. The petitioner's relatives were also prevented by respondents 1 & 2 from seeing the minor children, is the allegation. It is alleged that personal liberty of life and love and education are being denied to the minor children. This writ petition is filed on the premise

that respondents 1 & 2 had no authority to keep the minor children in their custody.

2. As far as this writ petition is concerned, which is filed seeking a writ of Habeas Corpus for directing production of the minor children, this court should be convinced that there exists an illegal confinement of the alleged detenues. In the case at hand the alleged detenues are minor children. Admittedly the petitioner is in Saudi Arabia and the children were staying along with their mother at Kadakkal. It is also admitted that since the date of death of their mother of minor children are staying along with respondents 1 & 2, who are their maternal grand parents. Under such circumstances there is absolutely no materials available before this court to arrive at any conclusion that custody of the minor children with respondents 1 & 2 will amount to an illegal confinement.

3. Who among the petitioner and respondents 1 & 2 is the proper person entitled to have custody of the minor children is a matter which cannot be adjudicated in this

proceedings, which is instituted under Article 226 of the Constitution of India. It will be open to the petitioner to seek appropriate remedy under the relevant statute before the appropriate court. It will be also left open to the petitioner to seek appropriate interim relief if any proper proceedings is instituted before such court having jurisdiction in the matter.

4. Since it is found that there exists no circumstances warranting interference of this court to issue a writ of Habeas Corpus, the above writ petition is dismissed, with liberty reserved to the petitioner to seek appropriate remedy before the court having jurisdiction in the matter.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

AMG

True copy

P.A. to Judge