

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 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

WP(CR).No. 344 of 2015 (S)

PETITIONER(S):

SHEEBA ANTONY
D/O.K.A.ANTONY, AGED 40 YEARS
RESIDING AT KALLERY HOUSE, MANNOOTHY P.O
THRISSUR 680 561.

BY ADVS.SRI.R.PARTHASARATHY
SMT.SEEMA

RESPONDENT(S):

1. THE STATE OF KERALA
REPRESENTED BY THE HOME SECRETARY
GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM 695001
2. THE COMMISSIONER OF POLICE
ERNAKULAM, REVENUE TOWER, KOCHI-11.
3. THE SUPERINTENDENT OF POLICE
THRISSUR - 680 001.
4. THE SUB INSPECTOR OF POLICE
MANNUTHY POLICE STATION, THRISSUR DISTRICT 682 507.
5. THE SUB INSPECTOR OF POLICE
THOPPUMPADY POLICE STATION, ERNAKULAM, KOCHI-682 507
6. T.J. ANTONY
AGED 44 YEARS, S/O.JACOB, THEKKANANTHASSERY

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7. JACOB T.J., AGED 78 YEARS, S/O. JOSEPH THEKKEANANTHASSERY
MUNDANVELLI (PO), KOCHI-682007.

8. LILLY JACOB, AGED 72 YEARS, W/O. JACOB THEKKEANANTHASSERY
MUNDANVELLI (PO), KOCHI-682007.

ADDL.R7 & R8 ARE IMPEADED AS PER ORDER DT. 4.8.2015 IN
IA.NO.11315/2015.

R1 TO R5 BY SPECIAL GP FOR WOMEN & CHILDREN
SMT. SREELALTA PARAMESWARAN

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 04-08-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

WP(Crl.).No. 344 of 2015 (S)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT. P1 - TRUE COPY OF THE COMPLAINT FILED BEFORE THE DEPUTY
COMMISSIONER OF POLICE KOCHI DATED 6.8.2014

EXT. P2 - TRUE COPY OF THE ORIGINAL O.P.1234/2014 FILED BEFORE THE
FAMILY COURT THRISSUR

EXT. P3 - TRUE COPY OF THE JUDGMENT IN WPC.371/2014 DATED
12.8/2014

EXT. P4 - TRUE COPY OF THE COMPLAINT DATED 24.7.2015

EXT. P5 - TRUE COPY OF THE LETTER ISSUED BY THE PRINCIPAL, ERUDITUS
INTERNATIONAL SCHOOL THRISSUR DATED 30.7.2015

RESPONDENT(S)' EXHIBITS

NILL

TRUE COPY

PS TO JUDGE

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

WP(CR) .No. 344 of 2015

Dated this the 4th day of August, 2015

JUDGMENT

Abdul Rehim,J.

The mother of 3 minor children aged 16 years, 6 ½ years and 4 ½ years respectively, is the petitioner. The 6th respondent is the husband of the petitioner and father of the minor children. Marital relationship of the petitioner and the 6th respondent was not cordial and litigations instituted by the petitioner seeking divorce and for recovery of gold ornaments are pending disposal before the Family Court, Thrissur. During pendency of the said cases, they arrived at a consensus to reside together in a house belonging to the 6th respondent . But on 24.7.2015 the 6th respondent attempted to assault the petitioner and she had to run out of the house, is the allegation. It is stated that, the petitioner was not permitted to take the children along with her. Eventhough she approached the police authorities and the police authorities directed the 6th respondent to handover the two

younger children to the petitioner, the 6th respondent refused to obey and had taken the children into his exclusive custody. The petitioner is denied of contact with the two younger children, who are studying at a school at Paravattani , Thrissur. According to the petitioner, on enquiries made by her it was revealed that the children are not attending the schools since 24.7.2015 onwards. It is mentioned that whereabouts of two children are not known and on enquiries made by her with the neighbors of the 6th respondent it was told that the 6th respondent had since left the country and went to Dubai. According to the petitioner, the children are now left in the custody of the additional respondents 7 and 8. Under the above mentioned circumstances this writ petition is filed seeking a writ of habeas corpus for directing production of the 2 minor children, Neeraj Jacob Antony and Abel Jacob Antony, before this court, based on the specific allegation that they are under illegal confinement of respondent 6 to 8.

2. It is mentioned in the writ petition itself that OP.No.1234/2014 filed by the petitioner seeking dissolution of the marriage based on allegations of cruelty is pending disposal before the Family Court, Thrissur. It is also mentioned that she

had filed another petition seeking recovery of gold ornaments from the 6th respondent which is also pending as OP.No.1233/14. It is further stated that the petitioner had filed an interim application for injunction as IA.No.3732/2014 in the OP.No.1234/14. It is stated that during pendency of the above cases before the Family Court the 6th respondent had filed a writ petition seeking a writ of habeas corpus before this court alleging that the petitioner as well as the children are under the illegal detention of the petitioner's brother and sister. This court ordered production of the alleged detainees in the above said writ petition. When they were produced it was noticed that the petitioner or the children are not under any illegal confinement, since they have chosen themselves to leave the company of the 6th respondent and started residence along with the elder sister of the petitioner on thereon free will. Noticing that the proceedings before the Family Court on the matrimonial issues are pending, the said writ petition was dismissed making it clear that the parties are at liberty to pursue their remedies before the Family Court.

3. It is mentioned in the writ petition that the interim application filed before the Family Court, IA.No.3732/14 seeking

for injunction against the 6th respondent from forcefully taking away the children was sought to be advanced. But the Family Court had posted the interim application for counter and for hearing to 12.8.2015. Since the petitioner was denied of access to the minor children who are now in the custody of respondents 6 to 8, this writ petition is filed.

4. We take note of the fact that both the petitioner as well as the 6th respondent were living together till 24.7.2015, along with the minor children. Allegation is that, when the petitioner was forced to leave the matrimonial house the 6th respondent had not permitted her to take the minor children along with her. Learned counsel for the petitioner contended that, this court in exercise of jurisdiction vested under Article 226 can interfere in the matter for protecting the welfare and paramount interest of the minor children. But we notice that the litigations touching upon the matrimonial disputes between the parties are already pending before the Family Court. Who among the petitioner and the 6th respondent is most suitable parent to be given custody of the minor children, is an issue which can be better agitated and decided before the Family Court having jurisdiction. This is especially because the said court is the competent court

having jurisdiction under the Guardian and Wards Act and it is the fact finding court which can appreciate all circumstances and attendant aspects for a better decision in the case. At present there is no materials produced before this court for arriving at any conclusion that custody of the minor children with respondents 6 to 8 will in any manner amount to an illegal confinement. Therefore we do not think that, interference of this court for issuance of a writ of habeas corpus does not exists on the facts and circumstances as illustrated. It is true that pendency of any matter before the Family Court is not a bar for this court to exercise jurisdiction vested under Article 226, when it is convinced that the life of the minor children or their welfare or paramount interest are in peril. But that does not mean that this court should exercise jurisdiction to decide such issues in all cases based on the mere allegations, despite availability of an effective alternate remedy which is statutory, before the competent court having jurisdiction under the relevant statute. It is always left open to the petitioner to approach the Family Court having jurisdiction under the Guardian and Wards Act to seek custody of the minor children. It is also left open to her to seek appropriate interim relief for production of the children and

for interim custody, pending disposal of such matters before the Family Court. We do not think that, if such a petition is moved along with necessary interim applications and if the urgency of the matter is appraised before the Family Court through appropriate motion made in that respect, the Family court will not consider it on a preferential basis. Hence we refuse interference in this case, by leaving open right of the petitioner to seek appropriate remedy before the Family Court having jurisdiction, as mentioned above.

5. Needless to observe that if any such attempt is made by the petitioner, the Family Court having jurisdiction will consider the issue taking note of the observations contained hereinabove.

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

C.K.ABDUL REHIM, JUDGE

K.RAMAKRISHNAN, JUDGE

Pmn/

