

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. 348 of 2015 (S)

PETITIONER:

- 1. K.R SANJAYAN, AGED 43 YEARS
S/O. N.KRISHNAN NAMBOOTHIRI, MANGALATHU VEEDU
VELIYANADU P.O., ALAPPUZHA-689590.**
- 2. DHAMODHARAN NAMBOOTHIRI, AGED 71 YEARS,
S/O. DHAMODHARAN NAMBOOTHIRI, VALARPALLYILLAM
CHERUVALLY, KAVUMBHAGOM P.O., THEKKETHU KAVALA
KOTTAYAM.**
- 3. RAMADEVI ANDHARGANAM, AGED 68 YEARS
W/O. DHAMODHARAN NAMBOOTHIRI, VALARPALLY ILLAM
CHERUVALLY, PONKUNNAM, KOTTAYAM.**

**BY ADVS.SRI.P.G.MANU (MAMMALASSERY)
SRI.JOBIN PAUL
SRI.R.RAHUL**

RESPONDENTS:

- 1. THE SUB INSPECTOR OF POLICE
RAMANKARY, KUTTANADU, ALAPPUZHA DISTRICT
PIN CODE-689595.**
- 2. THE CITY POLICE COMMISSIONER
ALAPPUZHA DISTRICT, PIN CODE-688001.**
- 3. MINIKUMARI, AGED 34 YEARS
D/O. DHAMODHARAN NAMBOOTHIRI, KRISHNA BHAVAN
KOTTIYAM P.O., KOLLAM DISTRICT, PIN CODE-691571.**

**BY ADV SMT. SREELATHA PARAMESWARAN, SPL. GOVT. PLEADER
FOR WOMEN & CHILDREN**

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

AMG

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1- PHOTOCOPY OF THE JUDGMENT DATED 10-06-2015 IN
WPCR NO. 230/2015.**

**EXHIBIT P2- PHOTOCOPY OF THE COMPLAINT SUBMITTED BY THE 1ST
PETITIONER BEFORE THE 1ST RESPONDENT DATED 30-07-2015.**

**EXHIBIT P3- PHOTOCOPY OF THE MEDICAL CERTIFICATE ISSUED FROM THE MAR
APREM MEDICAL CENTRE, KOTTAYAM.**

RESPONDENTS' EXHIBITS

NIL

True copy

P.A. To Judge

AMG

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

W.P (Crl.) No. 348 OF 2015

DATED THIS THE 18th DAY OF AUGUST, 2015

J U D G M E N T

C.K. Abdul Rehim, J:

This writ petition is filed based on an allegation that the minor daughter of the 1st petitioner named, Anjana M.S., aged 13 years, is being detained against her wishes by the 3rd respondent, who is the mother of the minor child. The 1st petitioner and the 3rd respondent are living separated for the last more than 7 years. It is alleged that, when the 3rd respondent came to meet the alleged detainee on 26-07-2015, she had abducted the minor child and escaped away in an Autorikshaw. Eventhough the petitioner preferred a complaint before the 1st respondent, no action was taken to recover the minor child or to recover back her to the petitioner, is the allegation. On the basis of specific allegation that the minor child of the petitioner is being illegally detained by the 3rd respondent, this petition is filed

seeking a writ of Habeas Corpus for directing production of the minor child and to set her at liberty.

2. It is mentioned in the writ petition that on an earlier occasion the 3rd respondent had approached this court in WP (Crl.) No.230/2015 raising allegation that the minor child, Anjana M.S., was being illegally detained by the 1st petitioner herein. By virtue of Ext.P1 judgment we held that, custody of the minor child with the 1st petitioner herein cannot be termed as illegal detention, since he is the father of the minor child. This court observed that there exists dispute in matrimonial relationship of the spouses and with respect to entitlement for custody of the children. It was observed that those are matters which need to be agitated before the appropriate court. It is also evident that this court had referred the matter for mediation, but the parties could not arrive at any settlement.

3. The petitioners points out that the minor child had expressed her wishes to remain with the 1st petitioner, at the time when the earlier original petition was considered.

It is also mentioned that the petitioners were about to prefer a case before the family court seeking for declaration regarding guardianship and custody of the minor children, and it is at that juncture the 3rd respondent had abducted the minor child and kept her under illegal custody. Therefore it is contended that jurisdiction of this court need to be invoked for setting the minor child at liberty to be in the custody of the petitioners.

4. From the facts and circumstances as narrated in the writ petition itself, it is clear that there exists dispute between the spouses with respect to custody of the minor children. While disposing the earlier writ petition this court made it clear that the parties are at liberty to agitate the issues before the family court having jurisdiction. Now the petitioners are approaching this court with an allegation that the minor child, Anjana M.S. was abducted without consent of the 1st petitioner by the 3rd respondent. Question remains as to whether this court can arrive at any conclusion with respect to custody of the minor child with

the 3rd respondent, as to whether it will amount to an illegal detention. The 3rd respondent being the mother of the minor child it is not possible for this court to arrive at any such conclusion, without an elaborate consideration of the facts and evidence. Therefore, prima facie, we are not inclined to entertain this petition filed seeking a writ of Habeas Corpus.

5. However, learned counsel for the petitioners expressed an apprehension that the 3rd respondent had removed the child to some unknown places and the whereabouts of the minor child at present is not revealed. It is also expressed an apprehension that the life of the child is in danger. Under such circumstances we directed the 2nd respondent to conduct an enquiry regarding availability of the minor child with the 3rd respondent. A statement filed by the 1st respondent would indicate that the minor child is residing along with 3rd respondent and her sister and that she is not under any illegal confinement. It is stated that they are now residing in a rental house at Perinad village.

6. Under the above mentioned circumstances, we find no materials to invoke jurisdiction vested under Article 226, for issuing any writ of Habeas Corpus. It will be left open to the petitioners to approach the family court seeking appropriate relief with respect to custody of the minor child. It will be also left open for them to seek appropriate interim order with respect to custody of the child, pending disposal of any such matters instituted before the family court. This writ petition is dismissed leaving open liberty of the petitioners to the extent as mentioned above.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

AMG

True copy

P.A. to Judge