

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE C.K. ABDUL REHIM
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

WP(Crl.).No. 349 of 2015 (S)

PETITIONERS :

SHAN A.S. AGED 26 YEARS
S/O. SHAJI A.J, (LATE) HOUSE NO 5/204 B, B.S.S ROAD
MATTANCHERY, KOCHI ERNAKULAM DT 682 002

BY ADVS. SRI. A. HAROON RASHEED
SRI. E. B. SHAIJU

RESPONDENTS :

1. SUPERINTEND OF POLICE
MALAPPURAM, MALAPPURAM DT
2. CIRCLE INSPECTOR OF POLICE
PARAPPANANGADI, MALAPPURAM DT
3. THE SUB INSPECTOR OF POLICE
PARAPPANANGADI, MALAPPURAM DT
4. KRISHNAN
"NITHUNYA" (CHERAYITHODI HOUSE
KADALUNDI NAGARAM P.O, MALAPPURAM DT 673 314
5. GOPALAN
CHERAYITHODI HOUSE, KADALUNDI NAGARAM P.O
MALAPPURAM DT 673 314

R1-R3 BY ADDL. DIRECTOR GENERAL OF PROSECUTION SRI. K. I. ABDUL RASHEED
R4 & R 5 BY ADV. SRI. C. K. MOHANAN
R BY GOVERNMENT PLEADER SRI. P. S. ABDUL KAREEM

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON 12-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(Crl.).No. 349 of 2015 (S)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 TRUE COPY OF PHOTOGRAPHS PETITIONER WITH NEEDU AND NEEDU WITH MOTHER OF PETITIONER

EXHIBIT P2 THE TRUE COPY OF THE NOTICE OF INTENDED MARRIAGE DATED 17/6/2015

EXHIBIT P3 TRUE COPY OF THE MESSAGES DATED 8/7/2015 AND 10/07/2015

EXHIBIT P4 TRUE COPY OF THE COMPLAINT AND RECEIPTS OF COMPLAINT FILED BY THE PETITIONER

RESPONDENT(S)' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

AV

**C.K. ABDUL REHIM, J.
&
MARY JOSEPH, J.**

W.P (Crl.) No. 349 OF 2015

DATED THIS THE 12th DAY OF OCTOBER, 2015

J U D G M E N T

C.K. Abdul Rehim, J:

The petitioner had approached this court seeking a writ of Habeas Corpus for directing production of Miss. Needu, the daughter of 4th respondent, before this court, and to permit her to go along with the petitioner, based on an allegation that she is under the illegal confinement of respondents 4 & 5.

2. Averments in the writ petition are to the effect that, the petitioner and the alleged detainee were in love for the last 8 years. The petitioner is employed in Bangalore and the alleged detainee got employment in an I.T company at Pune. They have decided to marry each other, and to solemnize the marriage under the Special Marriage Act. For which a notice of intention of marriage was submitted

before the Marriage Officer, Mattancherry on 17-06-2015, as per Ext.P2. But upon getting information about such developments the respondents 4 & 5 threatened the petitioner and his family members and detained the alleged detinue against her free will. Though the petitioner tried to contact the alleged detinue, she was not available. But the petitioner got E-mail messages from the alleged detinue requesting to rescue her from the illegal custody. Under such circumstances, alleging that the detinue is under illegal detention of respondents 4 & 5 against her free will, this writ petition is filed.

3. When the writ petition came up for admission this court directed the 2nd respondent to get an independent statement of the alleged detinue recorded. Initially it was reported that the alleged detinue had gone to Pune along with her father. Hence the case was adjourned to 21-08-2015 for recording statement of the alleged detinue. Accordingly a statement recorded from the alleged detinue was produced before this court. After perusal of the

statement this court was of the opinion that a direct interaction with the alleged detainee is needed to arrive at a proper conclusion with respect to alleged illegal confinement. Therefore we directed that the alleged detainee to be produced before this court. On the basis of such direction the alleged detainee was produced on 03-09-2015. When we interacted the alleged detainee expressed her strong determination to marry the petitioner. It was also said that, at present she is not permitted to go outside the house and not allowed to continue her job at Pune. She expressed unwillingness to go along with the 4th respondent to her parental house and also expressed her desire to go along with the petitioner. But, taking note of the fact that the petitioner and the alleged detainee belongs to different religion and there is no legally valid marriage established between the parties, this court was not inclined to send the alleged detainee along with the petitioner. It was brought to notice of this court that the notice of intention of marriage already submitted before the Marriage Officer was

withdrawn by the alleged detainee under compulsion. The alleged detainee had expressed her desire to solemnize the marriage under the Special Marriage Act by submitting a fresh notice of intention. Under the above mentioned circumstances this court permitted the petitioner to take necessary steps for the said purpose. Till solemnization of the marriage the 3rd respondent was directed to admit the alleged detainee in a Hostel at Ernakulam, with specific direction to the petitioner to meet expenses. The petitioner was directed to produce proof regarding submission of the notice of intimation of marriage.

4. Based on order passed by this court on 03-09-2015 the petitioner had produced the acknowledgment for receipt of money, dated 07-09-2015, evidencing payment of fee paid before the Marriage Officer, Kochi with respect to submission of the notice of intension. It was submitted that the marriage can be solemnized on completion of 30 days thereof. Accordingly we permitted the alleged detainee to be taken to the Marriage Officer for solemnisation of the

marriage on 08-10-2015. The alleged detainee was directed to admit back to the Hostel after solemnization of the marriage.

5. Today when the case is taken up for consideration learned counsel for the petitioner has produced the Certificate of Marriage issued by the Marriage Officer, Kochi dated 08-10-2015, for our perusal. The certificate would indicate that a valid marriage under the Special Marriage Act has been solemnized between the petitioner and the alleged detainee on 08-10-2015. This court takes on record the valid marriage established between the petitioner and the alleged detainee.

6. Under the above mentioned circumstances we are convinced that the alleged detainee is not under any illegal confinement at present. Both the alleged detainee and the petitioner are personally present before this court. They expressed their desire to live together as husband and wife on the basis of the valid marriage established.

7. Accordingly this writ petition is hereby disposed of by setting the alleged detenue at liberty to live along with the petitioner as husband and wife, at any place of their choice.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

MARY JOSEPH, JUDGE.

AMG

True copy

P.A. to Judge