

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT:
THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 17TH DAY OF AUGUST 2015/26TH SRAVANA, 1937

WP(Crl.).No. 366 of 2015 (S)

PETITIONER(S):

DEVARAJAN AGED 42 YEARS
S/O.KARUNAKARAN, MOORTHIPARAMBIL HOUSE, ERUKKAVU MURI
KUMARAPURAM VILLAGE, KARTHIKAPPALLY TALUK.

BY ADVS.SRI.S.SANAL KUMAR
SRI.M.T.SURESHKUMAR
SMT.T.J.SEEMA
SMT.BHAVANA VELAYUDHAN
SMT.SMITHA PHILIPOSE

RESPONDENT(S):

1. SIVANANDAN
AGED ABOUT 62 YEARS, S/O.KUNJUPANIKKAN
KALEECKAL HOUSE, CHENNAMKARA MURI, PURAKKADU VILLAGE
AMBALAPPUZHA TALUK, ALAPPUZHA-690 551
2. AMBIKA
AGED ABOUT 57 YEARS, W/O.SIVANANDAN, KALEECKAL HOUSE
CHENNAMKARA MURI, PURAKKADU VILLAGE
AMBALAPPUZHA TALUK, ALAPPUZHA-690 551
3. AJESH
AGED ABOUT 32 YEARS, S/O.SIVANANDAN, KALEECKAL HOUSE
CHENNAMKARA MURI, PURAKKADU VILLAGE
AMBALAPPUZHA TALUK, ALAPPUZHA-690 551
4. THE CIRCLE INSPECTOR OF POLICE
THRIKUNNAPUZHA POLICE STATION, ALAPPUZHA-690 515.
5. THE DISTRICT POLICE CHIEF
ALAPPUZHA-688 001.

R BY SPL.GOVERNMENT PLEADER SMT. SREELATHA PARAMESWARAN

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION
ON 17-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(Crl.).No. 366 of 2015 (S)

APPENDIX

PETITIONER(S)' EXHIBITS

P1 : TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME NO.128/2015
OF THE THRIKKUNNAPUZHA POLICE STATION, DATED 1-4-2015

P2 : TRUE COPY OF THE POSTMORTEM REPORT DATED 12-2-2015.

P3 : TRUE COPY OF THE ORDER DATED 24-4-2015 IN BA.NO.1837/2015 OF
THIS HON'BLE COURT.

RESPONDENT(S)' EXHIBITS

NIL

TRUE COPY

PS TO JUDGE.

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

WP(CR) No. 366 of 2015

Dated this the 17th day of August, 2015

JUDGMENT

Abdul Rehim,J.

The petitioner is seeking a writ of habeas corpus for directing production of the corpus of the his son and daughters viz. Arunraj, aged 16 years, Deviraj, aged 10 years and Durgaraj, aged 10 years and to issue appropriate direction or orders which this court may deem fit in the nature and circumstance of this case.

2. The petitioner's wife who is the mother of the alleged detenues, committed suicide on 10.2.2015. The petitioner was taken into custody by the police on the basis of Ext.P1 case registered with respect to the death of his wife, alleging offences punishable under sections 323, 324 and 306 of Indian Penal Code. According to the petitioner, he was totally innocent of the incident and his implication as accused was only on the basis of the 24 anti-mortem injuries of contusion found on the body during the post-mortem, which according to the petitioner was implicated by the deceased wife herself. The petitioner was remanded to jail in the above said case from 10.2.2015 till

27.4.2015. Ext.P3 is the order of Bail granted by this court, in which stringent conditions are incorporated. Respondents 1 and 2 are the maternal grand parents of the minor children and the 3rd respondent is their maternal uncle. It is stated in the writ petition that, after the petitioner was released on Bail, he wanted to see the children who are staying with respondents 1 to 3. But his attempt to visit the children was apprehended to be dubbed as violation of the conditions of the Bail order. Therefore he had approached the authorities of the 'SNDP Sakha Yogam' as well as the police station to facilitate a visit to the children. But all such requests made by the petitioner were not accepted by respondents 1 to 3, is the allegation. It is alleged that respondents 1 to 3 have no right to detain the children or to illegally prevent the petitioner from seeing his children. The petitioner being the natural guardian is entitled to get custody of the children and the detention of the children in the custody of respondents 1 to 3 will amount to an illegal confinement, is the contention.

3. Learned counsel for the petitioner raised vehement arguments that the petitioner is the natural guardian of the 3

minor children, under section 6 of the Hindu Minority and Guardianship Act 1956. It is contended that custody of the minor children with respondents 1 to 3 against the right of the petitioner who is the natural guardian will amount an illegal custody. According to the petitioner, he being the natural guardian there is no necessity for him to approach the court having jurisdiction under the Act, in order to get any declaration with respect to guardianship of the minor children. It is argued that custody of the minor children at present with respondents 1 to 3 being illegal, this court can invoke jurisdiction vested under Article 226 of the Constitution for issuing a writ of habeas corpus directing for production of the minor children and to pass appropriate orders regarding custody of the minor children, considering the welfare of the minor children which should be the paramount consideration to be taken note of. He has also cited various precedents of the hon'ble Supreme Court wherein it is held that in appropriate case writ jurisdiction can be invoked for issuing a writ of habeas corpus in the case of custody of minor children, considering the welfare and paramount interest of the minor.

4. On the facts of the case at hand, it is evident that the mother of the minor children committed suicide on 10.2.2015. The petitioner was taken into custody by the police and got remanded on the very same day. He was in jail till 27.4.2015 till he was released based on Ext.P3 order of Bail granted by this court. Admittedly the children were in the custody of respondents 1 to 3 during the said period. After 27.4.2015 the petitioner has not approached the appropriate court having jurisdiction under the Guardians and Wards Act seeking custody of the minor children. Whether the custody of the minor children can be entrusted with the petitioner as he being the natural guardian under the Hindu Minority and Guardianship Act 1956 or as to whether the custody of the children need to be entrusted with any other person considering the welfare of the minors as paramount consideration, are matters which can well be agitated by the court having jurisdiction under the Guardians and Wards Act. It is for that court to take all attendant circumstances including the fact that the criminal case registered against the petitioner is pending trial and the fact that one among the children is cited as a witness therein vis-a-vis the welfare and

paramount interest of the minor children. In order to take an appropriate decision whether the petitioner is entitled for custody of the children on a permanent basis or on a temporary basis or whether he is entitled to have only a visitorial right etc. are questions which can be well adjudicated by the court having jurisdiction. It will be left open to that court also to make interim arrangement, pending disposal of such adjudication.

5. As far as this court is concerned, for issuing a writ of habeas corpus by invoking jurisdiction vested under Article 226 of the constitution, there should be convincing materials to hold that the minor children are kept under illegal custody of respondents 1 to 3. From the facts and circumstances of the case as narrated above, we do not find any materials to hold that custody of 3 minor children with respondents 1 and 2 at present will amount to an illegal detention. Therefore we decline to entertain this writ petition for invoking such jurisdiction. Since we find that the petitioner is having an effective and alternate statutory remedy, it is for the petitioner to invoke such remedy instead of approaching this court.

6. Hence this writ petition is hereby dismissed reserving

liberty to the petitioner to seek appropriate remedy before the Family Court having jurisdiction in the matter. Needless to observe that if any such approach is made that court shall dispose of the matter considering all legal and factual circumstances, on the merits of the case, totally untrammelled by any of the observations contained hereinabove.

C.K.ABDUL REHIM, JUDGE

pmn/

K.RAMAKRISHNAN, JUDGE

