

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 8TH DAY OF SEPTEMBER 2015/17TH BHADRA, 1937

WP(Crl.).No. 385 of 2015 (S)

PETITIONER:

**HASHEER YUSUF, AGED 39 YEARS,
S/O. MOHAMMED KUNJU YUSUF, S.S.LAND,
KALLUMTHAZHAM P.O., KILIKOLLOOR,
AYATHIL, PIN-691 004.**

BY ADV. SRI. E.NARAYANAN

RESPONDENT(S):

- 1. THE SUB INSPECTOR OF POLICE,
KILIKOLLOOR POLICE STATION, KOLLAM - 691 004.**
- 2. THE CIRCLE INSPECTOR OF POLICE,
KILIKOLLOOR POLICE STATION, ERAVIPURAM,
KOLLAM - 691 011.**
- 3. SAHIRA,
"PUNNARAM", NEAR EDAVA RAILWAY STATION,
EDAVA, PIN - 695 311.**

**BY SENIOR GOVERNMENT PLEADER SRI. SHIBU JOSEPH WITH
ADGP SRI. TOM JOSE PADIJAREKKARA**

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON 08-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 :** COPY OF THE RELEVANT PAGE OF THE PASSPORT BEARING NO.301/2012/03/0018158 OF THE DAUGHTER OF THE PETITIONER HANIYA HASHEER.
- EXT.P2 :** COPY OF THE RELEVANT PAGE OF THE PASSPORT BEARING NO.301/2012/03/0018156 OF THE WIFE OF THE PETITIONER, THASNEEM THAHIRUKUTTY.
- EXT.P3 :** COPY OF THE COMPLAINT DTD.03.09.15 SUBMITTED BEFORE THE FIRST AND SECOND RESPONDENTS.
- EXT.P4 :** COPY OF THE RECEIPT ISSUED FROM THE POLICE STATION, KILIKOLLOOR.

RESPONDENT(S)' EXHIBITS - **NIL**

//TRUE COPY//

P.A. TO JUDGE

C.K.Abdul Rehim & Mary Joseph, JJ.

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W.P(Crl.) No.385 of 2015

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Dated this the 8th day of September, 2015.

JUDGMENT

Mary Joseph, J

This writ petition is filed by the petitioner, who is the father of a minor girl named Haaniya Hasheer aged 3½ years, alleging that the latter is under the illegal custody of the 3rd respondent, and seeking for issuance of a writ of habeas corpus directing the 3rd respondent to produce the minor child and to release her from the illegal detention and to set her at liberty.

2. The averments in the writ petition are to the following effect:-

The petitioner and the daughter of the 3rd respondent namely Thasneem got married on 08.07.2010. On 29.11.2011 a girl child namely Haaniya Hasheer was born out of the wedlock. After the birth of the child in the year 2012, the petitioner along with his wife Thasneem and the child went to Dubai in a family visa. Petitioner was doing business there and his wife Thasneem was working as a teacher

in Gulf Model School, Dubai. The petitioner and his wife were leading a happy and cordial life till the birth of the girl child Haaniya Hasheer. After a period of peaceful life, the wife Thasneem turned to be indifferent in her dealings with the child. She was not even prepared to do the normal motherly duties towards the child. The petitioner questioned the indifferent attitude of his wife towards the child and then the latter openly declared that she had no interest to look after the minor child. She said that she wanted to lead a free life and for securing that she is intending to leave the minor child in the custody of her mother Sahira, who is the 3rd respondent herein. The petitioner and his wife started picking up quarrels in respect of the reluctance of the petitioner to extend natural love, affection, care and protection towards the child and thus the marital relationship became strained.

3. The business of the petitioner collapsed in the meanwhile. A civil case was pending in the court at Kerala in connection with a dispute relating to the said business among himself and one of the partners to the business. In connection with the case the petitioner was compelled to return to Kerala on 11.06.2015. His wife Thasneem and

minor child Haaniya Hasheer also came to Kerala after ten days from 11.06.2015. The petitioner managed to contact her at the Airport over telephone. But the wife refused to accompany him. After reaching Kerala, the wife of the petitioner went to her house along with the child, directly from the Airport. On the evening of that particular day also the petitioner made a futile effort to contact his wife over telephone. Thereafter he directly approached her house. But the wife's mother, the 3rd respondent herein and her sister told the petitioner that his wife and child are not available in the house. But the petitioner could understand later that, his wife and child were there in the house of the 3rd respondent and that he was denied access to them by the 3rd respondent. Thereafter the petitioner's wife went to Dubai after leaving the minor child in the custody of the 3rd respondent. The petitioner, though tried to contact the child over telephone, the 3rd respondent did not permit him. The petitioner is not aware about the present working place of his wife. For the last two months the petitioner was denied of access to his wife and child and he does not have any information about their whereabouts. He learnt from the neighbours of the locality

that the minor child was confined by the 3rd respondent in her illegal custody. It is stated in the writ petition that he got information that the 3rd respondent, who is engaged in unauthorized transactions of money lending, while going out to collect interest on the amount so let from her customers, was in the habit of locking the child inside the room. It is stated further that instances are also noticed by the petitioner wherein the 3rd respondent treated the child with cruelty and even beaten the child brutally. On the apprehension that the life of the child would be endangered at the custody of the 3rd respondent, Ext.P3 complaint was lodged on 03.09.2015 before the 1st and 2nd respondents and obtained Ext.P4 receipt. It is alleged that the 1st and 2nd respondents have failed to pursue investigation in the complaint. In the said circumstances he is constrained to approach this Court under Article 226 of the Constitution of India seeking the relief as mentioned above.

4. Going by the averments contained in the writ petition it is seen that at the time when the petitioner came to Kerala on 11.06.2015 the minor child, Haaniya Hasheer was in the custody of her mother, the wife

of the petitioner. During the stay of the petitioner at Kerala after 11.06.2015 also, the wife of the petitioner was enjoying custody of the child. It is averred in the writ petition that at present the wife of the petitioner has gone to Dubai in connection with her employment thereby leaving the minor child in the custody of her mother, who is the 3rd respondent herein. It is the wife of the petitioner, who is none other than the natural guardian of the minor child, had entrusted the custody of the child with her mother, the 3rd respondent. The 3rd respondent being the grand mother and since the custody of the child was entrusted to her by her daughter, cannot be said to be illegally confining the child. The child being 3rd respondent's grand child, every authority is there for her to have her in custody and to look after her in the way which appears to her proper. To any stretch of imagination, the custody of a child by her grand mother cannot be termed as illegal confinement and detention as alleged by the petitioner. Moreover, whether the petitioner has got any better claim to have custody of the child or the right person to be granted custody considering the welfare of child etc; are matters not to be adjudicated by this Court in the

present writ petition, in view of the alternate statutory remedy available.

5. In instances of the nature, the petitioner being the father and natural guardian of the child, if intends to get the custody of the child, can very well approach the Family Court, which is the appropriate forum to grant the relief. The petitioner will be free to move an application before the Court concerned for getting the interim custody of the child. Only in circumstances indicating that the child was detained by any person without any authority to keep him and such custody turns out to be detrimental to the life of the child that the invocation of the power under Article 226 of the Constitution of India will be possible. In the case on hand, even going by the averments of the petitioner in the writ petition, no threat or danger to the life of the child to any stretch of imagination, can be apprehended, the child being in the custody of her grand mother, and was entrusted to her by her daughter, who is none other than the child's mother.

6. We cannot find any merit in the arguments of the petitioner that the child is under illegal confinement and detention. In the said circumstances, we are of the firm opinion that the relief sought is only

liable to be declined.

7. In the result, the writ petition is dismissed without prejudice to the right of the petitioner to approach the Family Court or any other appropriate forum for getting his grievance redressed.

Sd/-
C.K.Abdul Rehim, Judge.

Sd/-
Mary Joseph, Judge.

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