

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 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

W.P.(CrI.). No. 388 of 2015 (S)

PETITIONER:

ASEELA HAKKIM, AGED 49 YEARS,
W/O. NOOHU HAKKIM, 'SUHANA MANZIL', NEAR NERUKAVU,
KOTTAPPURAM CHERRY, PARAVOOR, KOLLAM.

BY ADVS. SRI. P. MARTIN JOSE
SRI. A. JANI (KOLLAM)
SRI. P .PRIJITH
SRI. THOMAS P. KURUVILLA

RESPONDENT(S):

1. THE STATE POLICE CHIEF,
POLICE HEAD QUARTERS, THIRUVANANTHAPURAM, PIN - 695 001.

2. THE COMMISSIONER OF POLICE,
OFFICE OF COMMISSIONER OF POLICE,
KOLLAM CITY, PIN - 691 001.

3. THE SUB INSPECTOR OF POLICE,
PARAVOOR POLICE STATION,
KOLLAM DISTRICT, PIN - 691 001.

4. MUHAMMED YASER @ BICHU, AGED 31,
S/O. NAJIM MAJEED, MUKKUNNAM KAVIL HOUSE,
THEKKUMBHAGAM P.O., PARAVUR, KOLLAM,
NOW RESIDING AT THONIKKADAVIL HOUSE,
THEKKUMBHAGAM P.O., PARAVUR, KOLLAM, PIN - 691 001.

R1 TO R4 BY SPECIAL GOVERNMENT PLEADER WOMEN AND CHILDREN
SMT. SREELATHA PARAMESWARAN

R4 BY ADVS. SRI. HARISH GOPINATH
SRI. R.S. KALKURA

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON
06-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(Crl.).No. 388 of 2015 (S)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXT.P1: TRUE COPY OF THE FIR IN CRIME NO.1379/2015 OF PARAVOOR
POLICE STATION, KOLLAM.**

RESPONDENT(S)' EXHIBITS - NIL

//TRUE COPY//

P.A. TO JUDGE

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

W.P.(Crl). No. 388 of 2015

Dated this the 6th day of October, 2015

JUDGMENT

MARY JOSEPH, J.

The petitioner, the mother of a lady named Suhana Shan, aged 29 years and grand mother of Nouheed @ Malu, aged 3½ years, has approached this court seeking the issuance of a writ of Habeas Corpus, directing respondents 1 to 3 to produce the body of Smt. Suhana Shan and Nouheed @ Malu before this court who have been under illegal detention of the 4th respondent and to set her at liberty. It is alleged that the lady was in affair with the 4th respondent.

2. The brief facts of the writ petition are as follows:-
The petitioner's daughter Smt. Suhana Shan was given in

marriage to Jalaludheen Shan about five years back. Jalaludheen Shan was employed at Qatar and in the wedlock a girl child named Nouheed @ Malu was born. The petitioner's daughter and grand daughter were residing with the petitioner since the son-in-law was abroad. The petitioner's daughter used to reside with her husband in the matrimonial home as and when her husband comes on leave.

3. Suhana Shan, the daughter of the petitioner is attending classes for IELTS and her grand daughter is studying in LKG in a nursery school. As usual the petitioner had dropped her daughter Suhana for attending the class and the grand daughter to the nursery school on 18.08.2015 at 12 p.m. The petitioner received a telephone call from the 4th respondent over her mobile phone intimating her that her daughter Suhana and granddaughter Nauheed @ Malu

are with him. Immediately on receipt of the said information the petitioner rushed to the nursery school and the institution where her daughter and the grandchild were attending the classes but, could not find them there. The Petitioner received a second call from the 4th respondent stating that her daughter and the granddaughter are with him at a hotel namely 'Al-Saj' at Kazhakoottam, Thiruvananthapuram and they will come back only at night. Eventhough the petitioner went along with some of her relatives to Al-Saj hotel, she could not find her daughter and granddaughter there. All her earnest efforts ended in vain and in the said circumstances the petitioner approached the 3rd respondent on 19.08.2015 and informed about the factum of missing of her daughter with the granddaughter.

4. Upon the information received from the petitioner

the 3rd respondent registered a crime as Crime No. 1379/2015 of Paravoor Police Station, Kollam under Section 57 of the Kerala Police Act, 2011, copy of which is appended to this petition as Ext.P1. Despite registration of the crime the 3rd respondent has not pursued with the investigation effectively and meaningfully and in such a circumstance that the petitioner approached this court seeking to issue the writ of Habeas Corpus.

5. On 15.09.2015 when the writ petition is taken up the alleged detainee Smt. Suhana Shan along with her minor daughter Nauheed @ Malu appeared before this court. When interacted with Suhana Shan, she said that she is living separated from her husband Sri. Jalaludheen Shan who is working abroad. It is stated by her that she along with the minor child was living with the petitioner since last many years. According to her the petitioner had compelled

her to join her husband despite the fact that she had been ill treated and harassed by him during her stay with him at his place of work in the middle east.

6. It is submitted by her that her affair with the 4th respondent had started much prior to her marriage with Shan, her husband. Admittedly of her she had gone along with the 4th respondent on 18.08.2015, as she could not bear the harassment extended to her by the petitioner. It is also admitted by her that after eloping with the 4th respondent on 18.08.2015 she had been staying with him at various places. It is on the information that a crime has been registered at the instance of her mother that she had surrendered before the police. When produced before the Magistrate, she expressed her desire to go along with the mother of the 4th respondent who was also present there and to reside in her house.

7. It is found that Smt. Suhana Shan was legally wedded to Sri. Shan and the marriage is subsisting. It is also learned by this court that the 4th respondent is having another wife and a child. Since there is no valid marriage established between the alleged detainee and the 4th respondent and no legally valid marriage could be solemnised without the marriage with the husband of the alleged detainee being dissolved, we required her to think over that and to make some arrangement and accordingly she was permitted to reside with the mother of the 4th respondent at her residence as she desired. The minor girl child Nouheed @ Malu was left in the company of the petitioner herein, who is the mother of the alleged detainee Smt. Suhana Shan. Liberty was also given to Smt. Suhana Shan to visit her child at the residence of the petitioner and directed the latter not to cause any obstruction to her visit

of the child at her residence at any point of time.

8. Today when the matter is taken up for consideration the alleged detainee Smt. Suhana Shan along with the 4th respondent and his mother appeared before this court. The child was also brought by the mother of the alleged detainee. When we interacted with her she raised her grievance that when she went to the house of the petitioner to visit the child, the latter abused her a lot. According to the alleged detainee, she has strong decision to marry the 4th respondent. It is also submitted by the lady that her marriage with Jalaludheen Shan came to an end on the latter pronouncing Talaq on her. She has taken a house on rent situated at Navayikulam Grama Panchayath bearing building No.NP V 1286. She also apprised us about her decision to join Kims Hospital at Kottiyam as a staff nurse. With respect to the child she has submitted that she cannot

live without the company of the child and that arrangements have been made by her to obtain the services of a housemaid for caring the child and to sent the child at a play school during day time.

9. Under the above circumstances, we found that Smt. Suhana Shan and her daughter Nouheed @ Malu were not under illegal detention of anybody at the relevant time. She has chosen to live with the 4th respondent with whom she was in affair. At the time of filing of the writ petition the child was in the custody of Smt. Suhana Shan, the mother of the child. In the said circumstances, this court feel it appropriate that the custody of the child be left with the mother being the natural guardian of the child.

10. However this court is not intending to make any arrangement for the permanent custody of the child as it is outside the purview of this court in the exercise of the writ

jurisdiction under Article 226 of the Constitution of India. Alternate remedies are available for the parties and it can be pursued before appropriate Forum in suitable proceedings.

With these directions this writ petition is disposed off setting the alleged detinue and the minor child at liberty to live at any place of the former's choice.

Sd/-
C.K. ABDUL REHIM
JUDGE

Sd/-
MARY JOSEPH
JUDGE

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