

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 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

WP(Crl.).No. 395 of 2015 (S)

PETITIONER:

**P.K. MOHAMMED RAFI,
AGED 62 YEARS, S/O.P S KASIM BAVA RAWTHER
PARAKKAVETTI PUTHENPARAMBIL, PERUNNA EAST P O
CHANGANASSERY VILLAGE, KOTTAYAM DISTRICT, PIN 686102**

BY ADV. SRI.MATHEW KURIAKOSE

RESPONDENTS:

- 1. STATE POLICE CHIEF
THIRUVANANTHAPURAM-676504.**
- 2. THE DISTRICT POLICE CHIEF
KOTTAYAM-686001**
- 3. THE STATION HOUSE OFFICER
CHANGANASSERY POLICE STATION, PIN-686101**
- 4. V S SAFAR,
AGED 55 YEARS, S/O.ISMAIL,
VALIYAKUNNATH HOUSE, KANJIRAPPALLY P O
KOTTAYAM DISTRICT, PIN-686507**
- 5. KURSHY RAFI,
AGED 58 YEARS, W/O.P K MOHAMMED RAFI,
PUTHENPARAMBIL, PERUNNA EAST,
CHANGANASSERRY, PIN-686102.**

**R1 TO 3 BY ADV. SRI. TOM JOSE PADINJAREKKARA, ADGP &
SRI.SHIBU JOSEPH, SR. GOVT. PLEADER**

R5 BY ADV. SRI. T.P. PRADEEP

**THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON
22-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AMG

APPENDIX

PETITIONER(S)' EXHIBITS

- P1:- TRUE COPY OF THE CERTIFICATE DTD 28/9/1996 ISSUED BY
DR SURESH NAINAN.**
- P2:- TRUE COPY OF THE MEDICAL PRESCRIPTION DTD 23/3/2002 ISSUED BY
DR SURESH NAINAN.**
- P3:- TRUE COPY OF THE MEDICAL PRESCRIPTION DTD 29/6/2007 ISSUED BY
DR SURESH NAINAN.**
- P4:- TRUE COPY OF THE ORDER DTD 20/4/2015 IN CMP NO 3090/2015 IN MC NO
31/2015 ON THE FILES OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I ,
CHANGANASSERY.**
- P5:- TRUE COPY OF THE COMPLAINT DTD 8/9/2015 SUBMITTED BY THE
PETITIONER BEFORE THE 3RD RESPONDENT**

RESPONDENTS' EXHIBITS

NIL

True copy

P.A. To Judge

AMG

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

W.P (CrI.) No. 395 OF 2015

DATED THIS THE 22nd DAY OF SEPTEMBER, 2015

J U D G M E N T

C.K. Abdul Rehim, J:

The petitioner herein is the husband of the 5th respondent. Their marriage was solemnized in the year 1978. There are two grown up children, born out of the wedlock, who are also married. Allegation in the writ petition is that the 5th respondent is suffering from some psychiatric disorder and she is under treatment of a Consultant Psychiatrist. Exhibits P1 to P3 medical records are produced in support of such an allegation. It is stated that, under the influence of her mental illness the 5th respondent had filed a complaint before the Judicial First Class Magistrate-I, Changanassery under the Domestic Violence Act, 2005 and obtained Ext.P4 order against the petitioner. It is further stated that on 31-08-2015 the 5th respondent went out of the matrimonial house and stayed along with her daughter at Aluva till 04-09-2015. Thereafter she went to the house of the 4th respondent, who is the brother of the 5th respondent. According

to the petitioner, he got reliable information that the 5th respondent had sold 13 cents of property belonging to her and is holding an amount about Rupees about One Crore, which she obtained as the sale proceeds. This writ petition is filed raising a specific allegation that the 5th respondent is being detained by the 4th respondent against her free will, with an oblique motive to grab the amount which the 5th respondent is now possessing. Under such circumstances the petitioner had submitted a complaint before the 3rd respondent as evidenced from Ext.P5. Alleging that the 3rd respondent is not taking any effective steps of investigation on the basis of the said complaint and also alleging that the 5th respondent is under illegal confinement against her free will, this case is filed seeking a writ of Habeas Corpus for directing production of the corpus of the 5th respondent and to set her at liberty.

2. When the case came up for admission on 14-09-2015 this court directed the learned Government Pleader to get instructions from the 3rd respondent regarding steps if any taken on the basis of Ext.P5 complaint. Today, when the case is called up, the 5th respondent entered appearance through counsel. It is submitted that the 3rd respondent had instructed her to appear before this court on today.

3. Since the 5th respondent is personally present before this court we have interacted with her. According to the 5th respondent there exists matrimonial disputes with the petitioner since 1996 onwards and that she was staying away from the matrimonial house on intermittent occasions, due to the intolerable mental torturing from the side of the petitioner and other family members. It is also mentioned that the immovable property which she obtained from her parents were sold and part of the consideration of about Rupees One Crore received earlier was spent for the family needs. It is stated that, recently she got the balance sale proceeds of Rs.95,00,000/- which she had kept in custody, by partly depositing the amount in fixed deposit in her name. It is stated that she had purchased a flat at Changanassery and she is now living independently along with a house-maid appointed to look after her. She had emphatically denied that she is suffering from any mental illness, and also the allegation that she is under illegal confinement of the 4th respondent.

4. From the facts enumerated as above, it is evident that the 5th respondent is now living separated from the petitioner due to estrangement in their matrimonial life. She is staying at a place of her own choice as per her wish. There is absolutely no

materials to presume that there is any element of illegal detention by the 4th respondent or by any other persons. Under such circumstances this court is convinced that there exists no circumstances warranting for issuance of any writ of Habeas Corpus. The parties are at liberty to sort out the matrimonial disputes through appropriate proceedings before appropriate forum.

Hence this writ petition is hereby dismissed, subject to liberty mentioned as above.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

MARY JOSEPH, JUDGE.

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True copy

P.A. to Judge