

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY**

FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937

WP(Crl.).No. 397 of 2015 (S)

PETITIONER(S):

**LIBU GEORGE, AGED 28 YEARS,
S/O.GEORGE, VARAMANNIL MATTATHU HOUSE,
ERAVIPEROOR P.O. THIRUVALLA,
NOW RESIDING AT G 7 & 8, JEWEL CAPE TOWN,
COLLECTORATE P.O., KOTTAYAM - 686 002.**

**BY ADVS.SRI.P.S.ANISHAD
SMT.LIMNA BHASKARAN**

RESPONDENT(S):

- 1. P.A. MATHEWS, AGED ABOUT 56 YEARS,
MINNARAM, CHANNAPETTA P.O.,
ANCHAL, KOLLAM - 691 311.**
- 2. SHINEY MATHEWS, AGED ABOUT 52 YEARS,
MINNARAM, CHANNAPETTA P.O.,
ANCHAL, KOLLAM - 691 311.**
- 3. JAMES G.KUTTY, AGED ABOUT 55 YEARS,
PEEDIKAYIL EAST, CHIRATTAKONAM,
THALACHIRA P.O., KOTTARAKKARA,
KOLLAM - 691 538.**
- 4. SHERIN MATHEWS, AGED 24 YEARS,
W/O.LIBU GEORGE, MINNARAM, CHANNAPETTA P.O.,
ANCHAL, KOLLAM - 691 311.**
- 5. THE SUB INSPECTOR OF POLICE,
EROOR, KOLLAM.**

**R1 & R2 BY ADVS. SRI.GEORGE ABRAHAM PACHAYIL
SMT.JEBI MATHER HISHAM**

**R5 BY ADV. SRI.TOM JOSE PADINJAREKKARA
ADDL.DIRECTOR GENERAL OF PROSECUTION
BY GOVERNMENT PLEADER SRI.SHIBU JOSEPH**

**THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON
25-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: A TRUE PHOTO COPY OF THE WORK PERMIT OF THE PETITIONER.

EXT.P2: A TRUE PHOTOCOPY OF CONTRACT OF EMPLOYMENT OF PETITIONER.

EXT.P3: A TRUE PHOTOCOPY OF THE MARRIAGE APPLICATION, DTD.11.8.2015.

**EXT.P4: A TRUE PHOTOCOPY OF THE ACKNOWLEDGMENT FOR RECEIPT OF MONEY
WITH R.NO.077727.**

EXT.P5: A TRUE COPY OF THE WRITTEN OBJECTION, DTD.10.9.2015.

EXT.P6: A TRUE COPY OF THE NOTICE OF THE 5TH RESPONDENT, DTD.10.9.2015.

**EXT.P7: A TRUE PHOTOCOPY OF THE COMPLAINT PREFERRED BY THE PETITIONER,
DTD.12.9.2015.**

RESPONDENT(S)' EXHIBITS:

**EXT.R1(a): COPY OF THE FIRST INFORMATION STATEMENT GIVEN BY THE
2ND RESPONDENT.**

EXT.R1(b): COPY OF THE FIRST INFORMATION REPORT.

//TRUE COPY//

P.S.TO JUDGE

Msv/

**C.K. ABDUL REHIM, J.
&
SHAJI. P. CHALY, J.**

W.P (Crl.) No. 397 OF 2015

DATED THIS THE 25th DAY OF SEPTEMBER, 2015

J U D G M E N T

C.K. Abdul Rehim, J:

The petitioner is approaching this court seeking a writ of Habeas Corpus for directing production of the 4th respondent, based on an allegation that the 4th respondent is being illegally detained by respondents 1 to 3.

2. Averments in the writ petition are to the effect that, the petitioner is an Aeronautical Engineer working in Canada and the 4th respondent is a Dental Doctor working in a private clinic at Kollam. The respondents 1 & 2 are the parents of the 4th respondent. It is stated that the petitioner and the 4th respondent have decided to marry each other and Ext.P3 application under the Special Marriage Act was submitted before the Marriage Officer on 11-08-2015. Exhibit P4 is the acknowledgment for receipt of the fee paid for the said purpose. According to the petitioner, the

relationship developed on the basis of a marriage proposal initiated at the instance of the family members of the 4th respondent. But subsequently the respondents 1 & 2 have withdrawn from the proposal and they took steps to invite other marriage proposals for the 4th respondent. Despite attempts made by the petitioner to convince respondents 1 & 2 about the decision of the petitioner and the 4th respondent, the respondents 1 & 2 went on with their attempts to fix another marriage for the 4th respondent. Therefore, on realising that the marriage cannot be solemnized with blessings of the parents of the 4th respondent, they took a decision to solemnize the marriage under the Special Marriage Act. It is stated that the 2nd respondent had preferred a complaint before the 5th respondent alleging missing of the 4th respondent, on the basis of which a case was registered by the 5th respondent as Crime No.1145/2015, under Section 57 of the Kerala Police Act. The 3rd respondent had raised an objection before the Marriage Officer, Thiruvalla against

solemnization of the marriage, as per Ext.P5. Further, the 5th respondent had also issued Ext.P6 notice to the Marriage Officer requesting to stop further proceedings for solemnization of marriage, stating that Crime No.1145/2015 is pending investigation with respect to missing of the 4th respondent.

3. Averments in the writ petition, is that, under the above mentioned circumstances the 4th respondent went to her home for making a request to respondents 1 to 3 to abstain from creating any obstructions with respect to solemnization of the marriage. But, it is alleged that, the respondents 1 to 3 have forcefully detained the alleged detinue in custody. Under such circumstances, alleging that the 4th respondent is under illegal detention of respondents 1 to 3 against her free will, the above writ petition is filed.

4. When the above case came up for admission, this court had issued notice to respondents 1 to 4 and directed for production of the 4th respondent. On 22-09-2015 the

respondents 1 to 3 had entered appearance through counsel and contended that the 4th respondent is not in their custody and that she is staying with the petitioner since 31-08-2015 onwards. The 4th respondent appeared in person before this court on that day. On interaction with the 4th respondent, she expressed her strong determination to marry the petitioner. She conceded that she had left the parental house on 31-08-2015, and was staying along with the petitioner at different places. According to the 4th respondent, even after expiry of the statutory period of 30 days from the date of submission of the notice of intention of marriage, the marriage could not be solemnized because of objections raised by respondents 1 to 3 before the Marriage Officer. It is said that, under the above mentioned circumstances she went to the house of the 1st respondent on 11th or 12th September 2015 (exact date she is not remembering) in order to request them to withdraw the objections. But she was detained in that house from that date onwards, is the allegation. However the above said

version is stoutly disputed by respondents 1 to 3. They have also filed counter affidavit stating that the 4th respondent is not in their custody since 31-08-2015 onwards and that the allegation of detention is absolutely untrue. It is narrated that, after the 4th respondent had left the house on 31-08-2015 she had contacted to the house over telephone both from inside and outside the State. She had also sent a message to the effect that she is with the petitioner in Tamil Nadu. According to respondents 1 to 3, since 31-08-2015 onwards the 4th respondent is living at different places.

5. When the 4th respondent appeared before this court on 22-09-2015, this court realized that she is not under any illegal confinement. On the basis of the strong desire expressed by her to complete formalities regarding solemnization of the marriage, this court permitted the petitioner and the 4th respondent to appear before the Marriage Officer on the next day for solemnization of the marriage. This is especially because, it was submitted that the 3rd respondent was called upon for a personal hearing

before the Marriage Officer, based on the objection raised, and that he had informed that the objection is not being pursued. It was also submitted on behalf of respondents 1 to 3 that they are prepared to conduct a customary marriage as per religious rites and ceremonies. Hence in the order passed by this court on 22-09-2015 the petitioner and the 4th respondent were permitted to appear before the Marriage Officer on 23-09-2015 for completing formalities regarding solemnization of marriage.

6. Today when the case is taken up for further consideration, learned counsel appearing for the petitioner had produced the 'Certificate of Marriage' issued by the Marriage Officer, Thiruvalla, dated 23-09-2015, for perusal of this court. The certificate would indicate that a valid marriage has been solemnized between the petitioner and the 4th respondent under the Special Marriage Act, on 23-09-2015. This court takes on record the valid marriage established between the parties. The petitioner and the 4th respondent are personally present before this court. They

expressed desire to live together as husband and wife, in an apartment owned by the petitioner situated at Kottayam. It is further intimated that they are planning to go to Canada, the place of work of the petitioner.

7. Under the above mentioned circumstances this court is convinced that the 4th respondent is not under any illegal confinement. On the basis of the valid marriage established and on the basis of the desire expressed by the parties, the 4th respondent is set at liberty to live with the petitioner as husband and wife, at any place of their choice.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

SHAJI. P. CHALY, JUDGE.

AMG

True copy

P.A. to Judge