

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 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

WP(Crl.).No. 406 of 2015 (S)

PETITIONER:

**MANOJ, AGED 30 YEARS,
S/O.MOHANAN, MANOJ BHAVAN,
KONNIMANGARAM, PATHANAMTHITTA DIST.**

**BY ADVS.SMT.JEENA JOSEPH
SRI.G.D.PANICKER**

RESPONDENT(S):

**SUB INSPECTOR OF POLICE,
PALAKKAD TOWN SOUTH POLICE STATION,
PALAKKAD, PIN - 678 706.**

**BY SPECIAL GOVT. PLEADER FOR WOMEN & CHILDREN
SMT.SREELATHA PARAMESWARAN**

**THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION
ON 29-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

mbr/

WP(Crl.).No. 406 of 2015 (S)

APPENDIX

PETITIONERS' EXHIBITS:

EXT. P1 : A TRUE COPY OF THE COMPLAINT PREFERRED BY THE PETITIONER'S
MOTHER IN LAW DATED 14.9.2015 BEFORE THE RESPONDENT.

EXT. P2 : A TRUE COPY OF THE COMPLAINT PREFERRED BY THE PETITIONER
DATED 16.9.2015 BEFORE THE VANITHA CELL, PALAKKAD.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

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

W.P (Crl.) No. 406 OF 2015

DATED THIS THE 29th 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 production of his minor child namely, Kumari. Sreenika. Averments are to the effect that the petitioner had married one Smt. Sruthi on 27-05-2013 and the minor child Sreenika was born out the wedlock. The child is now aged 1 ½ years. The petitioner is working at Sharjah. After the petitioner left to his work place at Sharjah, his wife was residing along with his mother in his family consisting of his grandmother and sister-in-law. It is alleged that the petitioner's wife, Smt. Sruthi had left the matrimonial home during August 2015 to her parental house at Palakkad. But the petitioner got information that she had thereafter eloped with a person named Sri. Rajeev Babu, on 06-09-2015. It is mentioned that, all the efforts

taken by the petitioner and his relatives to trace out his wife and child was in vain. Therefore the petitioner had lodged a complaint before the respondent and other police officials. But no effective steps were taken to trace out the child. It is alleged that the petitioner's wife is living along with a person named Sri. Rajeev Babu. But the petitioner apprehends that the life of the child is in danger. It is alleged that the person with whom Smt. Sruthi is now residing is a known 'Goonda' and he is accused in many criminal cases. It is apprehended that he may even cause bodily harm to the child. It is stated that the present whereabouts of the child is not known to the petitioner. Under such circumstances, the petitioner is approaching this court seeking direction for release of the child from the custody of his wife Smt. Sruthi and her paramour, Sri. Rajeev Babu.

2. It is pertinent to note that the petitioner had not impleaded either his wife Smt. Sruthi or the alleged paramour Sri. Rajeev Babu as respondent in the above writ

petition. It is evident from the averments in the writ petition itself that the minor child is with the custody of her mother, who is now allegedly residing with Sri. Rajeev Babu. Hence, prima facie the petitioner has not made out any case of illegal detention. This court is not satisfied that there exists any materials to invoke jurisdiction vested under Article 226 for issuing any writ of Habeas Corpus.

3. However, based on the allegation that whereabouts of the child is not known to the petitioner, this court directed the Government Pleader to get instruction from the respondent regarding the action if any taken on the basis of Exts.P1 & P2 complaints. Today when the case is taken up, learned Government Pleader had produced a statement obtained from the respondent, which would indicate that on 14-09-2015 the respondent had received a complaint from one Smt. Kanakamma, W/o. Sreenivasan, who is mother of the petitioner's wife. The complaint in brief is to the effect that her daughter named Smt. Sruthi along with the minor child Kumari. Sreenika were abducted

by one Sri. Rajeev Babu, who is living at Kanjiramkulam, Palakkad. The respondent conducted enquiries on the basis of the above complaint and it was revealed that Smt. Sruthi came to Palakkad about 2 months back, after the petitioner herein had left to Gulf countries. She had left her house on 06-09-2015 and started independent living at a rented house at Kanjikode within the limits of the Valayar Police Station. Subsequently Sri. Rajeev Babu had arranged a rented house to her at Puthussery. The respondent herein had recorded a statement of Smt. Sruthi, which is produced before this court for perusal. It is reported that at present Smt. Sruthi along with her daughter Kumari. Sreenika is living at 'Gautham Quarters', near to Water Tank, Puthussery, within the limits of the Valayar Police Station. On a perusal of the statement recorded from the wife of the petitioner it is evident that the petitioner's wife and child are living in the above said address from 08-09-2015 onwards. She said that she had left the house of the petitioner about 2 months back and started living with her

mother at her house at Palakkad. Her family members had harassed and tortured her in various manner. Therefore she had shifted residence to the above said address along with the child. According to her, the above facts are well-known to her family members. It is further stated that she is now working in a shop and that she is living separately with knowledge of her family members, based on her own wish and will.

4. Evidently the minor child of the petitioner is now in the custody of her mother. The child is of very tender age. It is clear that the child and the mother are living separated from the petitioner, in a rented house at Puthussery. We do not find any materials to hold that the child is under any illegal detention at present, because the child is now staying with her mother. If the petitioner has got any case that he is entitled to seek cohabitation with his wife or that he is entitled to have custody of the minor child, it is for him to take appropriate steps before appropriate court vested with such statutory powers.

5. Since it is evident that there is no illegal detention of the minor child, as alleged by the petitioner, we do not think that there exists any circumstances warranting interference of this court for issuing any writ of Habeas Corpus.

6. Accordingly the writ petition fails and the same is hereby dismissed, subject to liberty reserved to the petitioner to seek appropriate remedy before appropriate court.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

MARY JOSEPH, JUDGE.

AMG

True copy

P.A. to Judge