

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 20TH DAY OF OCTOBER 2015/28TH ASWINA, 1937

WP(Crl.).No. 410 of 2015 (S)

PETITIONER:

AJITH U. AGED 24 YEARS
S/O.UTHAMAN PILLAI, KATTAKKALIL VEEDU,
NIRAMANKADAV (P.O.), PAMMATHINKEEZH
MITHREMALA, NEDUMANGAD, THIRUVANANTHAPURAM

BY ADV. SRI.LIJU. M.P

RESPONDENT :

1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT, HOME DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM 695001
2. THE SUB INSPECTOR OF POLICE
VENJARAMOODU POLICE STATION, VENJARAMOODU
THIRUVANANTHAPURAM DISTRICT 695004
3. THE CHAIRMAN
CHILD WELFARE COMMITTEE, POOJAPPURA
THIRUVANANTHAPURAM 695004

R. BY SPL.GOVERNMENT PLEADER FOR WOMEN & CHILDREN SMT.SREELATHA
PARAMESWARAN

R BY ADV.SMT.M.U.VIJAYALAKSHMI, SC, KSCCW

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON
20-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(Crl.).No. 410 of 2015 (S)

APPENDIX

PETITIONER(S)' EXHIBITS

P1:-TRUE COPY OF THE BIRTH CERTIFICATE OF MINOR KASINATHAN A S DTD 10/3/2012

P2:-TRUE COPY OF THE IDENTITY CARD ISSUED FROM GLP SCHOOL, MUDAKKAL TO
MINOR KASINATHAN A S

P3:-TRUE PHOTOGRAPH OF KASINATHAN A S

P4:-TRUE COPY OF THE PETITION ADDRESSED TO 3RD RESPONDENT BY PETITIONER

RESPONDENT(S)' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

AV

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

W.P (Crl.) No. 410 OF 2015

DATED THIS THE 20th DAY OF OCTOBER, 2015

J U D G M E N T

C.K. Abdul Rehim, J:

The petitioner is seeking a writ of Habeas Corpus for directing production of his son, Master.Kasinathan A.S., who is now aged 3 years, and to hand over his custody to the petitioner. The allegation is that the petitioner's son is now in the custody of the 3rd respondent herein.

2. Averments are to the effect that, the petitioner is an Auto Driver by profession and the minor son was born out of a living relationship with one Smt. Sincy, who is the daughter of Smt.Sindhu. There was no legal marriage between the parents of the minor child. It is stated that since December 2012 onwards Smt. Sincy was missing along with the child from the company of the petitioner. But on the basis of a complaint made by the petitioner to the 2nd respondent, some persons have brought the child back to the petitioner and thereafter the child was in his custody,

being looked after by the petitioner's mother. The child was admitted to pre-primary schools at Govt. L.P.S, Mudakkal, Valakkadu, Elamba. The petitioner later married another lady and is living with her, along with the minor child, Master.Kasinathan. While so, around 2 months back some officials of the 3rd respondent came to the petitioner's house and requested him to bring the child to the office of the 3rd respondent. It was informed that Smt. Sincy was booked in a criminal case and is now confined in the Central Jail at Poojapura. When the petitioner brought the child to the office of the 3rd respondent, it was insisted that the child should be left there and the petitioner was allowed only to visit him. According to the petitioner he is the legal guardian of the minor child, Master.Kasinathan because the biological mother of the child is in jail. The petitioner has every right to have custody of the child with him. It is contended that the 3rd respondent has no authority to keep the child under custody. Under such circumstances, alleging that the minor child is detained under illegal custody, this writ petition is filed.

3. When the case came up for admission, we directed the Government Pleader to get instructions from the 3rd respondent. A statement submitted by the 3rd respondent was produced before this court, along with a Memo filed by the Government Pleader.

4. It is mentioned in the statement that the 3rd respondent is a statutory body constituted under the Juvenile Justice (Care and Protection of Children) Act, 2000 and is functioning as a Bench of Magistrates with powers conferred by the Code of Criminal Procedure, 1973. They are vested with powers in relation to any child in need of care and protection under the Act. It is also mentioned that under Section 37 of the Act the Committee shall have the final authority to dispose of cases for care, protection, treatment, development and rehabilitation of the children, as well as to provide basic needs to them. According to statements submitted by the 3rd respondent the minor child, Master.Kasinathan was entrusted to the Kerala State Council for Child Welfare, Thiruvananthapuram by virtue of an "order of short term placement" passed by the Child

Welfare Committee on 11-08-2015 pending enquiry. The 3rd respondent had denied the allegation of passing any information to the effect that the mother of the child was arrested in a criminal case and that she is in jail. It is mentioned that the 3rd respondent had received a request submitted by the petitioner herein on 18-08-2015 seeking release of the minor child. The 3rd respondent had ordered to conduct a social investigation/enquiry based on the claim raised by the petitioner. The Protection Officer, District Child Protection Unit, Thiruvananthapuram had conducted an enquiry and submitted a report to the 3rd respondent. A social investigation was also conducted through the Childline, Thiruvananthapuram. The reports received in this regard indicated that the child, Master.Kasinathan is the 3rd offspring of Smt. Sincy, who is aged about 21 years at present. She lived with a man named Sri.Vaishakh for 3 years and 2 girl children were born in that relationship. Those children were left neglected and the Child Welfare Committee, Kollam had entrusted one child for foster care and the 2nd child is under the care and protection of

Sri.Vaishakh's parents. Later the Child Committee entrusted the 2nd child also to the Kerala State Council for Child Welfare, Thiruvananthapuram, when it is noticed that the child is lacking care and protection from the grand parents. It was brought to notice of the Child Welfare Committee that Sri. Vaishakh had never married Smt. Sincy and the two children were born to her at her age of 15 and 16 years, respectively. Later Smt. Sincy left the children and went to work in a Textile Shop at Attingal. Subsequently she got acquainted with the petitioner herein and was living together with him for about 1½ years. Smt. Sincy was only 16 years and 10 months when she lived with the petitioner. It is admitted that the child, Master.Kasinathan was born out of the said relationship, on 07-03-2012, when his mother Smt. Sincy was aged 17 years and 8 months. Smt Sincy came to the 3rd respondent for the first time during July 2015, claiming custody of a child named Master.Parthan who was brought to protection and care of the committee. At that time Smt. Sincy claimed that she is living with a 3rd man named, Sri. Vipin and a child

named Master.Parthan was born out of that relationship. It is stated that, Smt. Sincy had left the company of the petitioner along with the child when the petitioner was sent to prison on conviction in a criminal case during the year 2015. The petitioner's mother reported about missing of Smt. Sincy and the child, to the Venjaramood police station. Then the child was brought back by certain unknown persons to the mother of the petitioner and she was looking after the child thereafter. Later she entrusted the child with father of the petitioner at his home at Ayilam, Attingal, when the petitioner's father was staying with his second wife, Smt. Jaya. The child, Master.Kasinathan was in the custody of the petitioner's father for nearly one year, till the petitioner's mother again picked up the child from that home. In May 2014 the petitioner's mother started life with another man by name, Sri.Babu. By that time the petitioner got released from the jail and he married a minor girl, aged 18 years named, Smt.Rajalakshmi and a female child was born to them. Thereafter the petitioner took away the minor child, Master.Kasinathan, from the mother's care and again

placed the child with his father, who is living at Ayilam, Attingal. At this juncture the 3rd respondent addressed the Childline, Thiruvananthapuram to trace out the children of Smt. Sincy, namely, Kumari. Pournami and Master.Kasinathan and to produce them before the 3rd respondent, in order to protect their safety and well being. Having found that the child, Master.Kasinathan is in a vulnerable environment, the 3rd respondent placed him in custody of the Kerala State Council for Child Welfare, Thiruvananthapuram. It is mentioned that the child, Master.Kasinathan is now contended in the institutional atmosphere under the Kerala State Council for Child Welfare, Thiruvananthapuram. The mother of the child Smt. Sincy had executed a surrender deed on 17-08-2015 in respect of the child, Master.Kasinathan.

5. From the facts as narrated in the statement it is evident that the minor child, Master.Kasinathan, is now in the custody of Kerala State Council for Child Welfare, Thiruvananthapuram as entrusted by the 3rd respondent on the basis of an order of short term placement passed by the

3rd respondent and on the basis of the surrender made by the mother. It is also mentioned that there are many criminal cases registered against the petitioner and he had already undergone conviction and sentence in one of the cases. According to the 3rd respondent if the child is allowed to grow up in the family of the petitioner, the future of the child will be spoiled and that there is every reason that he being deviated as an anti-social element. It is evident that, when the child was in the custody of the petitioner, he was handed over from one hand to another between two families upon convenience, as if nobody is prepared to take responsibility of bringing up the child. At present the child has got adjusted with the new environment and is living comfortable as reported by the District Child Protection Officer. The mother herself is a person of vulnerable behaviour and had confessed her inability to take care of the children. Therefore, even though the petitioner is the legal guardian, he falls under the label of "unfit parent" under Chapter I, Section 2 (d) (iv) of the Juvenile Justice (Care and Protection of Children) Act, 2000. As per

statutory provisions, the child in need of care and protection will also include a child who has a parent or guardian and when such parent or guardian is unfit or incapacitated to exercise control over the child. It is stated that the 3rd respondent is always acting to protect the best interest of the child as envisaged under the Act, in order to ensure physical, emotional, intellectual, social and moral development of the juvenile who is in conflict with law or of a child so as to ensure safety, wellbeing and permanence, to enable the child to survive and to reach his full potential.

6. It is mentioned by the learned Government Pleader that an application submitted by the petitioner seeking release of the custody of the child was considered by the Child Welfare Committee on the basis of the investigation reports and a proceedings was issued as CWC/TVPM/360 (b)/2015, dated 16-10-2015 rejecting the said application and entrusting custody of the minor child with the Kerala State Council for Child Welfare, Thiruvananthapuram, under the provisions of the Act. A copy of the said order is said to have been communicated to

the petitioner. Learned Government Pleader had handed over a copy of the said proceedings to the counsel appearing for the petitioner.

7. Under the above mentioned circumstances, it is evident that the minor child, Master.Kasinathan, who is alleged to have been illegally detained by the 3rd respondent is now in the custody of Kerala State Council for Child Welfare, Thiruvananthapuram under their protection and care. It is on the basis of a statutory order passed by the 3rd respondent that the custody of the said child is entrusted to the said authority. Under such circumstances this court finds no materials to hold that the child is under illegal confinement of the 3rd respondent or that the custody of the child with the 3rd respondent or any other authority with whom such custody was legally entrusted is an illegal confinement of the child. Therefore there exists no circumstances warranting issuance of a writ of Habeas Corpus by invoking power vested on this court under Article 226 for ordering release of the child or for entrusting his custody to the petitioner. If the petitioner is aggrieved in

any manner with respect to keeping custody of the child by the 3rd respondent or any other authority or if he is aggrieved by denial of his application for getting custody of the child, it will be left open to the petitioner to seek appropriate remedy available under law against such action or orders.

8. Subject to reserving liberty of the petitioner as mentioned above, this writ petition is hereby dismissed.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

MARY JOSEPH, JUDGE.

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True copy

P.A. to Judge