

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

WP(Crl.).No. 412 of 2015 (S)

PETITIONER(S):

PRAVEEN G.S. AGED 29 YEARS
S/O.SASIDHARAN, RESIDING AT PULLIYAL VEEDU
THURUVIKKAL P.O., TC NO.6/326, PRASANTH NAGAR ROAD
THIRUVANANTHAPURAM-695 031.

BY ADV. SMT.ELSA U.AMBRAIL

RESPONDENT(S):

1. FRANCIS
ARAGASSERY HOUSE, CHITTLAPILLY P.O., MULLUR VIA
THRISSUR-680 551.
2. THE SUB INSPECTOR OF POLICE
PERAMANGALAM POLICE STATION
THRISSUR DISTRICT-684 545.

R1 BY ADV. SRI.C.A.CHACKO
R BY GOVERNMENT PLEADER

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION
ON 18-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.K.ABDUL REHIM & MARY JOSEPH, JJ.

WP(Crl). No. 412 of 2015

Dated this the 18th day of December, 2015

JUDGMENT

Abdul Rehim,J.

The petitioner is seeking a writ of habeas corpus for directing production of Miss.Jeffy Francis (hereinafter referred to as the alleged detenu), who is the daughter of the 1st respondent, and to secure her from the alleged illegal confinement. According to the petitioner he was in love with the alleged detenu. Averments are that, the alleged detenu had completed MLT course from Kannur Medical College at Anjarakandy. The petitioner got acquainted with her through one of her course mates. A decision was arrived between the petitioner and the alleged detenu with respect to their marriage and they were in constant touch through telephone calls and messages. Till 19.3.2015 the petitioner got frequent calls from the alleged detenu through her mobile phone No.9745214171, to the petitioner's mobile phone No.9995569990. On 15.3.2015 the

petitioner got information from the alleged detenu about threats being faced by her from her parents, who were compelling her to marry another person against her will and wish. From 20.3.2015 onwards the alleged detenu is illegally restrained by her parents from contacting the petitioner and she is virtually confined under illegal custody, without even allowing her to attend any telephone calls. On 13.4.2015 the petitioner got a telephone call from the alleged detenu complaining about the physical and mental torturing met by her from the family members. Contention is that the alleged detenu is not in a position to come out from her house to solemnize a marriage with the petitioner. Even though the petitioner went to the house of the 1st respondent, he was not permitted to see the alleged detenu. Based on the specific allegations that the alleged detenu is illegally confined against her free will, the writ petition is filed.

2. When the case came up for admission, this court directed the 2nd respondent to conduct a discrete enquiry into the allegations of illegal detention and to submit a report. It was also directed to get an independent statement of the alleged detenu recorded, by deputing a woman police officer. A statement

recorded from the alleged detenu was produced before this court. It is revealed that the alleged detenu is now studying in an institution outside the State and she used to come to the parental house only once in a month. She is hesitant to disclose the name of the institution for specific reasons. It is stated that the petitioner is known to her as a friend of one Sri. Ratheesh, who is conducting a 'Chathan Seva Madom' at Anakkara in Thrissur. According to the alleged detenu she knows the said Ratheesh since the last 1 ½ years. But she had emphatically denied that she is under illegal detention of her parents or anybody else.

3. The 1st respondent entered appearance through counsel and filed counter affidavit disclosing certain crucial informations. It is mentioned that Sri. Ratheesh who is conducting 'Chathan Seva Madom' at Anakkakra had induced, procured and seduced the alleged detenu with the help of one of his friend, while she was a minor girl, and committed rape on her. A case registered with respect to missing of the alleged detenu as crime No.943/2014 of Peramangalam Police Station was converted into a case accusing with offences punishable under section 376 and 366A and 34 of Indian Penal Code, read with section 4 and 17 of the Protection of

Children from Sexual Offences Act 2012 against the said Sri. Ratheesh and another person, based on the revelations made by the alleged detenu. The said case was transferred to Taliparamba Police Station, Kannur District and re-registered as Crime No.998/2014, since the place of occurrence is within the limits of the said police station . The said case is now pending trial before the Sessions Court, Thalassery. According to the 1st respondent, the alleged detenu had discontinued her studies at the Medical College, Kannur and at present she is studying for B.Sc Nursing course at an institution outside the State. It is specifically alleged that the petitioner had approached this court only with a motive to ascertain the present place of stay of the alleged detenu, with an intention to influence her to give evidence in favour of the accused in the criminal case. It is also alleged that the counsel who had filed the above writ petition is the counsel who appeared for the accused in the criminal case before the Judicial First Class Magistrate Court, Kunnankulam. All the allegations of the petitioner with respect to the acquaintance with the alleged detenu and about the love affair, is stoutly denied. It is contended that the petitioner is only a tool in the hands of the above said

Sri. Ratheesh, who is implicated as accused in the criminal case. The intention behind filing of this writ petition is only to harass the family of the 1st respondent and the case is filed only with a malafide intention to know the whereabouts of the alleged detenu, by misusing jurisdiction vested on this court, through misrepresentations and suppressions, is the contention.

4. Based on the counter affidavit of the 1st respondent, this court passed an order on 8.10.2015 calling upon the petitioner to show cause as to why compensatory cost shall not be imposed against him for misusing jurisdiction vested on this court. In a reply affidavit filed by the petitioner on 26.10.2015, all the averments in the writ petition were reiterated. Further it is mentioned that, the alleged detenu was in constant touch with the petitioner over telephone and through SMS and that they have stayed together at Thiruvananthapuram from 11.3.2014 to 14.3.2014. It is further stated that the alleged detenu had handed over copies of her 'Birth Certificate' and 'Aadar Card' for the purpose of solemnising a marriage under the Special Marriage Act. It is also alleged that the detenu herself had written a letter on 12.4.2014, with an intention to submit the same before this court,

in case if she was abducted by her parents from the petitioner. The Petitioner had denied of having any connection with the above said Sri.Ratheesh. It is also alleged that the alleged detenu is a girl of such a nature that she had multiple relationships maintained and unfortunately the petitioner herein was one among them. The petitioner being honest and concerned about the alleged detenu's whereabouts, it is quite natural for him to seek help of this court to intervene and bring out the truth of the missing of the alleged detenu since 20.3.2015 onwards, is the statement. It is reiterated that till 19.3.2015 the petitioner had received telephone calls from the alleged detenu's mobile phone No.9745214171 to his mobile phone No. 9995569990. It is also reiterated that the alleged detenu used to inform the petitioner about the compulsions from the side of her parents for marrying another person against her will.

5. This court noticed that the petitioner had not disclosed the name of the friend through whom he got acquainted with the alleged detenu. He had also not disclosed the dates or details of the phone calls or SMS. Despite specific averments in the reply affidavit, the petitioner has not produced copy of the 'Birth

Certificate' or 'Aadar Card' alleged to have been entrusted by the detenu. He has also not produced the copy of the letter alleged to have been written by her. Eventhough it is contended that the alleged detenu had stayed at Thiruvananthapuram along with the petitioner from 11.3.2014 to 14.3.2014, nothing was disclosed about the place where they met or the place where they stayed together. Therefore it is felt that the reply affidavit could not be accepted for closing the writ petition.

6. Under the above mentioned circumstances, this court decided to order a further probe into the matter. Hence the State Police Chief (Director General of Police), Kerala State was directed to conduct a fullfledged enquiry into the matter, through any responsible officer authorised on that behalf, under his supervision. The enquiry was directed to be conducted specifically with respect to the following aspects:-

i) Whether the petitioner has got any relation or acquaintance with Sri.Ratheesh, who is the accused in Crime No.998/2014 of Taliparamba Police Station registered for offences punishable under Sections 376 and 366A IPC and

Sections 4 and 17 of the Protection of Children from Sexual Offences Act, 2012.

ii) Whether it is true and correct that the petitioner had any connection with any of the students who was studying for MLT course at the Medical College, Anjarakandy, Kannur along with the alleged detenu as per course mate.

iii) Whether the petitioner had any love affair or relationship with the girl and whether he had received telephone calls or SMS from her, in his Mobile No.99995569990 from the Mobile phone alleged to have been used by her, with No.9745214171 or with No.9745214179 (as corrected by the counsel for the petitioner).

iv) Is it (mistakenly typed in the order as 'It is') true that the alleged detenu, Ms.Jeffy Francis had stayed along with the petitioner at Thiruvananthapuram from 11.3.2014 to 14.3.2014. If so where they have stayed and was there any other person with him at that time, and if so whether she was a major girl at that time.

7. Based on the above said directions, the State Police Chief had ordered an enquiry to be conducted by Sri. K.P.Vijayakumaran,

Superintendent of Police SBCID, Thrissur Range. A detailed report of the enquiry was submitted before this court, enclosing all the documents and the statements of witnesses . The report of the enquiry revealed that, the petitioner herein used to visit the house of Sri.Ratheesh and had stayed there on several times. The above fact was seen revealed by none other than the father of Sri. Ratheesh, namely, Sri. Subramaniyan. Call details of the mobile phones used by the petitioner and Sri. Ratheesh revealed that they were under constant communications between each other. It was also revealed that one of the relatives of the petitioner is residing at Anakkara near to the house of Sri. Ratheesh and the petitioner used to come to his house. It is through whom the petitioner developed friendship with Sri. Ratheesh. Further, the petitioner himself had revealed to the enquiry officer that Sri. Ratheesh was introduced by the alleged detenu to be her face book friend.

8. In the enquiry conducted it is further revealed that, the version of the petitioner that he got acquainted with the alleged detenu through his friend studying at Medical College, Anjarakandy, Kannur, is totally false. It is proved that the

petitioner has no connection with any of the students who studied for MLT course at the Medical College at Kannur. It is also revealed that there was no contact between the alleged detenu and the petitioner over telephone, as averred in the writ petition. It is proved through enquiry that the allegations raised by the petitioner to the effect that the alleged detenu had stayed along with him at Thiruvananthapuram from 11.3.2014 to 14.3.2014, is absolutely incorrect. Before the enquiry officer the petitioner submitted that, those are not facts which were told by him to the Advocate. The only fact revealed from the enquiry is that, the alleged detenu had gone to Thiruvananthapuram on 10.6.2014, when she had a plan to elope with the above said Sri. Ratheesh. On that day their plan could not be worked out because the mother of Sri. Ratheesh had committed suicide. So she went to Thiruvananthapuram in a train as instructed by Sri Ratheesh and met the petitioner at the station. But it is revealed that the alleged detenu had returned from Thiruvananthapuram on the same day itself.

9. Conclusions contained in the report of enquiry can only lead to an inference that, the averments in the writ petition regarding acquaintance of the petitioner with the alleged detenu

and his claim of love affair, are absolutely false and baseless. The allegations regarding illegal detention of the alleged detenu by her parents was proved to be absolutely false. It is proved beyond any doubt that the attempt of the petitioner was only with an intention to know the present whereabouts of the alleged detenu and about her place of study, by misusing jurisdiction vested on this court. Evidently such an attempt was made only at the instance of the friend of the petitioner Sri. Ratheesh, who is an accused in a case alleging the offence of having committed rape on the alleged detenu.

10. Under the above mentioned circumstances, this court is fully convinced that, by filing the above writ petition the petitioner had abused jurisdiction vested on this court with an illegal, oblique and malafide motive. He had approached this court with a totally fabricated case, through averments of untrue facts and allegations, fully knowing that the same are totally false and untrue. The attempt on the part of the petitioner had resulted in wastage of precious judicial time. The said attempt had created severe prejudices, legal injuries, inconveniences, pecuniary loss and mental agony to the 1st respondent and the alleged detenu.

The practice adopted by the petitioner need to be condemned and deprecated through deterrent steps. Hence this court is of the considered opinion that the petitioner need to be imposed with compensatory cost, while dismissing the above writ petition. Considering the gravity of the issue, we are inclined to fix the cost at Rs.75,000/- (Rupees Seventy Five Thousand Only). It is also felt necessary to direct payment of a portion of the cost to the victim, who is the alleged detenu, in case the cost is realised from the petitioner.

11. Therefore, the above writ petition is hereby dismissed, subject to imposing compensatory cost of Rs.75,000/- on the petitioner. The petitioner is directed to make deposit of the amount of cost within a period of 2 weeks from the date of receipt of a copy of this judgment. The Registry is directed to issue notice to the petitioner, enclosing a certified copy of this judgment, calling upon him for depositing the amount within the said period. If no amount is deposited within the time stipulated, the Registry will address the District Collector concerned to initiate steps to realise the amount through revenue recovery. The amount if recovered shall be appropriated by paying a sum of Rs.25,000/- to the

alleged detenu and by paying the balance amount of Rs.50,000/- to the Kerala Mediation and Conciliation Centre .

12. Yet another serious aspect which came to notice of this court during adjudication of the case also need to be dealt with. During enquiry conducted by the Superintendent of Police, based on the direction issued by this court, it is revealed that the counsel who filed the above writ petition, Advocate Elsa U.Ambrail was the counsel who appeared on behalf of the alleged detenu before the Judicial Ist Class Magistrate Court, Kunnankulam in the case registered as Crime No.431/2014 of Peramangalam Police Station, with respect to her missing. It is evident that the alleged detenu had appeared before the Judicial First Class Magistrate Court, Kunnankulam on 14.3.2014, through Advocate Elsa U. Ambrail. It is further revealed that another case registered as Crime No.943/2014, with respect to the missing of the alleged detenu on a subsequent occasion, on 10.6.2014 was converted into a case alleging offences punishable under section 376, 366A and 34 IPC read with offences under the POCSO Act, and transferred to Talipapramba Police Station in Kannur District and re-registered as crime No.998/14. Sri. Ratheesh as well as his co-accused

Sri. Vipin, who now stand charge sheeted in the said case pending trial before the Sessions Court, Thalassery, were arrested in the said case on 16.6.2014 and they were remanded to Judicial custody. It is revealed in enquiry that Advocate Elsa U. Ambrail appeared for the accused before the Judicial First Class Magistrate Court, Kunnamkulam, when they were produced on arrest. Further, during the enquiry Advocate Elsa U. Ambrail had produced 2 documents before the superintendent of police. One document is the copy of the Birth Certificate of the alleged detenu. Another is the copy of a letter purported to have been written by the alleged detenu. Investigation revealed that the 2nd document contained signature of the alleged detenu, with date noted as 12.3.2014. Enquiry revealed that such a letter was never handed over by the alleged detenu to the petitioner and the handwriting of the said letter is not that of the alleged detenu. The alleged detenu had informed the enquiry officer that she had put her signature on a blank paper as requested by Advocate Elsa U. Ambrail, when she was produced before the JFCM Court, Kunnamkulam on 14.3.2014. Therefore, conclusions arrived in the enquiry is that, Advocate Elsa U. Ambrail had participated in

fabricating such a letter in a blank paper which contained signature of the alleged detenu for helping the petitioner to achieve his oblique motives. The fact that the very same Advocate who is appearing for the petitioner herein had appeared before the JFCM Court on behalf of the alleged detenu and also appeared for the accused Sri. Ratheesh and Sri.Vipin, and that she had participated in fabricating a document in a deceitful manner by misutilising blank signed paper obtained from the alleged detenu etc; would indicate that she was having clear knowledge about falsity of the averments contained in the writ petition and about the oblique and illegal motives behind making such an attempt. The available materials prima facie indicate that Advocate Elsa U. Ambrail has colluded and connived with the petitioner in abusing the process of this court, in a totally malafide manner.

13. Whether the above said acts on the part of the counsel mentioned hereinabove will amount to professional misconduct is a matter, which according to this court, need to be probed into by the appropriate statutory authority, which is the Bar Council of Kerala. This court is of the considered opinion that the matter need to be brought to notice of the Bar Council which is the

authority vested with powers to initiate suo motu disciplinary action, if it is convinced of any such misconduct.

14. Under the above mentioned circumstances the Registry of this court is directed to address the Secretary of the Bar Council of Kerala, by forwarding a copy of this judgment, along with copies of all the pleadings and a copy of the enquiry report and its accompanying documents. The Bar Council of Kerala will consider the matter and will take appropriate steps under the relevant statute, if it is convinced that any such action is warranted under the facts and circumstances revealed.

C.K.ABDUL REHIM, JUDGE

MARY JOSEPH, JUDGE

Pmn/

