

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

WP(Crl.).No. 420 of 2015 (S)

PETITIONER(S) :

GEETHU ARUNSAGAR AGED 28 YEARS
W/O.P.D.ARUNSAGAR, PARAMBATHERIL HOUSE, NEDUVANNOOR
CHOWARA P.O., ALUVA-683571.

BY ADVS.SRI.K.R.VINOD
MS.JENCY SUSAN JOSE
SRI.V.SRI NATH

RESPONDENT(S) :

1. THE SUB INSPECTOR OF POLICE
NEDUMBASSERY POLICE STATION, NEDUMBASSERY, ERNAKULAM.

2. THE SUB INSPECTOR OF POLICE
NORTH PARAVUR POLICE STATION, NORTH PARAVUR.

3. THE SUPERINTENDENT OF POLICE
(RURAL), ALUVA 683971.

4. THE DIRECTOR GENERAL OF POLICE
POLICE HEAD QUARTERS, THIRUVANANTHAPURAM.

5. JAGANNATH B.C., AGED 50 YEARS
2549, 10TH MAIN, E BLOCK
2ND STAGE, RAYAZI NAGAR, BANGLORE
PIN 560010.

R1-R4 BY GOVERNMENT PLEADER SMT.SREELATHA PARAMESWARAN
R5 BY ADV. SRI.ANIL K.MOHAMMED

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON
02-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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W.P.(Crl.) No.420 of 2015

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Dated this the 2nd day of November, 2015

JUDGMENT

Abdul Rehim, J.

The petitioner has approached this court raising an allegation that her husband was taken into custody from their house on the early morning of 03.10.2015, by certain persons came in a jeep and a car. He was forcibly taken from the house stating that they are police party from Karnataka State. It is alleged that the persons were not in uniform and nor they had shown any Identity Cards. Thereafter the father of the alleged detainee received a telephone call from the 5th respondent from Mobile No. 9845661012 informing that the alleged detainee is taken by him into custody because there exists certain money transactions to be settled to him by the alleged detainee and his father. The petitioner approached the 1st respondent with a complaint on the same day itself. But the 1st respondent has not taken any action to find out the alleged detainee. On the basis of a specific allegation that the alleged detainee is

being illegally detained by the 5th respondent, the petitioner is seeking a writ of habeas corpus for directing production of her husband and to secure him from the illegal detention and confinement.

2. As directed from this court, the Government Pleader had obtained instructions from respondents 1 and 2. On 09.10.2015, it was submitted before this court that, on 03.10.2015 the petitioner had approached the 1st respondent with a complaint that her husband was taken into custody by certain persons. It was submitted that, the 1st respondent had made enquiries by making call to the Mobile phone from which father of the alleged detainee had received the alleged call. The person who attended the phone said that they are Police Party from 'Subramanya Nagar' Police Station in Karnataka State and that the alleged detainee is being taken to Karnataka in connection with the investigation of a case registered against him as M.C.R No.381 of 2015 in the said Police Station. Later, the Station House Officer of the 'Subramanya Nagar' Police Station, namely Sri.Govinda Raj was contacted over his mobile phone and gathered information that the 5th respondent had lodged

complaint before that station alleging offence of cheating, against the alleged detainee and his father Sri.Danawan. Gist of the complaint is that, both of them had issued a cheque for an amount of Rs.7,65,000/- towards payment of sale consideration of Cows purchased by them from the 2nd respondent, but the cheque got dishonoured, and hence the complaint was lodged. The 1st respondent got information that an Assistant Sub Inspector of Police from Subramanya Nagar Police Station, namely Sri.Krishnamoorthy was deputed for enquiring about the complaint and he along with the police party had taken the alleged detainee from his house for making enquiries about the complaint. It was informed that the alleged detainee was released from the Police Station, at Karnataka, after recording his statement, in the presence of a witness named Sri.Shahir, who is a Malayali residing at Bangalore. Copy of the M.C.R No.381 of 2015 registered at Subramanya Nagar Police Station and copy of the statement of the alleged detainee recorded at the Station, which was received through e-mail was produced before this court by the 1st respondent.

3. But when the case was considered on 09.10.2015, learned

counsel appearing for the petitioner submitted that, despite the report regarding release of the alleged detainee from the Police Station at Karnataka on 04.10.2015 his whereabouts is not known and that he has not reached back home, till date. According to the petitioner, there is no information from her husband since 03.10.2015 onwards. Based on such submissions made, this court issued notice to the 5th respondent through speed post. The 3rd respondent, who is the District Police Chief, was directed to make a discrete enquiry into the allegations and to take necessary steps to register a case by recording statement of the petitioner with respect to missing of the alleged detainee and to investigate the same, if it is convinced that the petitioner's husband is missing. The 3rd respondent was directed to entrust the enquiry with any responsible officer to proceed further in the matter. A report regarding the progress of investigation was directed to be produced before this court.

4. Today when the case is taken up, the 5th respondent entered appearance through counsel and submitted that the alleged detainee is not under his custody and that he has no knowledge

about his whereabouts at present. The 3rd respondent had submitted a statement, based on the direction issued from this court. It is mentioned that, pursuant to the order of this court dated 09.10.2015, the 1st respondent was directed to get a statement recorded from the petitioner. But a statement of the petitioner could be recorded only on 17.10.2015, because she was not available in the house on 10.10.2015. It is mentioned that a case was registered based on the statement of the petitioner, as Crime No.1369/2015, under Section 57 of the Kerala Police Act. But the 'Crime Memo' shall not be prepared and circulated because the petitioner was reluctant to give a photo of the alleged detainee. However, the 1st respondent was deputed to Karnataka to collect details from the Police Station concerned. The story revealed as above with respect to taking into custody of the alleged detainee on 03.10.2015, based on the complaint of 5th respondent, was gathered. Information gathered is to the effect that on bringing the alleged detainee to the 'Subramanya Nagar' Police Station, his statement was recorded. Since it was found that he has no direct involvement in the case, he was released after recording the

statement. Meantime the petitioner and her mother had contacted the Police Station at Karnataka and they were informed that the petitioners husband is being released after recording his statement. It is specifically mentioned that the alleged detainee was released in the presence of Sri.Shahir, who is a Malayali, who is conducting a small business near to the said Police Station. The 1st respondent recorded a statement from the above said Sri.Shahir, in which it is mentioned that the alleged detainee was released at about 8 p.m on 04.10.2015 and he had boarded a Karnataka State Transport Bus from the Majestic Satellite Bus stand at Bangalore and returned to Kerala.

6. Statement furnished by the 3rd respondent would indicate that, the missing person and his parents are accused in Crime No.1304/2013 of Nedumbassery Police Station registered for offences under Sections 406, 417 420, 120(B) and 34 IPC, in Crime No.268/2013 of Thrissur Police Station and in Crime No.277/2008 of North Paravur Police Station registered for almost similar offences. All these cases are pending trial before various courts inside the State. It is further reported that the father of the alleged

detenue is a person involved in more than 48 cheating cases inside and outside the State and in most of the cases the alleged detenue is also involved.

7. The 3rd respondent had reported that, call details recorded on the Mobile Phone used by the alleged detenue with No. 9496952717 was traced out from 04.10.2015 onwards, which revealed that the person holding the said Mobile Phone had travelled through the 'tower locations' from Bangalore via Tamil Nadu and reached Palakkad on 5.10.2015 in the morning at 5:32 a.m and also reached Thrissur at 7:25 a.m on the same day. It is revealed that a Mobile Tower located at North Paravur had received activation of the said mobile phone at 8:54 a.m on the said day and a call was made from the said telephone to the mobile phone of the mother of the alleged detenue, with number 949661844. On the same day at 8:54 a.m he talked to his father also. At 9:11 a.m a call was made from the said telephone to the petitioner's mobile bearing number 9496672271. Again another call was made to the telephone of the alleged detenue's mother at 12:55 p.m and 1:00 p.m from the limits of the Mobile Tower located at Banerji Road, Ernakulam. Two other

calls were also made to the Mobile Phone of the alleged detainee's father from different places on the same day. The above information was cross-checked with the mobile phones of the petitioner and the father and mother of the alleged detainee. Copies of the call details are produced along with the statement for perusal of this court. Therefore, it is brought out that, submissions made on behalf of the petitioner that she had no contact or information about her husband from 03.10.2015, seems to be absolutely incorrect and untrue. It is evident that the alleged detainee had reached Kerala and he had contacted his father, mother and the petitioner till 1:27 p.m on 05.10.2015. It is mentioned in the statement that after 1:27 p.m on 05.10.2015, the mobile phone of the alleged detainee is remaining switched off. The 3rd respondent had raised a suspicion that the alleged detainee is hiding deliberately in some unknown place, in collusion with his family members, in order to avoid questioning by the police with respect to various cases in which he is involved.

7. Today when the case is taken up for consideration, learned Govt. Pleader had submitted a further statement of the 1st

respondent, in which it is mentioned that the investigation of the missing case was pursued and the parental house of the petitioner at Periyanaad in Kollam District was contacted. It is revealed that the parents of the petitioner are not alive and that the petitioner was residing along with her grandmother. It is mentioned that there are litigations between the grandmother of the petitioner and the alleged detainee and his father. The grandmother of the petitioner had given a statement that the alleged detainee had contacted her over telephone on a date after 25.10.2015 complaining that he is not able to contact the petitioner over telephone. But the petitioner was not available at that time. It is also mentioned that when the petitioner came for a marriage of a relative on 25.10.2015, she never revealed about the alleged missing of her husband to the grandmother.

8. From the facts revealed as above, this court is fully convinced that there is no basis for the allegation regarding the illegal detention of the alleged detainee. Preliminary investigation conducted by the respondents 1 and 3 would reveal that the submission made by the petitioner to the effect that she had no

knowledge about the alleged detainee after 03.10.2015, is not true and correct. There were contacts over telephone between the alleged detainee and the petitioner and other family members till 05.10.2015. At any rate, we take note of the fact that a criminal case with respect to alleged missing of the petitioner's husband has already been registered and investigation is being pursued.

9. Under the above mentioned circumstances we do not find any reason to adjudicate further on this writ petition, which is filed seeking for a writ of habeas corpus. Finding that the alleged detainee is not under illegal confinement of any person, the above writ petition is hereby closed.

10. However, the respondents 1 and 3 will pursue the investigation of the criminal case registered with respect to missing of the alleged detainee. The petitioner will be at liberty to seek appropriate remedy if the investigation has not fetched any positive result.

Sd/-
C.K .ABDUL REHIM, JUDGE

Sd/-
MARY JOSEPH, JUDGE

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