

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 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

WP(Cr1.).No. 439 of 2015 (S)

PETITIONER(S) :

BIJU V.G., AGED 38 YEARS,
S/O GANGADHARAN, VAZHAPULLY HOUSE, PENGAMUKKU POST,
VIA. KUNNAMKULAM, THRISSUR DISTRICT

BY ADVS.SRI.SANTHEEP ANKARATH
SRI.ARUN MATHEW VADAKKAN

RESPONDENT(S) :

1. STATION HOUSE OFFICER,
KUNNAMKULAM POLICE STATION, KUNNAMKULAM-680 503
THRISSUR DISTRICT

2. JEEVAN LAL
S/O RAJAN @ RAJU, PANTHAYIL HOUSE,
VADAKKEKKAD POST, THRISSUR DISTRICT
PIN -679 562

R1 BY ADDL.DIRECTOR GENERAL OF PROSECUTION SRI.K.I.ABDUL
RASHEED

BY GOVERNMENT PLEADER SRI.P.S.ABDUL KAREEM
R2 BY ADV. SRI.P.K.SAJEEV

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON
03-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1: TRUE COPY OF MARRIAGE CERTIFICATE OF THE PETITIONER AND
BINCY DT. 5/9/05.

EXT.P2 TRUE COPY OF FIRST INFORMATION REPORT AND FIRST INFORMATION
STATEMENT DT. 12/10/15 IN CRIME NO.1919/15 OF KUNNAMKULAM POLICE
STATION

RESPONDENT(S) ' EXHIBITS : NIL

/TRUE COPY/

P. A. TO JUDGE

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

W.P (Crl.) No. 439 OF 2015

DATED THIS THE 3rd DAY OF NOVEMBER, 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 his wife, Smt.Bincy and his minor child, Kumari.Anashya, before this court, based on an allegation that they are being illegally detained by the 2nd respondent herein.

2. Averments are to the effect that, the petitioner is employed in Dubai as a Driver and he came to India during August, 2015. His minor girl, Kumari.Anashya is studying in Bethany St. John's English Medium School at Kunnamkulam. It is stated that, on 12-10-2015 the petitioner's wife went to Kunnamkulam for picking up the daughter from the school, but she has not returned thereafter. A complaint was lodged by the petitioner before the 1st respondent with respect to missing of his wife and the child. Subsequently the petitioner got information that the alleged detenues were kidnapped by the 2nd respondent

and that they were residing somewhere in Munnar. Despite passing such an information to the 1st respondent, the 1st respondent is not taking any effective action to trace out the alleged detenues, is the allegation. Hence the petitioner is approaching this court based on the specific allegation that the alleged detenues are under illegal confinement of the 2nd respondent.

3. When the case came up for admission on 16-10-2015 this court issued notice to the 2nd respondent, directing production of the alleged detenues. The 1st respondent was also directed to intensify the investigation of Ext.P2 crime registered with respect to missing of the alleged detenues and to trace out and produce them before this court. Thereafter on 20-10-2015, when the case is taken up for further consideration, it was brought to notice of this court that the 2nd respondent could not be served with the notice issued from this court. On behalf of the 1st respondent it was submitted that the investigation of the case is under progress and that there is every chance of the alleged detenues being traced out within a short time. Therefore the matter was adjourned to 28-10-2015. But on 28-10-2015 when the case is taken up for further consideration, it was informed on behalf of 1st respondent that he had received a letter from the missing lady

to the effect that she had gone from the matrimonial house of her own wish. It was also reported that she had appeared before the Judicial First Class Magistrate's court, Kunnankulam on 21-10-2015 and that the learned Magistrate had set her at liberty. Since the 1st respondent failed to trace out the alleged detenues and to produce them before this court, despite the fact that this court had issued stringent directions and despite the fact that they appeared before the Magistrate's Court at Kunnankulam on 21-10-2015, the court made strict observations and directed the District Police Chief (Rural), Thrissur to take personal attention in the matter and to ensure that the alleged detenues are produced before this court. Subsequently on 30-10-2015 the police had traced out the alleged detenues and taken them in to custody and produced before this court. This court directed the 1st respondent to admit the alleged detenues in the 'Mahila Mandiram' at Thrissur, since there was no notice to the petitioner with respect to the production of the alleged detenues on that day. The case was adjourned to today for further consideration.

4. Today when the case is taken up, the alleged detenues were produced before this court by the 1st respondent. When we interacted with the lady, Smt. Bincy she

said that there exists severe matrimonial disputes between the petitioner and herself and that she had already filed a case before the Family Court, Thrissur seeking dissolution of marriage, as OP No.1507/2015. It is admitted that she had left the matrimonial house along with the child on 12-10-2015 and was staying at various places. According to her the 2nd respondent is a family friend of herself and he had only arranged the places for their accommodation. She said that she had appeared before the Magistrate's Court on 21-10-2015 and she was set at liberty by the learned Magistrate. According to her, she has now taken a house on rent at 'Edakkuzhiyoor' and is intending to stay there. According to her, neither herself nor the child is under any illegal confinement, as alleged in the writ petition. She is now staying away from the matrimonial house due to the dispute and on the basis that the application for dissolution of marriage has already been instituted.

5. Under the above mentioned circumstances this court is of the considered opinion that the allegation regarding the illegal confinement of the wife and child of the petitioner has no basis. It is evident that the wife of the petitioner had left the matrimonial home along with child on her own wish and will and that they are now staying at a place

of her own choice. Under such circumstances there is no circumstances existing for invocation of the jurisdiction vested on this court under Article 226 of the Constitution, for issuing any writ of Habeas Corpus. Hence the writ petition is hereby dismissed.

6. However, it is made clear that the petitioner will be at liberty to seek appropriate remedy with respect to the matrimonial dispute and/or with respect to custody of the minor child, by approaching the appropriate court.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

MARY JOSEPH, JUDGE.

AMG

True copy

P.A. to Judge