

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

WP(Crl.).No. 463 of 2015 (S)  
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PETITIONER(S) :  
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G.GOVINDAN AGED 53 YEARS  
S/O.GOPALAKRISHNAN, MELEVEEDU, VADAKKEMURI  
KAZHANI, KALLEPPALLY P.O, KAVASSERY  
PALAKKADU, KERALA  
PRESENTLY WORKING AS HEALTH INSPECTOR, PHC  
NAVAYIKKULAM P.O. THIRUVANANTHAPURAM DISTRICT.

BY ADVS.SMT.K.KUSUMAM  
SRI.K.KALESH

RESPONDENT(S) :  
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1. THE STATE OF KERALA  
REPRESENTED BY THE PUBLIC PROSECUTOR  
HIGH COURT OF KERALA ERNAKULAM -682 031.

2. THE DIRECTOR GENERAL OF POLICE  
POLICE HEADQUARTERS, VAZHUTHACAUDU  
THIRUVANANTHAPURAM DISTRICT 695001.

3. THE DISTRICT POLICE CHIEF  
THIRUVANANTHAPURAM DISTRICT 695001.

4. C.R. BINDU  
AGED 40 YEARS, D/O.LATE RAGHAVAN, CHAKKALAKUL VEEDU  
PARAKKULAM P.O, PRINCHERY, THRISSUR DISTRICT 691 602.

SPL.G.P.SMT.SREELATHA PARAMESWARAN.

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON  
12-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(Cr1.).No. 463 of 2015 (S)  
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APPENDIX

PETITIONER(S) ' EXHIBITS  
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EXT.P1 - TRUE COPY OF G.O.P.262/2002 ON THE FILE OF FAMILY COURT,  
THRISSUR DATED 12.4.2002.

EXT.P2 - TRUE COPY OF ORDER IN IA.702/2002 IN G.O.P.262/2002 ON THE  
FILE OF FAMILY COURT, THRISSUR DATED 2.12.2002.

EXT.P3 - TRUE COPY OF JUDGMENT IN WP(CRL)NO.133/2014(S) ON THE FILE OF  
THE HON'BLE HIGH COURT OF KERALA DATED 29.6.2004.

EXT.P4 - TRUE COPY OF ORDER IN WP(CRL)NO.88/2007 FILED BEFORE THE  
HON'BLE SUPREME COURT OF INDIA DATED 30.07.2007.

EXT.P5 - TRUE COPY OF ORDER IN IA 3499/2013 IN G.O.P.262/2002 ON THE  
FILE OF FAMILY COURT, THRISSUR DATED 30.11.2013.

EXT.P6 - COPY OF LETTER FROM THE MINISTRY OF HOME AFFAIR TO PRINCIPAL  
SECRETARY, HOME DEPARTMENT, KERALA DATED 28.08.2014.

/TRUE COPY/

P.S. TO JUDGE.

s1.

**C.K.Abdul Rehim & Mary Joseph, JJ.**

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W.P.(Crl.)No.463 of 2015

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Dated this the 12<sup>th</sup> day of November, 2015.

**JUDGMENT**

**Abdul Rehim, J.**

1. The petitioner is approaching this court seeking a writ of Habeas Corpus for directing production of his son named M.G.Gopikrishnan, who is now aged 15 ½ years. *Inter alia* the petitioner is seeking direction for conducting DNA test of the petitioner, the 4<sup>th</sup> respondent, and the son, before Rajiv Gandhi Centre for Science and Technology, Thiruvananthapuram and to call for a report with respect to the parentage of Master M.G.Gopikrishnan.
2. Averments in the writ petition are that, the 4<sup>th</sup> respondent is the

wife of the petitioner, their marriage being solemnized on 10.5.1998. It is stated that, Master M.G.Gopikrishnan was born out of the said wedlock on 14.6.2000. It is further stated that the 4<sup>th</sup> respondent had deserted the petitioner and went back to her parental home along with the child. The petitioner filed GOP 262 of 2002 before the Family Court along with I.A.No.702 of 2002 for getting interim custody of the child. As per Ext.P2 order passed by the Family Court on 2.12.2002 in I.A.No.702 of 2002 the petitioner was allowed to see the child at any time at the residence of the 4<sup>th</sup> respondent. It is alleged that the 4<sup>th</sup> respondent had not permitted the petitioner to see the child, despite Ext.P2 order, and various petitions filed at the instance of the petitioner was not considered by the Family Court. In the year 2004, the petitioner had approached this court by filing W.P. (Crl.)No.133 of 2004 seeking a writ of Habeas Corpus for

directing production of the child, raising allegation that Ext.P2 order is not being complied with by the 4<sup>th</sup> respondent and her brother named Sri.Raveendranath. The said writ petition was disposed of by this court through Ext.P3 judgment, dated 29.6.2004 making it clear that if the order of the Family Court is not complied with it is left open to the petitioner to approach the said court for getting it implemented, rather than moving this court under a Habeas Corpus petition. This court observed that if the petitioner moves an application before the Family Court, that court will take appropriate action to get the order implemented and also to take steps for protection of the child.

3. It is stated in the writ petition that, thereafter the son of the petitioner had kidney problem and the petitioner filed applications before the Family Court seeking to provide medical aid to his son. It is stated that, based on the orders issued by the

Family Court, the child was admitted in a hospital and had undergone surgery, at the expenses of the petitioner. According to the petitioner, thereafter the case before the Family Court was pending for a long time. But after recovery of the child from the illness, the 4<sup>th</sup> respondent again refused to produce the child before the Family Court. It is stated that the petitioner came to know that the minor child was not in the custody of the 4<sup>th</sup> respondent and that the 4<sup>th</sup> respondent had handed over the child to some unknown persons. Therefore, the petitioner moved a case before the Hon'ble Supreme Court as W.P.(Crl.) 88 of 2007. The Hon'ble Supreme Court had disposed of the said case through Ext.P4, permitting the petitioner to withdraw the case observing that the petitioner had already moved the High Court and upon the basis of the directions issued by the High Court he had filed petition before the Family Court. It is evident from

Ext.P4 that the petitioner submitted before the Hon'ble Supreme Court that the Family Court had disposed of the matter. However the Supreme Court observed that, the order passed by that court will not preclude the petitioner from taking steps as is permitted under law.

4. Ext.P4 order was issued by the Hon'ble Supreme Court on 30.7.2007. According to the petitioner, the matter was again agitated before the Family Court by reviving GOP No.262 of 2002. It is stated that I.A.No.3499 of 2013 was filed before the Family Court seeking directions against the 4<sup>th</sup> respondent to produce the child. But on 30.11.2013 when the 4<sup>th</sup> respondent produced the child before the Family Court, the petitioner realized that the child produced is some other child and not his son. According to the petitioner, eventhough he made a request to the Family Court to take further steps to identify the child, the

Family Court dismissed the interim application on 30.11.2013 by recording the submission made on behalf of the petitioner that the child produced is not that of him. Ext.P5 is the order passed by the Family Court in this regard, on 30.11.2013.

5. It is stated in the writ petition that, after Ext.P5 order the petitioner was approaching various authorities including the State Police Chief, the Prime Minister and such other authorities, making various complaints about missing of his son and also requesting for a CBI enquiry in the matter. The petitioner has produced Ext.P6, which is a letter forwarded from the Ministry of Home Affairs, Government of India to the Principal Secretary of the Home Department of the State Government, informing that a CBI enquiry cannot be ordered *suo motu* by the Central Government unless the State Government makes any such request as per its desire to handover the case to CBI.

6. It is stated that thereafter on two occasions the 4<sup>th</sup> respondent had produced the child before the Family Court. But according to the petitioner the child produced was not that of him. It is stated that when the matter was brought to the notice of the Family Court, that court suspected about mental status of the petitioner and he was sent to psychiatric evaluation and a report was called for. According to the petitioner the report received was to the effect that the petitioner is perfectly alright with respect to his mental status. It is alleged that the petitioner had seen his son at two places while travelling in Bus at Thiruvilwamala on 26.12.2013 and near Navaikulam on 21.5.2015. But he could not locate him even after alighting from the Bus. It is alleged that, due to the undue influence of the 4<sup>th</sup> respondent, respondents 1 to 3 are not taking any steps to find out his son. According to the petitioner, his apprehension is that his real son

is not in the custody of the 4<sup>th</sup> respondent and she might have lost custody of the child. It is alleged that the 4<sup>th</sup> respondent is not revealing the real facts before the Family Court and is attempting to befool the petitioner. It is contended that, the petitioner, being the biological father of the son has got every fundamental right to know the identity and whereabouts of his son, who has been left in the custody of the 4<sup>th</sup> respondent since the year 2000 onwards. In such circumstance the petitioner is seeking invocation of jurisdiction vested on this court under Article 226 for granting the reliefs as mentioned above.

7. Heard Smt.Kusumam, learned counsel for the petitioner on the question of admission of the writ petition. Evidently an application seeking custody of the child was pending before the Family Court since the year 2002 onwards. It is admitted that, after the dismissal of the writ petition by this court in the year

2004, the petitioner was permitted to treat his son by admitting him in the hospital. But it is revealed that the petitioner had approached the Hon'ble Supreme Court in the year 2007 contending that the Family Court had dismissed the case. However it is conceded that the case was restored thereafter. The petitioner has not revealed the exact situation regarding what transpired in the Family Court between 2004 and 2013. However from Ext.P5 it is evident that an interim application was moved before the Family Court directing for production of the minor son. It is also not disclosed as to what transpired in the Family Court after dismissal of the said application, I.A.No.3499 of 2013 through Ext.P5 order, which was issued as early as on 30.11.2013. Eventhough it is alleged that the son of the petitioner was missing from the custody of the 4<sup>th</sup> respondent, the petitioner has not specifically mentioned as to when the 4<sup>th</sup>

respondent lost custody of the son or since when he came to know that his son is not in the custody of the 4<sup>th</sup> respondent. Eventhough it is alleged that the petitioner had lodged a complaint to the State Police Chief with respect to missing of his son, neither the copy of any such complaint is produced nor the date of submission of any such complaint is mentioned in the writ petition. Eventhough Ext.P6 is produced, which would reveal that the petitioner had submitted eversomany representations before the Central Government seeking CBI enquiry in the matter, he has not mentioned anything to the effect that he has lodged a complaint before any of the police authorities in the State with respect to missing of his son. If the petitioner has got a case that his son is missing, the first thing he would have done was to approach the police authorities with a proper complaint and to get the case registered with respect to

missing of his son. There is no specific case alleged to the effect that, despite such a complaint the police authorities have failed in registering a case and in investigating such case in an appropriate manner.

8. Learned counsel for the petitioner conceded that, after Ext.P5 the case before the Family Court (GOP 262/02) was also dismissed. It is not revealed on what basis the case was dismissed and as to whether the petitioner had taken any further steps challenging the dismissal or sought for a restoration of the case. On a comprehensive appreciation of the facts as disclosed, we are constrained to observe that the petitioner is not approaching this court with clear hands by revealing all the factual situations prevailing. At any rate, it is to be conceded that the petitioner has no case that his son is being illegally detained by anybody. Therefore there arise no question of invoking jurisdiction of this

court for ordering production of the corpus of his son, on the basis that he is under illegal confinement. At the most, this is a case where the petitioner is raising a grievance about missing of his son. If that be so, the petitioner is at liberty to seek appropriate remedy by way of approaching the police authorities concerned for registering a man missing case and to get the case investigated in order to trace out his son. Even if it is assumed that, the case of the petitioner is that despite such approach made, the authorities have failed in taking any effective steps, the remedy left open to him is not by way of filing a case seeking writ of Habeas Corpus. In such case, the petitioner can invoke jurisdiction of the appropriate court/authority complaining about inaction on the part of any specific officials in discharging the duty cast upon them. Having not resorted to any such remedies, the above case instituted seeking a writ of Habeas Corpus, that

too on the basis of very vague allegations raised, cannot be entertained.

9. Under the above mentioned circumstances, we are not inclined to admit the above writ petition and the same is hereby dismissed. However, we make it clear that the petitioner will be left open with appropriate remedies to approach any appropriate authorities or court with respect to the alleged missing of his son.

**C.K.Abdul Rehim, Judge.**

**Mary Joseph, Judge.**

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