

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

**WP(Cr1.) .No. 468 of 2015 (S)**

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PETITIONER(S) :

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MRS.BINDHU SAMPATH, AGED 48 YEARS  
W/O.MR.SAMPATH, RESIDING AT THEKKEVEEDU, ATTUKAL  
MANACAUD P.O. THIRUVANANTHAPURAM 695 009.

BY ADV. SRI.SREELAL N.WARRIER

RESPONDENT(S) :

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1. THE DIRECTOR GENERAL OF POLICE  
KERALA, POLICE HQ, VAZHUTHACAUD  
THIRUVANANTHAPURAM - 695 010.

2. SUB INSPECTOR OF POLICE, VIDYANAGAR POLICE STATION,  
KASARAGOD - 671 123.

3. VINCENT @ NISA  
AGE AND FATHER'S NAME NOT KNOWN AND LAST UNDERSTOOD TO HAVE  
RESIDED AT KALLAVARA PARAMBIL HOUSE,  
NEAR YAKKARA TELEPHONE EXCHANGE, YAKKARA  
PALGHAT - 678 701.

R1 AND R2 BY GOVERNMENT PLEADER SRI. UNNI SEBASTIAN KAPPAN  
R3 BY ADV. SRI.V.A.JOHNSON (VARIKKAPPALLIL)

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON  
25-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON & ANIL K. NARENDRAN, JJ.**

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**W.P.(CrI.)No.468 of 2015**

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Dated, this the 25<sup>th</sup> day of November, 2015

**JUDGMENT**

Anil K. Narendran, J.

The petitioner has approached this Court in this Writ Petition, seeking a writ of habeas corpus directing respondents 1 to 3 to produce before this Court the body of the alleged detainee Nimisha A., the daughter of the petitioner, who is under illegal custody of the 3<sup>rd</sup> respondent. The petitioner has also sought for a writ of mandamus commanding respondents 1 and 2 to investigate into and report under what circumstances and how the alleged detainee has been converted into a different religion.

2. According to the petitioner, her daughter Nimisha, aged 25 years, a Final BDS student at Century Dental College, Poinachi, Kasaragod District is found missing from the College Hostel from 7.11.1995 onwards. The petitioner's husband filed a complaint before the 2<sup>nd</sup> respondent and the Police registered Crime No.479/2015 of Vidhyanagar Police Station, under Section 57 of the Kerala Police Act, 2011. It is alleged in the Writ Petition that, the petitioner's daughter is under the illegal custody of the 3<sup>rd</sup>

respondent and she has been converted to Islam. On 10.11.2015, the alleged detainee was brought to Vidhyanagar Police Station. As informed by the 2<sup>nd</sup> respondent, the petitioner and others reached Vidhyanagar Police Station on 11.11.2015 and met the alleged detainee. At that time, a group of Muslim Youths were found assembled outside the Police Station. The 2<sup>nd</sup> respondent produced the alleged detainee before the Judicial First Class Magistrate Court, Kasaragod. The learned Magistrate, after recording her statement set her at liberty and she went along with the group of persons then found outside the Court. Thereafter, the petitioner was not informed of the whereabouts of the alleged detainee.

3. By order dated 16.11.2015, this Court directed the third respondent to produce the alleged detainee Nimisha before this Court, if she is available in his custody. The Government Pleader was also directed to get instructions from respondents 1 and 2 as to whether any crime with respect to missing of the alleged detainee has been registered on the basis of the complaint of the petitioner and if so, what is the stage of the investigation. This Court has also directed the 2<sup>nd</sup> respondent to

take earnest efforts to trace out the alleged detainee and produce her before this Court.

4. Today, when the case was taken up for consideration, the alleged detainee and the 3<sup>rd</sup> respondent were personally present in Court. A statement has also been filed by the 2<sup>nd</sup> respondent stating that, on 10.11.2015 the investigation team located the alleged detainee at Yakkara in Palakkad District and she was brought to Vidhyanagar Police Station. Her statement was recorded in the Police Station. As per the statement so recorded, she is living with her husband Issa @ Bexen, son of the 3<sup>rd</sup> respondent herein. In September, 2013 she got converted into Islam at her own will, at Salafi Masjid, Thiruvananthapuram and changed her name as Fathima Nimisha. She got married with Issa @ Bexen in the month of October, 2015 at Payannur in Kannur District. She was produced before the Judicial First Class Magistrate Court, Kasaragod. The learned Magistrate, after recording her statement set her at liberty. The statement filed by the 2<sup>nd</sup> respondent would further reveal that, as directed by this Court in the order dated 16.11.2015, the 2<sup>nd</sup> respondent conducted enquiry at the house

of the 3<sup>rd</sup> respondent at Yakkara in Palakkad District. The 3<sup>rd</sup> respondent stated before the 2<sup>nd</sup> respondent that, his son Bexen married the alleged detenue and they frequently reside at Yakkara. However, their present whereabouts are not known to him. In the enquiry conducted in the house near Yakkara Telephone Exchange, where the alleged detenue and her husband ordinarily reside, the house was found locked and no information could be obtained from the neighbourhood. In the enquiry conducted in the house of one Rashid, who is a friend of Issa @ Bexen, at Udumbumthala in Kasaragod District, where he redinary resides along with his wife, the said house was also found locked and no information could be obtained from the neighbourhood.

5. We have interacted with the alleged detenue, who was personally present in Court. The alleged detenue has stated that, she is not under illegal custody of either the 3<sup>rd</sup> respondent or his son Issa @ Bexen and that, her customary marriage with the said Isha @ Bexen, who also got converted into Islam, was solemnised in the month of October, 2015 at Payannur in Kannur District. In order to register the customary marriage, under the

provision of the Special Marriage Act, 1954, they have already moved the Marriage Officer concerned. The alleged detainee has also stated that, she does not want to go back with her parents.

6. We have interacted with the 3<sup>rd</sup> respondent, who was personally present in Court. The 3<sup>rd</sup> respondent reiterated the stand taken during the enquiry conducted by the Police, as revealed from the statement filed by the 2<sup>nd</sup> respondent before this Court.

7. We have also interacted with Issa @ Bexen, who was personally present in Court. He has stated that, he got married with the alleged detainee in the month of October, 2015 at Payannur in Kannur District and residing with her in his own house at Yakkara in Palakkad District. He has also stated that, his only source of income is the agricultural income received from the land settled in his favour by a deed executed by his father, namely the 3<sup>rd</sup> respondent.

8. Considering the facts and circumstances as mentioned above, we find that the alleged detainee, is not under illegal custody of either the 3<sup>rd</sup> respondent or his son Issa @ Bexen. In such circumstances, the Writ Petition fails and the

same is dismissed.

9. But, it is made clear that the dismissal of the Writ Petition will not stand in the way of the petitioner pursuing the further relief sought for in this Writ Petition or the 1<sup>st</sup> and 2<sup>nd</sup> respondent conducting investigation in accordance with law, with regard to the incriminating materials or circumstances, if any, found in the investigation conducted in Crime No.479/2015 of Vidhyanagar Police Station. All the contentions raised by the petitioner in this regard are left open.

No order as to costs.

Sd/-  
**P. R. RAMACHANDRA MENON,**  
**JUDGE**

sd/-  
**ANIL K. NARENDRA,**  
**JUDGE**

kmd

/True copy/

P.A. to Judge