

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 7TH DAY OF DECEMBER 2015/16TH AGRAHAYANA, 1937

WP(Crl.).No. 472 of 2015 (S)

PETITIONER(S)/PETITIONER:

ANEES MUHAMMED K.
S/O.KUNHIMUHAMMED.K, KUNANGATTIL HOUSE
THIRUVEGAPPURA(PO), PATTAMBI TALUK
PALAKKAD DT.PIN:679304.

BY ADVS.SRI.T.K.AJITH KUMAR
SRI.P.VINODKUMAR
SRI.K.T.SIDHIQ
SMT.M.A.JINSA MOL

RESPONDENT(S)/RESPONDENTS:

1. THE SUB INSPECTOR OF POLICE
KALPAKANCHERY POLICE STATION, KALPAKANCHERY(P.O)
MALAPPURAM DT.PIN:676551.
2. SHANMUGHAN,
S/O.ARAMUGHAN, MANDALATH HOUSE, RANDATHANI(PO)
ATHIRUMADA, TIRUR TALUK, MALAPPURAM DT.PIN:676510.
3. ARAMUGHAN,
MANDALATH HOUSE, RANDATHANI(PO), ATHIRUMADA
TIRUR TALUK, MALAPPURAM DT.PIN:676510.
4. NARAYANI,
W/O.ARAMUGHAN, MANDALATH HOUSE, RANDATHANI(PO)
ATHIRUMUNDA, TIRUR TALUK, MALAPPURAM DISTRICT
PIN-676510.

5. VAHIDA @ KRISHNAPRIYA,, AGED 21 YEARS
D/O.MUHAMMEDKUTTY, C/O.SHANMUGHAN, MANDALATH HOUSE
RANDATHANI(PO), ATHIRUMADA, TIRUR TALUK
MALAPPURAM DT.PIN:676510.

R3,R4 BY ADV. SMT.ANJALI G.KRISHNAN
R3,R4 BY ADV. SRI.C.M.MOHAMMED IQUABAL
R2 &5 BY ADV. SRI.C.K.MOHANAN
R BY GOVERNMENT PLEADER SRI. EGGY N. ELIAS

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON
07-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(Crl.).No. 472 of 2015 (S)

APPENDIX

PETITIONER(S)' EXHIBITS

P1 TRUE COPY OF THE COMPLAINT DATED 17.11.2015 SUBMITTED BEFORE
THE 1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS

NIL

TRUE COPY

PS TO JUDGE

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

WP(Crl.) No. 472 of 2015

Dated this the 7th day of December, 2015

JUDGMENT

Abdul Rehim,J.

The petitioner is approaching this court seeking a writ of habeas corpus for directing production of his minor child aged 1½ years, namely Master Arshak. Allegation is that, the minor child born out of the wedlock with the 5th respondent is being illegally detained by respondents 2 to 5. It is stated that the 5th respondent had left the company of the petitioner along with the child on 17.10.2015, under the pretext that she is going to attend the 'Fashion Designing' class. Thereafter when the petitioner tried to contact her the mobile phone was switched off. A case was registered with respect to missing of the 5th respondent at Valanchery Police Station as Crime No.1026/2015 under section 57 of the Kerala Police Act. It is mentioned that the 5th respondent had surrendered before the Judicial First Class Magistrate Court I, Tirur on 12.11.2015 along with the child and

expressed her wish to go along with the 2nd respondent. The court had let her free to go along with the 2nd respondent, but directed that the petitioner should be permitted to meet the child once in a week. Alleging that, without complying the above said direction respondents 2 and 5 have taken the child to some unknown place, this writ petition is filed. Respondents 3 and 4 are the parents of the 2nd respondent. It is alleged that respondents 3 and 4 are also hiding the child without permitting the petitioner to see him. Based on the specific allegation of illegal detention of the child, the above writ petition is filed.

2. When the case came up for consideration on 23.11.2015 this court ordered notice to respondents 2 to 5, directing them to produce the minor child of the petitioner before this court. The 1st respondent was directed to take steps to trace out the missing child and to ensure that the child is produced before this court. Despite such an order the child was not traced out and produced. Respondents 3 and 4, who entered appearance through counsel, submitted that they are not aware about the present place of residence of respondents 2 and 5 and that they are not having custody of the child. It was submitted on behalf of the police authorities that, enquiry conducted had revealed that th 5th

respondent had converted to Hindu religion and adopted the name 'Krishnapriya' and a marriage with the 2nd respondent was solemnised under the Hindu rites.

3. Since the missing child was not traced out this court directed the District Police Chief, Malappuram to take personal attention in the matter and to entrust the investigation with any responsible officer. Consequently, when the case is taken up on today, the 5th respondent along with the child was produced before this court. Counsel had entered appearance on behalf of the respondents 2 and 5. It is contended that there is a marriage established between respondents 2 and 5 and the 5th respondent is now staying along with the 2nd respondent. It is further contended that the child is now in the custody of the 5th respondent and she is being looked after by the 5th respondent. Learned counsel appearing for the petitioner, on the other hand contended that, respondents 2 and 5 are hiding out the child in some unknown places and they were not available even in the house of the 2nd respondent. According to him, the child is not kept under safe circumstances and the petitioner being the father is entitled to have custody of the child.

4. It is brought to notice of this court that the petitioner

had already approached the Family Court, Tirur seeking permanent custody of the child by filing OP.No.659/2015. It is also mentioned that the said case stands posted before the Family Court on 21.12.2015. We are of the considered opinion that, who among the petitioner and the 5th respondent is the best suitable parent for entrusting with custody of the minor child, is a question which can be best adjudicated and decided by the appropriate court. It is left open to the petitioner to seek interim custody in any appropriate application before the said court. We are of the opinion that it is for the Family Court to take a decision considering urgency of the matter, on a earlier basis.

5. Today we have permitted the petitioner to have access with the child for some time, and the child was thereafter returned custody to the 5th respondent. Eventhough learned counsel for the petitioner pressed for an order directing handing over custody of the child to the petitioner, till the matter is taken up for consideration by the Family Court, we are not inclined to grant any such relief, considering the tende age of the child. It is for the Family Court to consider all such aspects and to take an appropriate decision, untrammelled by any observations

contained herein.

6. As it is convinced that the 5th respondent is now keeping custody of the minor child and that she is living along with the 2nd respondent in Muthuthara at Palakkad, we are not holding that the child is under illegal custody. Hence there exist no circumstances warranting interference of this court for issuance of any writ of habeas corpus.

7. Hence the above writ petition is hereby disposed of by directing the Family Court, Tirur to dispose of the case at the earliest or to pass appropriate orders with respect to interim custody of the child. It is undertaken on behalf of the 5th respondent that she had taken notice of pendency of the matter before the Family Court and about the posting of the case on 21.12.2015. It is further undertaken that she will enter appearance before the Family Court on the said date along with the child.

C.K.ABDUL REHIM, JUDGE

MARY JOSEPH, JUDGE

Pmn/

