

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 14TH DAY OF DECEMBER 2015/23RD AGRAHAYANA, 1937

WP(Crl.).No. 476 of 2015 (S)

PETITIONERS:

1. ALIKUTTY PAULOSE,
W/O, PAULOSE, POOVATHUNGAL HOUSE
LAUNDRY, UPPUTHARA, IDUKKI DISTRICT, PIN-685 505.
2. THOMAS P.P. @ BABU
S/O. PAULOSE, POOVATHUNGAL HOUSE, LAUNDRY
UPPUTHARA, IDUKKI DISTRICT, PIN-685 505.

BY ADVS.SRI.A.A.ZIYAD RAHMAN
SRI.LAL K.JOSEPH
SRI.V.S.SHIRAZ BAVA
SRI.JOSEPH KURIAN VALLAMATTAM
SRI.K.H.ANSAR

RESPONDENTS:

1. THE SUPERINTENDENT OF POLICE
IDUKKI, AT PAINAVU, IN IDUKKI DISTRICT, PIN-685 603.
2. THE SUB INSPECTOR OF POLICE
UPPUTHARA POLICE STATION, UPPUTHARA, IDUKKI DISTRICT.
3. THE SUB INSPECTOR OF POLICE
IDUKKI POLICE STATION, IDUKKI DISTRICT.
4. AMAL JYOTHI CHARITABLE SOCIETY
REG. NO.1.143/2008, CMC CONVENT, PAINAVU
IDUKKI DISTRICT, PIN-685 603.
5. CHAVARAGIRI CMI SPECIAL SCHOOL
VIKAS BHAVAN, PARAPPU, AYYAPPAN KOVIL P.O.
IDUKKI DISTRICT, PIN-685 507.

- *6. THE CHILD WELFARE COMMITTEE,
IDUKKI MINI CIVIL STATION, THODUPUZHA, IDUKKI DISTRICT,

R1 TO R3 BY ADV. SRI. K.I. ABDUL RASHEED, ADGP &
ADV.SRI. P.S. ABDUL KAREEM, GOVT. PLEADER.
R5 BY ADV. SMT.SARITHA THOMAS
SMT. MANASY T.

*[R6 IS IMPEADED AS PER ORDER DATED 27-11-2015 IN IA No.17103/2015.]

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON 14-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:
AMG

APPENDIX

PETITIONER(S)' EXHIBITS

**P1 : TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME 241/2014 OF
UPPUTHARA POLICE STATION.**

**P2: TRUE COPY OF THE CHARGE SHEET IN SC 198/2015 OF THE SESSIONS
COURT (SPECIAL COURT) THODUPUZA.**

RESPONDENTS' EXHIBITS

NIL

True copy

P.A. To Judge

AMG

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

W.P (Crl.) No. 476 OF 2015

DATED THIS THE 14th DAY OF DECEMBER, 2015

J U D G M E N T

C.K. Abdul Rehim, J:

The petitioners are approaching this court alleging illegal detention of a minor child, who is a mentally retarded and dumb and could able to utter only few words. The child is the daughter of the 2nd petitioner, who is the son of the 1st petitioner. The child was studying in the 5th respondent's school. On 09-06-2014 the child was subjected to sexual harassment, with respect to which a case was registered against the 2nd petitioner and it stands charge sheeted against him for offences punishable under Section 376 of IPC read with Section 4 of Protection of Children from Sexual Offences Act, 2012. The said case is pending for trial before the Sessions Court (Special Court), Thodupuzha as SC No.198/2015.

2. Allegation of the petitioners is that the real culprit is somebody from the 5th respondent's school and that the 2nd petitioner is innocent with respect to the alleged offence. Meantime, custody of the child namely 'Ann Maria' (herein after referred to as the alleged detainee) was entrusted with the 4th respondent by the additional 6th respondent. The 1st petitioner alone is permitted to have occasional visit to the child. According to the petitioners, the child is very much affectionate to them, as well as to sister of the 2nd petitioner, who is widow residing in the house. Eventhough the petitioners made request for release of the alleged detainee, the respondents 4 & 5 are denying such request, is the allegation. It is contended that the 2nd petitioner is the natural guardian who is entitled to have custody of the child and that the respondents 4 & 5 have no manner of right to keep custody of the child, without consent of the petitioners. It is on the basis of the specific allegation that the alleged detainee is under illegal detention, the above writ petition is filed.

3. Pursuant to notice issued from this court the 5th respondent entered appearance through counsel and sought time to file counter affidavit. Based on a direction issued from this court, learned Government Pleader had collected instructions from respondents 3 to 6. A statement submitted by the Chairman of the additional 6th respondent is produced for perusal of this court. It would indicate that a petition was received by the 6th respondent from the Co-ordinator of the Child line, Idukki at Kattapana on 11-06-2014 containing allegations of sexual abuse of the alleged detainee, along with a written complaint from the teachers of the 5th respondent's school. The 6th respondent had forwarded the complaint to the 2nd respondent, based on which the criminal case was registered. The alleged detainee is a mentally retarded child. She was not co-operating with the committee to record her statement. But based on the documents the committee had arrived at a conclusion that the alleged detainee is a child need care and protection under Section 2 (d) (ii) & (vi) of the Juvenile Justice (Care and Protection of Children) Act, 2000.

Therefore the child was provided with shelter in the 4th respondent's institution, until further orders, taking into consideration of the fact that the alleged detainee is a mentally retarded child and the father of the alleged detainee is accused in the case and that the mother of the child is not in a position to give protection, as she is in conflict with her husband and is out of home; and also because of the fact that the 5th respondent's school has no residential facility. The 4th respondent institution where the child is placed under custody has a special residential school for mentally retarded children and they are willing to provide protection to the child. A report submitted by the 4th respondent to the 6th respondent would indicate that child is responding positively to education and treatment. As the child belongs to the category of down syndrome, she need special training and treatment and consideration, is the statement. Therefore the committee has not taken any decision to place the child in her family. It is further mentioned that the 1st petitioner had filed an application before the 6th respondent on 21-11-2014 seeking discharge

of the 2nd petitioner from the criminal case. But the 6th respondent had dismissed the petition since the committee has no jurisdiction to decide such an issue.

4. Subsequently, on 16-02-2015, the 1st respondent had filed an application before the 6th respondent expressing her desire to visit the child at the 4th respondent's institution. The committee had granted permission. Accordingly the 1st petitioner had met the alleged detainee. It is stated that the committee had placed the alleged detainee who is a victim child in the 4th respondent's special school, in exercise of its power under Section 31 (1) of the Juvenile Justice Act, read with Section 4 (4) of the POCSO Act, 2012. The child was removed from the 5th respondent's school because the said school has no residential hostel. It is categorically mentioned that, nobody including the petitioners have not filed any application for custody of the child.

5. From the facts revealed as above, this court is convinced that the alleged detainee is not under any illegal confinement as alleged in the writ petition. Evidently the

alleged detainee is now entrusted with the 4th respondent on the basis of orders issued by the 6th respondent, who is the authority vested with powers under the Juvenile Justice Act. If the petitioners have got any case that they are entitled to get custody of the child, it will be left open to them to approach the 6th respondent with any appropriate petition, in which case the 6th respondent will be obliged to take a decision, after conducting necessary enquiry. Having not resorted to any such recourse, the present writ petition is filed seeking a writ of Habeas Corpus cannot be entertained.

6. Therefore the above writ petition is dismissed by reserving liberty to the petitioners to approach the 6th respondent for redressal of their grievance.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

MARY JOSEPH, JUDGE.

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True copy

P.A. to Judge