

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 22ND DAY OF DECEMBER 2015/1ST POUSHA, 1937

WP(Crl.).No.485 of 2015 (S)

PETITIONER:

RAJESH, AGED 44 YEARS
S/O.GOPALAKRISHNA PILLAI, AJIPRIYA NIVAS
MANKOMPU DESOM, KUTTANAD TALUK, ALAPPUZHA.

BY ADVS.SRI.ABDUL JALEEL.A
SMT.M.A.SULFIA

RESPONDENTS:

1. REGHUNATHAN NAIR,
FATHER OF RANJITHA, KOCHUPARAMBIL, KOTTABHAGAM
MANKOMPU, KUTTANAD TALUK, ALAPPUZHA
PIN-688502.
2. RANJITHA, AGED 34 YEARS
D/O.REGHUNATHAN NAIR, KOCHUPARAMBIL, KOTTABHAGAM
MANKOMPU, KUTTANAD TALUK, ALAPPUZHA
PIN-688502.
3. SUB INSPECTOR OF POLICE
PULINKUNNU, KUTTANAD TALUK, ALAPPUZHA
PIN-688502.
4. SUPERINTENDENT OF POLICE
OFFICE OF THE SUPERINTENDENT OF POLICE, BAZAR POST
ALAPPUZHA-688012.
5. THE PRINCIPAL
ST.THOMAS CENTRAL SCHOOL, PERURKARA, KUTTANAD TALUK
ALAPPUZHA, PIN-688502.

R3 & R4 BY SENIOR GOVT. PLEADER SRI.SHIBU JOSEPH
R1 BY ADV. SRI.K.S.HARIHARAPUTHRAN
R1 BY ADV. SRI.GEORGE MATHEW

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON
22-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS:

P1 : TRUE COPY OF THE BIRTH CERTIFICATES OF GOUTHAM KRISHNA, AGED 12 YEARS, AND DIYA KRISHNA AGED 10 YEARS.

P2 : PHOTOGRAPH OF GOUTHAM KRISHNA, AND DIYA KRISHNA.

P3 : TRUE COPY OF THE COMPLAINT FILED BEFORE R3 DT.3-9-2013.

P4 : TRUE COPY OF THE LETTER GIVEN TO R5 DTD. 8-4-2013.

P5 : TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE THE R4 DTD. 14-11-2015.

RESPONDENT(S)' EXHIBITS:

NIL

// TRUE COPY //

P.A TO JUDGE.

C.K.ABDUL REHIM & ALEXANDER THOMAS, JJ.

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Dated this the 22nd day of December, 2015.

J U D G M E N T

Abdul Rehim, J.

Father of two minor children namely, Goutham Krishna, aged 12 years and Diya Krishna, aged 10 years, is the petitioner herein, seeking a Writ of Habeas Corpus commanding for their production before this Court and to set them at liberty.

2. Allegations are to the effect that, the 2nd respondent is detaining the minor children under illegal confinement. Averments in the writ petition would indicate that the marriage between the petitioner and the 2nd respondent was solemnized in the year 2002. But they separated through dissolution due to severe discord, during the year 2013. It is alleged that the 2nd respondent had taken the minor children from the residence of the petitioner on 4.9.2012, when the children were studying at a school near to the petitioner's residence. Since the houses of both

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the petitioner and the 2nd respondent are in the same locality, where the children were admitted in a school, the petitioner used to visit them and was in good relationship. But from March, 2013 onwards, he could not see the children at the school because the 2nd respondent had taken them away without knowledge of the school authorities or without any intimation to the petitioner. Even though the petitioner had approached the 1st respondent, who is the father of the 2nd respondent, he has not disclosed whereabouts of the children. It is alleged that, on 12.11.2015 when the petitioner approached the 1st respondent he had replied that the petitioner need not enquire about the children and he don't know whereabouts of them. According to the petitioner, the 2nd respondent is not at all bothered about the children and he apprehended that she might have put the children in trouble. It is stated that the petitioner is not in a position to locate whereabouts of the children. Hence, alleging illegal custody of the minor children by respondents 1 & 2, the above Writ Petition is filed.

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3. Even though this Court was not inclined to admit the above writ petition, because of the fact that custody of the minor children with their mother cannot be termed as illegal detention, counsel for the petitioner had raised a plea that the petitioner is not even in a position to ascertain where the children is now living and as to whether the children are available in the custody of the 2nd respondent. Therefore, this Court directed the 3rd respondent to make an enquiry and to submit a report to this Court with respect to the present whereabouts of the two minor children.

4. In a statement submitted by the 3rd respondent it was indicated that, the 2nd respondent is now in Delhi along with the 2 minor children and that she is residing along with her sister. But the 3rd respondent could not collect the address of the 2nd respondent in Delhi, because the 1st respondent has not revealed the present address. Learned counsel for the petitioner submitted that since whereabouts of the children are not revealed, he is not in a position even to move the appropriate courts seeking custody of the children. Therefore, notice was issued to respondents 1 & 2

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directing production of the minor children.

5. Based on notice received from this Court, the 1st respondent entered appearance through counsel and filed counter affidavit. It is stated in the affidavit that the 2nd respondent is at present working at Gwalior in Madhya Pradesh, where her sister is also employed. It is stated that the petitioner has not visited the 1st respondent or enquired about the children, and the allegations raised otherwise are absolutely false. It is also alleged that the intention behind filing of the above Writ Petition is ill-motivated. It is mentioned in the affidavit that the children are now studying in Class VII and V, respectively, in St. Teresa's Senior Secondary School, Carmel Nagar, Sikender Kampoo, Gwalior, Madhya Pradesh and in the Kids Academy School, F-299, Harishankerpuram, Lashkar, Gwalior, Madhya Pradesh.

6. When the case is taken up for consideration on today, the learned counsel for the petitioner pointed out that, despite revealing the names of the schools where the children are studying, the 1st respondent has not mentioned about address of the 2nd

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respondent. Learned counsel for the 1st respondent submitted that he has no objection in revealing the address, but, the only apprehension is that the petitioner may create trouble at her place of residence and at her work place and will try to cause hindrance for earning her livelihood and maintenance of the minor children. However, learned counsel for the 1st respondent had informed this Court that the 2nd respondent is at present residing at Flat No.301, Neha Apartments, Chitenysigoth, Gwalior in Madhya Pradesh State.

7. From the facts enumerated as above, it is evident that the minor children are in the custody of the 2nd respondent, who is their mother. Parents of the children are living separated since their marriage stands dissolved. Evidently, the children are in the custody of the mother since the last about 2 years. Whether the petitioner is entitled to have permanent custody of the minor children or as to whether he is entitled to have interim custody or visitation on the minor children, are questions which can be well adjudicated by the court having competent jurisdiction under the Guardian and Wards Act. Since the minor children are in the

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custody of their mother, this Court cannot hold that they are kept under illegal confinement or detention. There exists no circumstances warranting interference by this Court to issue any Writ of Habeas Corpus. It will be left open to the petitioner to seek appropriate remedy before the Family Court having jurisdiction in the matter.

Therefore, the above Writ Petition is dismissed, reserving liberty of the petitioner to seek appropriate remedy before the appropriate court.

C.K.ABDUL REHIM,
Judge.

ALEXANDER THOMAS,
Judge.

bkn/-