

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 30TH DAY OF NOVEMBER 2015/9TH AGRAHAYANA, 1937

WP(Crl.).No. 488 of 2015 (S)

PETITIONER(S) :

REMYA.R, AGED 29 YEARS,
D/O.RAJI.K, RESIDING AT "KESHAVAM", SANKARNAGAR,
504, KAIMONAM, THIRUVANANTHAPURAM.

BY ADVS.SRI.J.R.PREM NAVAZ
SRI.P.T.SHEEJISH

RESPONDENT(S):

1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO HOME DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM, PIN-695 009.
2. THE DIRECTOR GENERAL OF POLICE,
OFFICE OF THE DIRECTOR GENERAL OF POLICE,
POLICE HEAD QUARTERS, VAZHUTHACADU,
THIRUVANANTHAPURAM- 695 004.
3. CIRCLE INSPECTOR OF POLICE,
ETTUMANOOR CIRCLE, KOTTAYAM DISTRICT, PIN-686 041.
4. THE STATION HOUSE OFFICER,
VAIKOM POLICE STATION, KOTTAYAM DISTRICT, PIN-686 041.
5. MAHES S., AGED 34 YEARS,
S/O.S.SAMBASIVAN, RESIDING AT MADAPPALLIMADOM,
EAST GATE, NEAR AYYAPPAN TEMPLE, MURIYANKULANGARA,
VAIKOM, KOTTAYAM DISTRICT, PIN-686 041.

R1 TO R4 BY SPL.GOVERNMENT PLEADER SMT.SREELATHA PARAMESWARAN

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION
ON 30-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

Msd.

WP(Crl.).No. 488 of 2015 (S)

APPENDIX

PETITIONER(S)' EXHIBITS :

**EXHIBIT P1 : TRUE COPY OF THE COMPLAINT FILED BEFORE THE SUB
INSPECTOR OF POLICE, VAIKOM DATED 25-11-2015.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

C.K.ABDUL REHIM & K.RAMAKRISHNAN, JJ.

WP(Crl) No. 488 of 2015

Dated this the 30th day of November, 2015

JUDGMENT

Abdul Rehim,J.

The mother of a girl child aged about 3 ½ years is the petitioner seeking a writ of habeas corpus for directing production of the child and to handover custody to her.

2. Averments in brief are that, the marriage between the petitioner and the 5th respondent was solemnised on 25.10.2009 and the child was born out of the wedlock on 3.4.2012. It is alleged that all along the 5th respondent was causing harassment to the petitioner and there exists severe matrimonial disputes. It is alleged that, on 2.11.2015 the 5th respondent started assaulting the child and it was questioned by the petitioner, which resulted in a quarrel between them. The petitioner was brutally manhandled and the 5th respondent had abducted the child and went out of the house, after declaring that the petitioner will never going to see the child again. The petitioner

got panic of the situation and had attempted to commit suicide, and was hospitalised. It is mentioned that, on 7.11.2015 when the petitioner approached the 5th respondent to have her child, the 5th respondent had threatened and coerced her to sign certain documents, including a petition for divorce on mutual consent. It is mentioned that, despite Ext.P1 complaint lodged before the 4th respondent, no effective steps were taken to trace out the child and secure custody to the petitioner.

3. Contention of the petitioner is that the child being of tender age needs protection, care, love and affection of the mother and that the 5th respondent had openly declared a hostile attitude towards the child and is intentionally keeping away the child from the company of the petitioner in order to harass her. From the circumstances narrated in the writ petition it is evident that there exists severe matrimonial dispute between the petitioner and the 5th respondent. Evidently the child is kept in the custody of the 5th respondent from 2.11.2015 onwards. This court is of the considered opinion that the jurisdiction vested under Article 226 need not be exercised for issuance of a writ of habeas corpus, because the child is in the custody of her father,

which cannot be termed as an illegal detention or confinement.

4. Learned counsel advanced vehement arguments appealing this court for interference in order to protect the best interest of the child. Of course, settled precedents are to the effect that this court in appropriate cases even while exercising jurisdiction under Article 226 or 227 can pass orders in the interest of the welfare of the child, which should be the paramount consideration while deciding the question of custody. But who among the parents is the best suited person to have custody of the child is a matter which can be best adjudicated by the Family Court. It is for the Family Court to decide the question with due regard to the circumstances under which the child can be given custody to either of the parents, for which prima facie appreciation of factual aspects and circumstances is necessary . This court do not find any extreme special circumstances prevailing which warrants interference in this case, which is filed without invoking jurisdiction vested on the Family Court.

5. Hence we are not inclined to entertain this writ petition. However, it is made clear that the petitioner will be at

liberty to approach the Family Court seeking for custody of the minor child. She will be also at liberty to approach the Family Court in appropriate application seeking interim custody, pending disposal of the case. We do not think the Family Court, if appraised of the urgency of the matter, will not consider any such interim application expeditiously.

5. Under the above mentioned circumstances the writ petition is disposed of by reserving liberty to the petitioner to approach the Family Court seeking appropriate reliefs.

C.K.ABDUL REHIM, JUDGE

K.RAMAKRISHNAN, JUDGE

Pmn/

