

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH**

THURSDAY, THE 17TH DAY OF DECEMBER 2015/26TH AGRAHAYANA, 1937

WP(Crl.).No. 506 of 2015 (S)

PETITIONER:

**DR.JASHIR KUNHAMMED PALIKKUNNIL,
AGED 43 YEARS, S/O. PALIKUNNIL MUHAMMED KUNHAMED,
PULIKUNNIL HOUSE, KOTTILKULAM, BECKEL P.O.,
KASARAGOD DISTRICT**

BY ADV. SRI.M.T.SURESHKUMAR

RESPONDENTS:

- 1. KADAVATH ABDULLA KUNHI ABDUL KHADAR,
KADAVATHU HOUSE, KOTTKKULAM, BEKAL P.O.,
KASARAGOD-671318.**
- 2. FAJIB ABDUL KHADAR,
KADAVATHU HOUSE, KOTTKKULAM, BEKAL P.O.,
KASARAGOD-671318.**
- 3. THE DISTRICT POLICE CHIEF,
KASARAGODE-671121.**
- 4. DEPUTY SUPERINTENDENT OF POLICE,
HOSDURG-671121.**
- 5. THE CIRCLE INSPECTOR OF POLICE,
HOSDURG-671121.**
- 6. S.I. OF POLICE,
BEKAL POLICE STATION, PIN-671318.**

**R3-R6 BY ADV. SMT. SREELATHA PARAMESWARAN, (SPL. G.P. FOR WOMEN
AND CHILDREN)**

**THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON
17-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AMG

APPENDIX

PETITIONERS' EXHIBITS

- EXT- P1- TRUE COPY OF THE MARRIAGE CERTIFICATE DATED 09-09-2002.
- EXT- P2- TRUE COPY OF THE COMPLAINT FILED BEFORE THE 3RD
RESPONDENT DATED 10-12-2015.

RESPONDENTS' EXHIBITS

NIL

True copy

P.A. To Judge

AMG

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

W.P (Crl.) No. 506 OF 2015

DATED THIS THE 17th DAY OF DECEMBER, 2015

J U D G M E N T

C.K. Abdul Rehim, J:

The petitioner is approaching this court seeking a writ of Habeas Corpus for directing production of the alleged detinue namely, Mrs.Thajisha, who is the wife of the petitioner, before this court. Allegation is that the respondents 1 & 2 are illegally detaining her against her free will.

2. Averments are to the effect that marriage between the petitioner and Mrs.Thajisha (herein after referred to as the alleged detinue) was solemnized on 28-07-2001 and two children were born out of the wedlock, who are aged 12 years and 9 years respectively. After the marriage the petitioner along with the wife was living at Jeddah in Saudi Arabia, since the petitioner was working in a Hospital therein. It is stated that the petitioner along with

his wife and children came to India on 01-08-2015 to attend a marriage ceremony of one of his relatives. After attending the marriage function the petitioner had visited various tourists places along with his family. On 24-08-2015 the respondents 1 & 2 along with mother of the alleged detainee came to the house of the petitioner and they insisted for sending the alleged detainee along with them, under the pretext that they have arranged some prayers in their home and that the alleged detainee needs treatment. The petitioner also accompanied her to the parental house . As insisted by the alleged detainee, the petitioner had permitted her to stay with her parents for few days. At that time the children were with the parents of the petitioner. The alleged detainee and the children were scheduled to go back to Saudi Arabia on 02-09-2015. But when the petitioner visited the parental house of the alleged detainee, he was not permitted to meet his wife. The 1st respondent insisted that she has to undergo treatment and she needs rest for some more time. It was promised that by the time

they need to go back to Jeddah she will join them. But later the petitioner was informed that the alleged detainee had some problems which need to be sorted out and that she will join the petitioner later after taking a proper decision on the issue. Eventhough the petitioner strongly protested against the attitude of respondents 1 & 2, he had to go back to Jeddah along with his children to rejoin them in their school. Hence they left to Jeddah without the alleged detainee along with them.

3. Thereafter various attempts were made by the petitioner to communicate with the alleged detainee which was prevented by the 1st respondent, is the allegation. It is stated that the petitioner is not even permitted to talk with his wife and all attempts made for reconciliation through mediators and family members could not achieve any result. The petitioner got information from the relatives that the alleged detainee is having some sort of depression and the parents used to consult some so-called spiritual men and this is creating more agony in the mind of the petitioner,

which could put the life of the alleged detneue to danger. It is stated that the petitioner had every reason to believe that the alleged detenue is under illegal confinement against her free wish and will. It is on the said premise that this writ petition is filed.

4. When the case came up for admission on 11-12-2015, this court directed the 6th respondent to conduct a discreet enquiry regarding the illegal detention of the alleged detenue by respondents 1 & 2. An independent statement of the alleged detenue was directed to be recorded by deputing a woman police officer, not in uniform. The 6th respondent was directed to submit a report regarding the enquiry on enclosing such statement if any recorded.

5. Today, when the case is taken up, the 6th respondent had filed a statement, which would indicate that, on enquiry it is revealed that the alleged detenue is under treatment at the Psychiatry Department in Pariyaram Medical College Hospital. The alleged detenue was

admitted to the said hospital on 04-09-2015 and discharged on 11-09-2015. A statement of the alleged detainee recorded by the Inspector of Police, Women Cell, Kasaragod is produced along with the report. In the statement the alleged detainee had mentioned that she was living along with the petitioner and their children at Jeddah, where the petitioner is working. It is stated that her family life was very cordial and pleasant. But it is stated that on a particular day she developed mental tension when she heard a big sound in front of the flat where they were living, when she was alone. She is taking medicines with respect to emotional issues and her condition was not normal at that time. It is mentioned that when she came back to her parental house, her father took her to a Doctor at Pariyaram Medical College and she was admitted there and she is continuing treatment as out-patient, at present. According to the alleged detainee the Doctor had advised her to continue the medicines and not to stop the medicines for quite sometime. She had categorically mentioned that her

family members have not detained her in any manner. She complained of the fact that the petitioner had not called her over telephone and expressed her desire to see the petitioner as well as the children. Along with the statement copies of the prescriptions and Discharge Card from the Pariyaram Medical College Hospital is produced. Evidently the alleged detainee is under treatment of Dr.Druhin A.V., Professor of Psychiatry, Medical College, Pariyaram.

6. From the facts enumerated as above, we are convinced that the alleged detainee is not under any illegal confinement, as alleged. Learned counsel for the petitioner had raised vehement contentions stating that the petitioner is prevented by respondents 1 & 2 from visiting the alleged detainee or from having any interaction with her. It is also alleged that the respondents 1 & 2 are preventing the petitioner from talking to the alleged detainee over telephone. From the allegations it is evident that there exists some dispute between the petitioner and the family members of the alleged detainee. But, we are convinced that

the alleged detinue is staying along with her parents on her own wish and will. It is also revealed that she is undergoing psychiatric treatment for emotion/psychic problems. Situation being so, there is no circumstances warranting interference of this court to invoke jurisdiction vested under Article 226 for issuing any writ of Habeas Corpus. The petitioner will be left open with remedies before the appropriate court to sort out matrimonial issues if any with the alleged detinue or with her parents. All such issues can adjudicated by the competent court having jurisdiction in the matter. That court having vested with jurisdiction, which is to a great extent is conciliatory in nature, can also be approached for attempting mediation/conciliation in the matter and for attempting a re-conciliation or re-union of the matrimony. Having left with such efficacious remedy under the relevant statute no relief can be granted in this writ petition, merely because there exists some matrimonial dispute by which the petitioner is prevented from taking his wife.

7. Under the above mentioned circumstances, the writ petition is hereby dismissed by reserving liberty to the petitioner to seek appropriate remedy before the court having competent jurisdiction.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

MARY JOSEPH, JUDGE.

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True copy

P.A. to Judge