
(2010) 05 KL CK 0066

In the High Court Of Kerala

Case No : Writ Petition (Criminal) . No. 174 of 2010 (S)

Amina

APPELLANT

Vs

B.A. Abdul Hameed and The Sub Inspector of Police

RESPONDENT

Date of Decision : 31-05-2010

Acts Referred:

Citation : (2010) 05 KL CK 0066

Hon'ble Judges : R. Basant, J;M.C. Hari Rani, J

Bench : Division Bench

Advocate : K.V. Sohan, for the Appellant; T.B. Shajimon, for the Respondent

Final Decision : Allowed

Judgement

R. Basant, J.—This petition is filed by the petitioner/mother complaining that her daughter aged 2 years and 9 months (born on 30/8/07) has been illegally taken away from her by use of force by the 1st respondent - her husband on 29/4/10. Thereafter the child, it was alleged, was being illegally detained by the 1st respondent - the father of the child.

2. This petition was filed on 17/5/10. This judgment must be read in continuation of the earlier orders passed in this case resting with the order dated 24/5/10.

3. The 1st respondent - husband, contends that the child was not forcibly taken away as alleged by the petitioner. The child was with the 1st respondent for the past about 10 months, it is contended.

4. Another Bench vide earlier order dated 24/5/10 had directed that the child be permitted to remain in the custody of the petitioner. The case was posted to this date and accordingly it has come up for hearing today.

5. Today, when the case is called, the petitioner and the 1st respondent are present. They are represented by their counsel. The child has been brought to Court by the petitioner/mother. It is submitted that O.P. No. 175/10 has been filed before the Family Court, Kasaragod, and the same is pending before that

court. That case stands posted for service of notice on the respondent to 6/7/10. No interim application has been filed in that case, it is submitted.

6. The child has been brought to Court. The child is now in the custody of the petitioner/mother. We permitted the father to have interactions with the child till 4.30 p.m. today.

7. In the peculiar facts and circumstances of this case, we do not think it necessary to proceed to resolve the dispute as to how the child happened to be in the custody of the father when this petition was filed on 17/5/10. We take note of the fact that the child is a female child and it has not completed 3 years yet. In these circumstances, we permit the petitioner to keep the custody of the child subject to the following specific directions:

(i) The child shall be produced before the Family Court, Kasaragod, on 3/6/10.

(ii) The parties shall appear before the Family Court on that date. The petitioner shall produce the child before the Court on that date.

(iii) The Family Court shall advance hearing of the case - O.P. No. 175/10 to that date. Both parties shall be at liberty to stake the claim for interim custody of the child and produce all relevant materials. The Family Court shall consider all relevant circumstances and proceed to pass appropriate ad interim orders on 3/6/10 and appropriate orders in the I.A. as expeditiously thereafter as possible - at any rate, within a period of two weeks from 3/6/10. We observe specifically that we have not intended to express any opinion on merits on the rival contentions.

(iv) Compliance shall be reported to this Court by the Family Court.

8. This writ petition is accordingly allowed with the above directions.

9. Call this writ petition again on 21/6/10 to consider the report of the Family Court for further directions, if any, necessary.

10. The Registry shall forthwith communicate these directions to the Family Court.

11. Hand over copies of this judgment to the learned Counsel for both the petitioner and respondent.