

(2012) 09 KL CK 0112

In the High Court Of Kerala

Case No : Writ Petition (Criminal) No. 418 of 2012 (S)

C.D. Adarsh Kumar, Chamakkalayil (H) Kallekulam, Poonjar APPELLANT
South P.O., Kottayam 686582

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 14-09-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 09 KL CK 0112

Hon'ble Judges : Pius C. Kuriakose, J;A.V. Ramakrishna Pillai, J

Bench : Division Bench

Advocate : Jomy George, Sri. Sebastian Thomas, Sri. Jose Choondiyani and Sri. P. Rejinark, for the Appellant; K. Rajesh Sukumaran, for (R5 and R6) and Sri. N. Suresh, Government Pleader for (R1 to R4), for the Respondent

Judgement

Pius C. Kuriakose, J.—This writ petition under Article 226 has been filed by the petitioner, the husband of one Simmy, alleging that Smt. Simmy his wife and Anna his child are being illegally detained against her wishes by her brothers - respondents 5 and 6 at Madikkeri in Karnataka State. On considering this writ petition for admission on 21/8/2012, the Government Pleader took notice on behalf of respondents 1 to 4 and this court ordered notice by speed post to respondents 5 and 6. An order was also passed directing the respondents 5 and 6 that they shall appear before this court and produce Simmy and minor child Anna before this court on 12/9/2012.

2. On 12/9/2012, respondents 5 and 6 entered appearance through advocate Sri. K. Rajesh. Respondent 6 alone was present in this court. Neither Simmy nor the child were produced. Hence, on that day we passed the following orders:

Advocate K. Rajesh enters appearance on behalf of respondents 5 and 6 who are allegedly detaining Smt. Simmy, their sister and her minor daughter Anna. Mr. Rajesh submitted that the 6th respondent is present in the court. The child is only two and half old and is having serious health problems also, because of

which the mother Simmy has not been able to come.

2. The above submissions of Mr. Rajesh was disputed by Sri. Suresh the learned Government Pleader, who submitted that the 4th respondent was able to contact Smt. Simmy over her mobile phone and then Simmy told the 4th respondent that she is aware of the order passed by this court and that she will be appearing before this court today.

3. We enquired of Mr. Rajesh as to whether Simmy and Anna respectively, the wife and child of the petitioner, will be produced before this court. The learned counsel answered in the positive.

Under the above circumstances, we adjourn the case to Friday (14/9/2012). The respondents 5 and 6 will ensure that Simmy and her minor daughter Anna will be present before this court at 10.15 a.m. on that day.

3. Today, Smt. Simmy along with her minor child Anna is present before us. The petitioner and the elder son of the petitioner and Simmy were also present. We interacted in detail with Smt. Simmy, the alleged detainee. We interacted with the petitioner also.

4. Smt. Simmy told us that the allegation, that she is being illegally detained by her brothers- respondents 5 and 6 against her wishes, is without any foundation. The petitioner phoned up her brothers- respondents 5 and 6 and informed them that unless they come and take away their sister Simmy, consequences will follow. It was in that context that her brothers came down from Madikkeri and took her to their house in Madikkeri. She is not in anybody's detention or confinement. She is an absolutely free person. We enquired of her as to why she is not appearing before the Family Court, Kottaym at Ettumannur, where her husband has filed Original Petition seeking custody of Anna the girl child, she told us that the hearing date of the family Court matter is only tomorrow and she intends to appear before the Family Court.

5. Our impression, on the basis of the interaction which we had with Smt. Simmy, is that the allegation that she is being illegally detained against her wishes by respondents 5 and 6, their brothers, is not correct. We find that she is an absolutely free person and it was in entirely different circumstances that she left matrimonial home and is now in Medikeri along with her brothers. The relief which is sought for - issuance of habeas corpus cannot be granted. The learned counsel for the petitioner requested that the petitioner be permitted to interact with Anna, the minor child for some time. Smt. Simmy requested that she be permitted to interact her elder son who is presently in the custody of the petitioner. In view of the above requests, we dispose of this writ petition without granting the relief sought for but directing the petitioner and Smt. Simmy to have an interaction respectively with Anna and the elder son, at least for half an hour in the veranda of this court.

As regards the dispute between the petitioner and Smt. Summy over the custody

of the children, we are sure that the Judge of the Family Court, Kottayam at Ettumannur will follow the statutory procedures - counselling, conciliation, etc. and explore the possibility of settlement of all the issues between the husband and wife before the matter pending before the Family Court is taken up for trial.