

(2000) 08 KL CK 0071
In the High Court Of Kerala
Case No : O.P. No. 21712 of 2000

K.A. Abraham

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 10-08-2000

Acts Referred:

Citation : (2000) 2 KLJ 384

Hon'ble Judges : N. Krishnan Nair, J;K. Narayana Kurup, J

Bench : Division Bench

Advocate : V. Giri, for the Appellant; K.K. Babu, M. Ramesh Chander and V.K. Mohanan, Govt. Pleader, for the Respondent

Judgement

Narayana Kurup, J.—The husband of the alleged detainee has filed this Habeas Corpus Petition. According to the petitioner (86), his wife (82) is being illegally detained by respondents 3 and 4. The 3rd respondent is the son of the petitioner and the 4th respondent is his daughter-in-law. Considering the age of the alleged detainee we dispensed with her personal appearance before this court and accordingly she was directed to be examined by an Advocate commissioner to ascertain whether she is being illegally detained by respondents 3 and 4. Smt.Bindu C.V. was appointed as Advocate Commissioner as per order dated 1.8.2000. The Advocate Commissioner was directed to proceed to the house of the third respondent and interview the alleged detainee in strict privacy to ascertain whether she is under illegal detention of respondents 3 and 4 or anybody else. Pursuant to our direction the Advocate Commissioner interviewed the alleged detainee and submitted a report before this court. From a perusal of the aforesaid report, we had a feeling that the alleged detainee has been tutored to give set answers to the questions put to her. The Commissioner has noted that the alleged detainee "pretended as if she cannot, understand anything." It was further noted that it was felt that she was prepared by someone else to give readymade answers, as she had previous experience of visit of commissioner from Muvattupuzha court regarding some property dispute" and that "it was also

felt that she is scared of somebody though she did not admit it. What worries us more is the observation of the Commissioner to the following effect: "Further" she said that her younger son (3rd respondent) instructed her to say that she likes to be with him to those who happened to ask her like any commission regarding these matters. Considering the totality of the facts and circumstances brought to our notice including the report of the commissioner, we formed a tentative opinion that the alleged detainee is not a free agent to take an independent decision as to where she should spend the evening of her life. According to us, it may be a case where due to old age and the attendant debility she may be so weak as to deprive her of her capacity to take an independent decision. Further, we felt that she may or may not have dementia or other - related old age problem(s) which would stand in the way of her being master of her own fate. Accordingly, we were of opinion that the alleged detainee has to be examined by a Medical Board to ascertain her physical and mental condition reminding ourselves that the scope of a Habeas Corpus petition is not merely confined to release a person detained under illegal custody but also to see the welfare of the alleged detainee at the place where he/she is alleged to be detained. Therefore, we directed the Superintendent, General Hospital, Ernakulam to constitute a Medical Board consisting among others a medical specialist, a psychiatrist and a clinical psychologist whose services may be requisitioned from outside if need be and to examine the alleged detainee and to submit a report before this court stating whether she is suffering from any disability physical or mental so as to deprive her of the capacity to take an independent decision. The Board was also directed to report regarding her general state of health and well being. The Board was further directed to go into the question as to whether the alleged detainee requires any specialised treatment for any condition afflicting her. Pursuant to the aforesaid direction, the detainee was examined by a Medical Board of the General Hospital, Ernakulam on 9.8.2000. The opinion of the Board is as follows:

We, the members of the Medical Board have examined Smt. Sosamma - 82 years on 9.8.2000 at 11 a.m. at General Hospital, Ernakulam. On preliminary examination, she is found to be suffering from Parkinsonism with Dementing features. A final opinion about her medical status can be given only after observing her for a few days and after some investigative procedures. So, the said Sosamma is advised admission at General Hospital, Ernakulam. Her son Baby objected the admission of Smt.Sosamma, since he is not now prepared for the same.

sd/-

sd/-

Dr. Davidkora, Psychiatrist.

Dr. M.R. Gopalakrishnan, Psychiatrist.

sd/-

sd/-

Dr. S.G. Rajan, Physician.

Dr. George Varghese, E N T Surgepn.

sd/-

Dr. P.V. Balan, Superintendent & Chairman

From a perusal of the opinion of the Medical Board, we are satisfied that the detenue requires constant medical attention considering the fact that she is suffering from Parkinsonism with dementing features. When the petition came up for further hearing before us today, learned counsel appearing for the third respondent has given an undertaking before us that he has no objection to the medical condition of his mother being attended to by any doctor of the petitioner's choice and for that purpose he is prepared to permit the petitioner to take his mother to latter's place of residence. This undertaking is recorded and the petitioner is permitted to take his wife from the house of the third respondent forthwith. We make it clear that petitioner shall permit respondents 3 to 5 and the members of their family to visit the mother at the petitioner's residence or such other place where the petitioner resides.

Habeas Corpus Petition is disposed of as above.