
(2010) 10 KL CK 0136

In the High Court Of Kerala

Case No : Writ Petition (Criminal) No. 397 of 2010 (S)

M. Sudheesh

APPELLANT

Vs

State of Kerala, Secretary and Others

RESPONDENT

Date of Decision : 13-10-2010

Acts Referred:

Citation : (2010) 10 KL CK 0136

Hon'ble Judges : R. Basant, J;M.L. Joseph Francis, J

Bench : Division Bench

Advocate : A. Krishnan, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

R. Basant, J.—The petitioner has come to this Court with this petition for issue of a writ of Habeas Corpus to search for, trace and produce his sister Sujitha, a young woman aged above 21 years. (date of birth 25.4.1989). She has completed her Plus two course and was doing her Lab Technician course at Tirur. She has been missing from 30.8.2010. A complaint was made before the local police. But the police were not able to trace the alleged detainee. The petitioner apprehended that his sister, Sujitha, was being illegally detained by the 5th respondent.

2. This petition was filed on 6.10.2010. It was admitted on 7.10.2010. Notice was ordered to the respondents. The case was posted to this date for appearance of the parties.

3. Today when the case is called, the petitioner is not present. He is represented by his counsel. His father and mother, Unni Nair and Lakshmy, have come to Court. The 5th respondent has come to Court. Along with him, the alleged detainee has also come to Court.

4. As the alleged detainee Sujitha has come to Court along with the 5th respondent, who is allegedly confining and detaining her, we permitted the

alleged detainee to remain alone in the Chamber with opportunity for no one to influence her. We did permit the parents of the alleged detainee to interact with her during the pre-lunch session. After the lunch recess we interacted with the alleged detainee alone initially and later in the presence of her parents. Subsequently we interacted with the alleged detainee and the 5th respondent.

5. Counsel for the petitioner and the learned Government Pleader were present. The 5th respondent and the alleged detainee are not represented by any counsel.

6. The alleged detainee and the 5th respondent submit before us that they are legally married. They are Hindus. Their marriage was solemnised at Arya Samaj Mandir (Vedic Church), Rammohan Road, Calicut on 31.7.2010. Certificate No. 1858/2010 dt. 31.7.2010 issued by the Arya Samaj Mandir is produced to confirm such marriage. The alleged detainee and the 5th respondent further submit that the alleged detainee is now pregnant. They have produced before us a prescription issued by Dr. Roopa Rathish M.B.B.S. and a report of Bharath Medical Laboratory to indicate that the pregnancy test (Card test) conducted has revealed positive pregnancy. Both the alleged detainee and the 5th respondent pray that they may be permitted to return together, they having already become man and wife in accordance with law.

7. The parents of the alleged detainee submit that the alleged detainee is not speaking voluntarily and genuinely. She is under great mental pressure and influence. They pray that the alleged detainee may be permitted to return along with them and they may be given an opportunity to counsel and guide the alleged detainee.

8. We attempted to ascertain whether the parties can harmoniously settle their disputes. We find that the parents of the alleged detainee are willing to take the alleged detainee along with them and produce her back before this Court after seven days. If the alleged detainee wants to go along with the 5th respondent even then, the parents submit that they will accept her decision and shall permit her to go with the 5th respondent. Even the 5th respondent does not appear to be averse to the said idea. But we note that the alleged detainee adamantly refuses to go with her parents. We advised her to accept the request of her parents, but we were not successful.

9. In a petition for issue of a writ of Habeas Corpus we are primarily concerned with the question whether the alleged detainee is under any illegal detention or confinement. In the facts and circumstances of this case, we are satisfied that the alleged detainee is not under any illegal detention. It appears to us that she is a strong willed woman. We must note that she has already crossed the age of 21 years. We are bound to recognise and accept her decisional autonomy. We are, in these circumstances, satisfied that no further directions need be issued in this case.

10. In the result:

a) This Writ Petition is dismissed.

b) The alleged detenue, Sujitha, who has come to Court along with the 5th respondent, is permitted to leave the Court with the 5th respondent as desired by her.