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**(2009) 09 KL CK 0073**

**In the High Court Of Kerala**

**Case No : Writ Petition (Criminal) . No. 333 of 2009 (S)**

Manoharan. T.

APPELLANT

Vs

Prasanna Kumari and Others

RESPONDENT

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**Date of Decision : 30-09-2009**

**Acts Referred:**

**Citation : (2009) 09 KL CK 0073**

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

**Bench : Division Bench**

**Advocate : P. Vijaya Bhanu, for the Appellant; R. Rajesh Kormath, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

R. Basant, J.—This judgment must be read in continuation of the orders passed by this Court from 19-8-2009 till 15-9-2009. The petitioner is the son of the alleged detainee - a woman aged about 78 years. The said detainee has three children. The petitioner is the only son. The first respondent is her eldest daughter. There is one more daughter for the alleged detainee, who has not been arrayed as party in this proceedings. The second respondent is the husband of the first respondent whereas the third respondent is the brother of the alleged detainee.

2. The petitioner is unmarried. His mother - the alleged detainee, was residing with him. It is his grievance that his mother was forcibly taken away by respondents 1 to 3 on 19-7-2009. She was admitted to the hospital. According to the petitioner, she was being illegally detained and confined by respondents 1 to 3.

3. Notice was ordered to the respondents. Respondents 1 to 3 have appeared through counsel. It is their contention that the alleged detainee is seriously ill. She needed hospitalisation. Her continuance at the house of the unmarried son was not conducive for her welfare, proper treatment and care. It was ,in these

circumstances, that the alleged detainee was got admitted to the hospital. She was given treatment. She was continuing such treatment. She was inpatient in the Moulana Hospital for sometime. After discharge, her treatment is continuing. She had to be admitted again after such discharge. In short, according to respondents 1 to 3, there is no element of confinement or detention at all. The alleged detainee has been looked after by respondents 1 to 3 as her present condition requires such attention and care.

4. The petitioner raised a grievance that the alleged detainee is being detained against her wish and desire. All concerned admitted that the present condition and the old age of the alleged detainee is such that her presence before court cannot be insisted. In these circumstances, the learned Chief Judicial Magistrate, Manjeri, was requested to proceed to the hospital to ascertain the wishes of the alleged detainee. The learned C.J.M., Manjeri, has accordingly visited the hospital. A report dated 22/9/09 has been submitted by the learned C.J.M. To the report is appended, a statement of the alleged detainee recorded by the learned C.J.M.

5. We are in these circumstances satisfied that the alleged detainee is not illegally detained or confined by respondents 1 to 3. She is residing with respondents 1 and 2 and she is under the care and custody of respondents 1 and 2 only because her present condition requires the same. The alleged detainee has also stated to the learned C.J.M. that she has nothing against the petitioner herein and that she wants to remain with respondents 1 and 2 as she, in her present condition, needs the assistance of a female relative to attend on her.

6. The petitioner has today produced before this Court and handed over to the learned Counsel for respondents 1 and 2 the following documents voluntarily as agreed on 15/9/09 which agreement is incorporated in the order passed on that date. Following are the documents returned:

(1) Discharge certificate of the deceased husband of the alleged detainee.

(2) Pension pass book issued to the alleged detainee.

7. The learned Counsel for respondents 1 and 2 points out that the discharge certificate is in a deplorable condition. That fact is noted and recorded. The learned Counsel points out that except the flaps of that document, rest of it is in a very precarious condition. That submission is noted and recorded.

8. The learned Counsel for the petitioner submits that his option to pursue the legal proceedings - O.S. No. 202/09 pending before the Munsiff's Court, Manjeri, and any other legal proceedings may be left open. It is so directed by us.

9. The learned Counsel for the petitioner further submits that there may be a direction to respondents 1 and 2 to produce the documents presently handed over before any court before which proceedings between the parties may be pending/initiated. The learned Counsel for respondents 1 and 2 submit on their behalf that the documents in the condition in which they are handed over by the

petitioner today shall be produced before the appropriate courts if so directed by the court concerned.

10. The learned Counsel for the petitioner finally submits that the petitioner's right to visit his mother - the alleged detenue, may be preserved. The learned Counsel for respondents 1 and 2 on behalf of respondents 1 and 2 submit and undertake that the petitioner can visit his mother wherever she is and respondents 1 and 2 shall not raise any objection against such visits of the petitioner. That submission and undertaking is also taken note of and hereby recorded.

11. We are satisfied, in these circumstances, that no further specific directions are necessary. This writ petition is, in these circumstances, dismissed subject to the above notings and recordings.