
(2021) 01 KL CK 0416
In the High Court Of Kerala
Case No : Writ Petition (Crl) No. 124 Of 2020

Prathibha P

APPELLANT

Vs

State Police Chief And Ors

RESPONDENT

Date of Decision : 19-01-2021

Acts Referred:

Kerala Police Act, 2011 — Section 57

Citation : (2021) 01 KL CK 0416

Hon'ble Judges : K. Vinod Chandran, J;M.R. Anitha, J

Bench : Division Bench

Advocate : Sreedevi Kylasanath, Achuth Kylas, R.Mahesh Menon, Deago John K, Amal Dev C.V, M.P.Ashok Kuma, Bindu Sreedhar, Asif N, K.B.Ramanand

Final Decision : Dismissed

Judgement

M.R. Anitha, J

1. This Writ Petition has been filed seeking for the production of the father of the petitioner from the illegal custody of the 5th respondent.

2. According to the petitioner, the marriage between the detenu and the mother of the petitioner was solemnized on 07.06.1984 and she was born on 07.05.1987. Thereafter the marriage of the petitioner's mother and father was dissolved on 05.06.1995. She claims that even after that father used to visit the petitioner and her mother till 2016. 5th respondent is the nephew of the father and now her father is in the illegal custody of the 5th respondent and he is trying to grab the properties of her father. Her mother had filed O.P. No. 71/2016 before the Family Court, Thiruvananthapuram, seeking for maintenance. Thereafter, father went missing and never appeared before the Family Court. According to the petitioner, on enquiries, it was revealed that the father is under the illegal custody of the 5th respondent. Hence, the Writ

Petition.

3. Notice was issued to the respondent Nos. 1 to 4 and the learned Government Pleader appeared on behalf of the respondent Nos. 1 to 4. 5th

respondent appeared through Adv. M.P. Ashok Kumar.

4. Heard both sides.

5. As per the statements of facts filed by the 3rd respondent, the alleged detainee married the mother of the petitioner on 07.06.1986 and he is a

person who retired from Indian Army on 30.04.1989. The marriage between the petitioner's mother and alleged detainee was dissolved in the year

1988 and thereafter he married Smt. Nalini on 18.08.1988. He worked as a Security at Handloom Mill, Nemom after retirement. He went missing

from 21.07.2015 onwards from the house where he and Smt. Nalini had been residing. He was aged 70 years at that time. Crime No. 1148/2020

under Section 57 of the Kerala Police Act was filed at Nemom Police Station. Based on the statement of Smt. Nalini, the case has been investigated

by the Sub Inspector of Police, Nemom. The 5th respondent Anilkumar is the nephew of the alleged detainee. He was interrogated and according to

him, the alleged detainee showed some mental illness from 2010 onwards. He used to wander here and there and occasionally went missing for days

and would return back. Wife of the detainee, Smt. Nalini also endorsed that fact. In the year 2014, mother of the petitioner filed O.P seeking for

maintenance and it was decreed exparte and 28 cents of property owned by the detainee was attached before judgment but that property was

transferred by alleged detainee to the 5th respondent and ultimately the case was compromised by the 5th respondent by giving 13 cents and house

therein to the mother of the petitioner as per a gift deed since he was not in a position of contesting the case. Wide search has been conducted in

various places about the detainee to the maximum possible. The Bank Accounts of the deteneue also verified. The investigation regarding the pension

drawing details of the alleged detainee showed that the pension amount was credited till 30.04.2011 and the last withdrawal was on 05.10.2010. An

amount of Rs. 56,094/- was debited from the account as excess pension drawn on 20.08.2013. Thereafter the alleged detainee has not submitted life

certificate. Enquiries were made with regard to the death and treatment of unidentifiable persons from the General Hospital, Thiruvananthapuram and

Mental Hospital Peroorkada etc., investigation was conducted in various border Police Stations of Tamilnadu, in railway Police Stations at Nagarcovil,

Thakkala and Marthandam regarding any wandering person or unidentifiable dead bodies. Investigation also conducted in major pilgrimage centres.

According to the 3rd respondent, all the possible measures have been taken to trace out the missing person. It is also revealed that alleged detainee

appeared before the Sub Registrar, Venganoor on 22.02.2001 for sale of his property to the 5th respondent. So the statement of the 3rd respondent

would reveal that the enquiry and investigation made so far did not reveal any illegal custody of the alleged detainee with the 5th respondent.

Admittedly, the statement would further go to show that in the year 2015, while the alleged detainee went missing, his wife Smt. Nalini approached the

Nemom Police Station and based on her statement, a crime was registered under Section 57 of the Kerala Police Act. The statement also shows that

in the year 2014 the mother of the petitioner filed an O.P seeking maintenance from him, that O.P was decreed exparte also and it is thereafter he

went missing. So there is long delay in the petitioner approaching this Court seeking for a Writ of Habeus Corpus. Also as said earlier, there is nothing

to indicate the illegal custody of the detainee with the 5th respondent.

Having regard to the facts and circumstances, we do not find any reason to keep the Writ Petition pending and accordingly, it is dismissed.