

(2014) 07 KL CK 0161
In the High Court Of Kerala
Case No : WP(Crl.). No. 278 of 2014 (S)

Rajan A. Thomas

APPELLANT

Vs

Sub Inspector of Police

RESPONDENT

Date of Decision : 22-07-2014

Acts Referred:

Citation : (2014) 07 KL CK 0161

Hon'ble Judges : Dama Seshadri Naidu, J; Antony Dominic, J

Bench : Division Bench

Advocate : Dilish John and Surumi Shakeel, Advocate for the Appellant; Asaf Ali, Advocate Director General of Prosecution, P. Jayabal Menon, Jagan George, Advocates and S. Sreekumar, (SR.), Advocate for the Respondent

Judgement

Antony Dominic, J.—Heard the learned counsel for the petitioner, learned Government Pleader for the first respondent and learned counsel for respondents 2 and 3.

2. Petitioner, a Doctor by profession, filed this writ petition complaining that his daughter Riya Thomas was found missing from his house from 20.5.2014. According to him, enquiries revealed that she was being illegally detained by the second respondent whose father is the third respondent. Petitioner has averred that Riya Thomas since childhood had shown an indifferent attitude towards her parents and was under the treatment of Dr. Philip John, a Psychiatrist. It is also averred that she had learning disorder, attention deficit hyperactivity disorder, development co-ordination disorder etc. and that for such ailments, they had approached Dr. Junaid Rahman of the General Hospital, Ernakulam. It is stated that the petitioner's daughter is not in a position to take informed decisions and that capitalizing on his acquaintance with the petitioner's daughter, the second respondent is keeping her in illegal detention. With these averments, the petitioner has filed this writ petition seeking issuance of a writ of habeas corpus with a prayer to set the detinue at liberty.

3. On the filing of the writ petition, this Court directed the learned Government

Pleader to obtain instructions in the matter. Accordingly, when the case was taken up for consideration on 8.7.2014, the petitioner's daughter and the second respondent appeared before this Court and after interaction with her, this Court passed the following order:

The petitioner, a doctor by profession, is the father of Riya Thomas, aged 23 years. According to the petitioner, from her childhood, Riya had an indifferent attitude against her parents and she was being treated by a psychiatrist by name Dr Philip John and another doctor by name Dr M.I. Junaid Rahman of the General Hospital, Ernakulam. He stated that since 20.5.2014, his daughter is missing and he fears that she is being illegally detained by the second respondent whose father is the third respondent. With these allegations, he has filed the writ petition with a prayer for the issuance of a writ of habeas corpus to set his daughter at liberty.

Today, when the matter was taken up, the petitioner, the detinue and the second respondent appeared before this Court. We interacted with the detinue and in answer to our questions, she made various allegations, not only against the petitioner but also against her mother, which, in general, were of physical violence against her. She states that she is scared of her parents and it was therefore that she had to leave her paternal home. She also told us that she is now employed in TIASEBAN Boutique at Panampilly Nagar, Kochi and that she is staying in an accommodation provided by them, along with a colleague. She further states that she is intending to get married to the second respondent.

We are not fully convinced about the genuineness of the submissions made by the detinue before us. Considering the background of the detinue, the nature of the allegations levelled and the medical certificates that were produced by the petitioner, it is necessary that before further orders are passed in this writ petition, the detinue should be accommodated at a neutral place inaccessible to the second respondent and a psychological evaluation should also be done.

In such circumstances, we direct that from today onwards, the detinue will be accommodated at Santhi Nikethan Hostel, Near Lourde's Hospital, Vaduthala at the expense of the petitioner. We request the authorities of the hostel to cooperate in this matter and arrange a psychological evaluation of Riya Thomas by the concerned doctors of Lourde's Hospital, Vaduthala, Ernakulam. During the period of her stay in the hostel, the second respondent or the third respondent will have no access to the detinue and if the detinue is also co-operative, her parents will be allowed access to her. She will not be allowed to use any mobile phone.

The detinue will be produced before this Court on 14.7.2014. The first respondent will produce the report from the hospital on that day. Post on 14.7.2014.

4. In pursuance to the said order, a psychological evaluation of the alleged detinue was done at Lourdes Hospital, Ernakulam and under the cover of the

letter dated 14.7.2014, the psychological evaluation report was forwarded to this Court. In the report, it was concluded thus:

Emotionally Unstable Personality Disorder (F60.30). This personality pattern leads to clinically significant distress in her personal and social functioning. The personality traits are stable and its onset can be traced back to her early childhood days. The enduring pattern is not accounted for as a manifestation of an emotional disorder.

5. Thereafter, when the matter was taken on 15.7.2014, the parties themselves suggested that there is a possibility of settling the dispute, if the matter is referred for mediation. Accordingly, the order dated 15.7.2014 was passed referring the case for mediation. The report dated 15.7.2014 of the Ernakulam Mediation Centre shows that the matter could not be settled despite mediation.

6. The case was again considered on 17.7.2014, when an order was passed seeking clarification from the Lourdes Hospital mainly as to whether she is capable of taking informed decisions.

Accordingly, by their letter dated 21.7.2014, made available by the Government Pleader today, the Chief Consultant Psychiatrist of the Hospital has reported thus:

Miss Riya Thomas, 23 years is found to have Emotionally Unstable Personality Disorder. In such conditions, degree of instability is not quantifiable and behaviour pattern is difficult to predict. Environmental factors can have a strong influence on her behaviour in personal and social situations. Psychological evaluation reveals no features of any major psychotic disturbance and reality contact is not found to be disturbed. Since she is found to have average intellectual functioning, she may lead a normal life and can take decisions on her own will. In view of her emotionally unstable nature, she may exhibit some maladjustments in stress provoking situations. Under these circumstances, she may be benefited with long term psychotherapies under trained professionals if she is motivated for the same.

7. The report thus obtained by this Court from the Lourdes Hospital shows that though the petitioner's daughter is an emotionally unstable person, she is capable to taking a decision on her own will.

8. Today also, the detainee answered to our questions in a stable manner and she made her decision clear to us that she wants to lead an independent life and to get married to the second respondent, in terms of the provisions of the Special Marriage Act. She has also rejected our suggestion that in the meanwhile, she may return to her parents.

9. On behalf of respondents 2 and 3, the learned counsel also informed us that the 2nd respondent also intends to get married to the petitioner's daughter, in terms of the provisions contained in the Special Marriage Act.

10. As we have already noticed, this petition is filed for a writ of habeas corpus

on the allegation that the petitioner's daughter is being illegally detained by the second respondent. The facts disclosed show that the said allegation is factually incorrect. Psychological evaluation also reveals that she is capable of taking informed decisions. In such circumstances, we are satisfied that this is not a case of illegal detention and therefore we cannot entertain this writ petition.

Writ petition fails. It is accordingly dismissed.