
(2010) 11 KL CK 0151

In the High Court Of Kerala

Case No : Writ Petition (Criminal) No. 429 of 2010 (S)

Sruthy Sameel

APPELLANT

Vs

State of Kerala, The Sub Inspector of Police and Aboobacker
A.K.

RESPONDENT

Date of Decision : 10-11-2010

Acts Referred:

Citation : (2010) 11 KL CK 0151

Hon'ble Judges : R. Basant, J;K. Surendra Mohan, J

Bench : Division Bench

Advocate : Nagaraj Narayanan, for the Appellant; No Appearance, for the Respondent

Final Decision : Allowed

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 her husband Sameel, a person, aged about 24 years. The petitioner is a young woman, aged 23 years (date of birth - 30.05.1987). Her family originally hails from Trichur. But her father and mother have settled in Bangalore for a long period of time. The petitioner is born and brought up at Bangalore. She has completed her B.Sc. Nursing course. She has not secured employment so far.

2. The alleged detenu Sameel was a student of the B.E degree course at Bangalore. His college was near the college of the petitioner. The petitioner and the alleged detenu met and fell in love. They decided to get married. They have got their marriage registered under the Cochin Christian Civil Marriage Act. Their marriage was registered under the Cochin Christian Civil Marriage Act on the strength of the directions issued by a learned Single Judge of this Court in W.P(C) No. 12324 of 2010. Ext.P1 is the certificate to confirm the solemnisation/registration of their marriage on 05.05.2010 under the Cochin Christian Civil Marriage Act. They are thus legally wedded husband and wife.

3. According to the petitioner, the relatives of the alleged detenu do not approve of and have not accepted the marriage between her and the alleged detenu. The petitioner came to this Court with the allegation that the alleged detenu was being illegally detained and confined by the 3rd respondent, who is none other than the father of the alleged detenu. The petitioner is a Christian by religion; whereas the alleged detenu is a Muslim. The relatives of the alleged detenu are not in favour of the inter religious marriage. According to the petitioner, the alleged detenu faces threat from his relatives. He is being illegally confined and detained. It is, in these circumstances, that the petitioner has come to this Court with this petition. Earlier request made to the Koratty police under Ext.P2 did not lead to any tangible action and it is hence that the petitioner came directly to this Court with this petition for issue of a writ of habeas corpus.

4. This petition was filed on 02.11.2010. It was posted to 03.11.2010 and the same was admitted on 04.11.2010. Notice was ordered to the respondents. The case was posted to this date.

5. Today when the case was called, the petitioner and her counsel are present. The 3rd respondent has not come to Court. But some of his relatives had come to Court. A counsel has entered appearance for the 3rd respondent. The alleged detenu Sameel has also come to Court today.

6. We had interactions with the petitioner alone initially. We later had interactions with the alleged detenu alone. Subsequently we had interactions with the petitioner and the alleged detenu together. Relatives of the alleged detenu - his father's sister's husband-Ummar and his son-Shiyas, were also present.

7. We had such interactions between the parties after the lunch recess. Towards the close of the interactions, the mother of the petitioner-Jalaja also came running to this Court on coming to know of the pendency of this petition.

8. The petitioner and the alleged detenu state before us that they are legally married and want to live as husband and wife. Inasmuch as the relatives of the alleged detenu are not approving the marriage and inasmuch there are threats and intimidation from the relatives of the alleged detenu, they are afraid to commence life together. They pray that they may be granted protection to live as husband and wife without threat and risk of harm from anyone. The petitioner states that her relatives have also abandoned her and are not approving of the relationship between her and the alleged detenu. She has hence been compelled to take shelter along with a friend of hers. She has completed her B.Sc. Nursing course. She expects to secure employment at an early date.

9. The alleged detenu states before us that he accepts that he is married to the petitioner. He wants to afford protection and patronage to the petitioner. He is willing to do the same. He has attempted to get the approval of his parents and relatives. He has not succeeded in doing the same. He has been asked to choose between the petitioner, his wife, and his relatives. He is taking a bold decision to stand by the petitioner. He has not completed his B.E course. He has taken

Diploma in Computer Engineering. He has applied for jobs. He expects to secure job at the earliest. He also states that he wants to reside along with the petitioner after they both secure employment and settle themselves in life.

10. The mother of the petitioner states before Court that she and her husband are not able to approve of the relationship between the petitioner and the alleged detenu. Threats have been hurled at the petitioner's parents and relatives by the relatives of the alleged detenu. The parents of the petitioner do not want to afford any support or protection for the petitioner and the alleged detenu. But as the mother of the petitioner, she is worried about the safety and security of the petitioner. The petitioner and the alleged detenu, who are now legally married, are at liberty to pursue whatever course they want, submits the mother of the petitioner. But she and her husband do not approve of or accept the relationship.

11. The relatives of the alleged detenu, i.e. Ummar and Shiyas state categorically that the 3rd respondent and other relatives of the alleged detenu are unable to accept and approve the marriage between the alleged detenu and the petitioner. They are not interested in accepting and approving such inter religious marriage. However, they state before Court that they have no objection whatsoever in the alleged detenu taking whatever decision that he pleases about himself and his future. The relatives of the alleged detenu are unable to accept and approve the relationship. But they do not want to oppose or cause any obstruction to the desire of the alleged detenu to live with the petitioner. The alleged detenu and the petitioner shall be at liberty to pursue whatever course they want, without any threat or harm from the relatives of the alleged detenu, assert Mr. Ummar and his son Shiyas. The 3rd respondent is not present. He is hospitalised due to illness yesterday, it is asserted by his counsel. The counsel states that the 3rd respondent also takes the same stand as his relatives - Ummar and Shiyas.

12. In a petition for issue of a writ of habeas corpus, we are primarily concerned with the response of the alleged detenu. The alleged detenu states categorically that he admits and accepts that he is the legally wedded husband of the petitioner. He wants to live with the petitioner. He wants to leave the Court along with the petitioner. They shall try to secure employment for themselves and later they shall choose to reside together at any appropriate place. Now he wants to leave the Court along with the petitioner. After securing employment, they may choose to set up their residence at any convenient place. The petitioner and the alleged detenu do not reveal to the Court their destination. They may choose to reside in Kerala, or Bangalore or anywhere else, they submit. In any case they pray that protection may be afforded to them to live without any threat or risk of harm and injury.

13. We are satisfied that the alleged detenu and the petitioner are legally married spouses. We are satisfied that they want to leave the Court together. We accept their submission that immediately they do not want to live together as husband and wife together. The learned Government Pleader undertakes that

necessary action shall be taken to give adequate police protection to the petitioner and the alleged detenu. The police officers at Bangalore shall also be informed of the need to afford protection to the petitioner and the alleged detenu, if they are at Bangalore. If they are in Kerala, necessary protection shall be afforded by the Kerala Police to the petitioner and the alleged detenu, undertakes the learned Government Pleader. Considering the unfortunate plight and submissions of the mother of the petitioner, the learned Government Pleader further submits that the Bangalore police shall be contacted to ensure that Jalaja and Antony (the parents of the petitioner) residing at

Raja Clay Works, Sidhartha Nagar, Tumkur, Karnataka

shall also be afforded adequate protection. We are now satisfied that this Writ Petition can be allowed and appropriate directions can be issued.

14. In the result:

- a) This petition is allowed;
- b) The alleged detenu Sameel, an adult major person, is permitted to leave the Court along with the petitioner as desired by him;
- c) We record the submission of the petitioner and the alleged detenu that they want to leave together from Court and that they want to set up residence together after they secure employment at any place convenient to them;
- d) We record the submission of the learned Government Pleader that the petitioner and the alleged detenu as also the parents of the petitioner shall be given adequate protection by the Kerala Police if they seek such protection;
- e) We record the further submission of the learned Government Pleader that the Karnataka Police shall be contacted by the Kerala Police to ensure that adequate police protection is given to the petitioner and the alleged detenu as also the parents of the petitioner, in case they need any such protection and make appropriate request to the police concerned.