

(2010) 10 KL CK 0157

In the High Court Of Kerala

Case No : Writ Petition (Criminal) No. 322 of 2010 (S)

T.P. Balasundaran

APPELLANT

Vs

Mr. P. Sandeep and The State of Kerala

RESPONDENT

Date of Decision : 19-10-2010

Acts Referred:

Citation : (2010) 10 KL CK 0157

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

Bench : Division Bench

Advocate : T. Ramprasad Unni, for the Appellant; Babu S. Nair, for the Respondent

Judgement

R. Basant, J.—This judgment must be read in continuation of various orders passed by us in the matter resting with the order dt.18.10.2010.

2. This petition for issue of a writ of Habeas Corpus was filed by the petitioner complaining that his minor daughter Sangeetha @ Silpa, a girl aged below 16 years (date of birth 1.9.1994) is missing from 17.5.2010. He apprehended that his daughter, referred to as the alleged detainee hereafter, is in the illegal custody and confinement of the first respondent.

3. This petition was filed on 10.8.2010. It was admitted on the same day. The alleged detainee was traced and produced before this Court on 16.8.2010. Orders have been passed from time to time. Arrangements were made for custody of the alleged detainee with her parents. But such arrangements did not work. The girl, who was returned to the custody of the petitioner, was taken to Salem and from there she was allegedly found to be missing. Subsequently as per orders passed by this Court the alleged detainee has been produced before this Court.

4. We have interacted with the alleged detainee. Subsequently we have interacted with her parents, i.e. the petitioner and his wife. We have also interacted with the first respondent and his parents. The learned Counsel for the petitioner, learned Counsel for the first respondent and the learned Government

Pleader are also present.

5. At the end of the prolonged discussions, we find that the parties have come to a settlement and understanding. Affidavits have been filed by the first respondent, parents of the first respondent and the petitioner herein.

6. The alleged detainee and the first respondent assert before us that their marriage in accordance with the Hindu customary rites had taken place on 25.5.2010 at the Mookambika Temple, Kollur. The learned Government Pleader submits that investigation by the police also confirmed that some such ceremony had taken place between the alleged detainee and the first respondent. The parents of the alleged detainee and the parents of the first respondent assert that they have had no role in such alleged solemnization of marriage and that they were in no way parties to such marriage. They had no knowledge and had not given their consent to such marriage, they assert. Such marriage, if any, must have been in gross violation of the provisions of the Prohibition of Child Marriage Act, 2006. However, taking into account the subsequent events in this case, though reluctantly, the parents of both the alleged detainee and the first respondent state that if such a marriage had taken place, they have no way, but to accept that. The alleged detainee and the first respondent claim to have lived together as husband and wife after such alleged marriage. The parents of the alleged detainee agree that the alleged detainee can be handed over to them by the Court and that they shall accept the request of the parents of the first respondent to leave the alleged detainee in their custody to be looked after by them. The first respondent and the alleged detainee and the parents of both of them have accepted this arrangement.

7. We are, in these circumstances, satisfied that the following directions can be issued as agreed by both sides in this Writ Petition.

a) The alleged detainee is permitted to leave the court along with her parents.

b) We record the submission of the parents of the alleged detainee that they have settled their disputes with the first respondent and his parents and shall hand over the alleged detainee to the parents of the first respondent to enable them to keep her in their custody and to look after her.

c) We record the submissions of the parents of the alleged detainee that they have no grievance or complaints against the first respondent and his parents now and they shall not press any allegations against them. They have no further complaints or grievance against the first respondent or his parents, submit the parents of the alleged detainee.

d) We record the submission of the parents of the first respondent that they shall willingly take the alleged detainee in their custody and look after her if the parents of the alleged detainee willingly hand her over to their custody.

8. This Writ Petition is accordingly allowed to the above extent. The alleged detainee is permitted to leave the Court along with her parents.

9. Issue copy of the judgment to the learned Government Pleader, the learned Counsel for the first respondent and the learned Counsel for the petitioner forthwith.

ORDER

10. This order must be read in continuation of all the earlier orders passed by us, including the order dt. 13.9.2010.

11. Today when the case is called, petitioner and his wife are present. They submit before us that the minor child, who was taken to Salem, is missing from Salem and her whereabouts are not known. It is the submission of the petitioner and his wife, the parents of the alleged detainee, that the alleged detainee has been taken away again by the first respondent and the people acting at his behest. The petitioner and his wife submit that their daughter, the alleged detainee, is also not co - operating and it is their assessment that the alleged detainee has been taken away by the first respondent from Salem.

12. Complaint was made before the Salem Police, who had directed the petitioner to approach the Pattambi Police. Accordingly complaint has been filed before the Pattambi Police, it is submitted. She was missing from Salem from 24.9.2010, submits the petitioner. The petitioner and his wife pray that this Court may issue appropriate orders to ensure that their daughter is safe. They further submit that if the minor daughter is traced, they shall not be seeking any further reliefs in respect of the child. They want the satisfaction that the minor child is safe. The alleged detainee can be permitted to pursue whatever course she thinks is best and the Court feels appropriate, submit the parents of the alleged detainee. Learned Counsel for the petitioner also prays that it may be ensured that the alleged detainee is safe. The parents require and need atleast that satisfaction, submits the counsel.

13. We are certainly satisfied that the alleged detainee, who is missing again from 24.9.2010, must be traced. We direct respondents 2 to 4 to take all efforts to trace the alleged detainee and produce her before this Court. The learned Govt. Pleader prays for time. Call on 12.10.2010. If the alleged detainee is traced prior to that date, learned Govt. Pleader shall be at liberty to inform both the counsel and pray for advancement of the case.