

(2010) 11 KL CK 0150

In the High Court Of Kerala

Case No : Writ Petition (Criminal) . No. 306 of 2010 (S)

Vignesh S.B.

APPELLANT

Vs

Padmanabha Pillai and Others

RESPONDENT

Date of Decision : 12-11-2010

Acts Referred:

Citation : (2010) 11 KL CK 0150

Hon'ble Judges : R. Basant, J;M.L. Joseph Francis, J;M.C. Hari Rani, J;K. Surendra Mohan, J

Bench : Full Bench

Advocate : A. Rajasimhan, for the Appellant; Thomas Abraham, for the Respondent

Judgement

R. Basant, J.—This judgment must be read in continuation of the various orders passed by the Court in the matter resting finally with the order dated 04.11.2010.

2. The petitioner had come to this Court for issue of a writ of habeas corpus to search for, trace and produce his wife Sindhuja.P.A, a young woman, aged 20 years (date of birth -26.09.1990). According to the petitioner, he and Sindhuja, the alleged detainee, have been in love. They have already got their marriage solemnised and registered under the Kerala Registration of Marriages (Common) Rules, 2008. Their marriage took place on 08.09.2009. Notwithstanding the registration of marriage, the spouses were residing separately and the alleged detainee, who was a student at the time of the marriage, was continuing to get educated. The petitioner had occasion to come to this Court earlier for issue of a writ of habeas corpus and, vide Ext.P7 judgment, it appeared that the matter was harmoniously settled. But according to the petitioner, even thereafter, the attitude of respondents 1 and 2 did not change. They were causing difficulties for the proper implementation of Ext.P7 judgment. Respondent No. 1 is the father of the alleged detainee. Respondent No. 2 is an uncle of the alleged detainee. The petitioner came to this Court again with this Writ Petition with a grievance that the alleged detainee was being illegally detained and confined by respondents 1

and 2.

3. This petition was filed on 27.07.2010. The alleged detainee was produced before this Court ultimately on 05.08.2010. An attempt was made again to harmoniously settle the disputes between the parties. Directions were issued from time to time. As stated earlier, this judgment must be read in continuation of the earlier orders passed in this matter.

4. Today when the case is called, the learned Counsel for respondents 1 and 2 submitted that they are no more interested in the matter. They accept the decision of the alleged detainee to go with the petitioner herein straight away. The alleged detainee, during the pendency of this petition, had gone to the petitioner on 03.11.2010 and thereafter she is continuing to reside with the petitioner. In these circumstances, the learned Counsel for respondents 1 and 2 submits that respondents 1 and 2 have no objection in the Court passing appropriate orders.

5. The petitioner and the alleged detainee submit before us that they have been residing together from 03.11.2010. No further relief is necessary. They may be permitted to leave the Court together, it is prayed.

6. The petitioner and the alleged detainee have an apprehension that harm may be caused to them by respondents 1 and 2 or their peaceful residence may be disturbed by them. The learned Government Pleader on behalf of the police undertake that if the petitioner and the alleged detainee have any complaints, they can raise such complaints before the police, whereupon, necessary action shall be taken by the police.

7. The alleged detainee states that she wants to continue her education. She is a student of the 4th semester of the B.E Course. During the pendency of this petition, she has been transferred from Sharunathan College of Engineering, Thiruchi to Noorulislam Centre for Higher Education, Kumaracoil, Thuckalay. She prays that permission may be granted to her to get re-transferred to the college at Thiruchi and continue her education there. The petitioner and the alleged detainee submit that they are afraid that respondents 1 and 2 and their people might obstruct their attempt to get the relevant documents returned and to get transferred to the college at Thiruchi.

8. The learned Government Pleader submits that if the petitioner and the alleged detainee require any assistance of the police, they can make such request and the police shall ensure that the attempt of the petitioner and the alleged detainee to get the alleged detainee transferred to the college of her choice is not in any way disturbed or interfered with by respondents 1 and 2 or persons acting at their behest. They can apply for necessary protection and the same shall be granted by the police, submits the learned Government Pleader. We record that submission of the learned Government Pleader.

9. In the result:

- a) This Writ Petition is allowed;
- b) The alleged detainee Sindhuja.P.A, wife of the petitioner, is permitted to leave the Court along with the petitioner;
- c) We record the submission of the learned Government Pleader that the petitioner and the alleged detainee can apply to the police if they perceive any threat to their person or to their attempt to get the alleged detainee transferred to the college at Thiruchi from the institution at Kumaracoil.

ORDER

Dated this the 4th day of November, 2010

10. This petition actually stands posted to 19.01.2011. On the representation of the learned Counsel for the petitioner, this petition has been called today. When the case is called, the petitioner and the alleged detainee are present before Court. The learned Counsel for the petitioner is also present. Notice was given to the learned Counsel for respondents 1 and 2. The learned Counsel for respondents 1 and 2 is also present.

11. The learned Counsel for the petitioner submits that the alleged detainee, who had gone along with her parents and who was continuing her education, has all on a sudden come to the petitioner on the evening of 03.11.2010. The alleged detainee now states before us that she does not want to reside away from her husband, the petitioner herein. She wants to reside along with him at his residence at Vattiyoorkkavu. She shall continue her education residing with her husband, the petitioner herein. She had come to the house of the petitioner after her college on 03.11.2010 and had joined her husband, the petitioner herein. Both the petitioner and the alleged detainee pray that they may be permitted to reside in peace without any obstruction or interference from anyone. The petitioner and the alleged detainee state that the alleged detainee wants to continue her education living with her husband, the petitioner herein.

12. The learned Counsel for respondents 1 and 2 submits that he has not received sufficient time to contact respondents 1 and 2 and take instructions from them. In these circumstances, the learned Counsel prays that the matter may be posted to some day next week to enable him to take instructions.

13. We accept the request of the learned Counsel for respondents 1 and 2. We accept the submissions of the petitioner and the alleged detainee. We note that they are already legally wedded husband and wife. We permit them to leave the Court together today with directions to them to appear before this Court on the next date of posting.

14. Call this petition again on 12.11.2010. On that day, the learned Counsel for respondents 1 and 2 and the learned Counsel for the petitioner shall be heard and appropriate further directions issued. The petitioner and the alleged detainee shall appear on that date.

15. We take note of the submission of the learned Counsel for the petitioner (as also the petitioner and the alleged detainee) that they apprehend danger from respondents 1 and 2, their relatives and their henchmen. They pray that directions may be issued to the police to ensure that the petitioner and the alleged detainee are permitted to reside in peace at the residence of the petitioner at

TC 6/230(1), Sayanora, PRA-56, Thittamangalam, Vattiyoorkavu, Thiruvananthapuram,

within the jurisdiction of the Vattiyoorkavu Police Station. The learned Government Pleader agrees that the 3rd respondent shall take necessary action to ensure that there is no disturbance caused to the residence of the couple at the residence of the petitioner till the next date of posting.

16. Call on 12.11.2010 at 1.45 p.m in the Chamber.

17. Hand over copies of this order to the learned Counsel for the petitioner and the learned Government Pleader.

Dated this the 29th day of October, 2010

18. This order must be read in continuation of our earlier orders dated 27.07.2010, 04.08.2010, 05.08.2010, 22.09.2010 and 23.09.2010.

19. We are informed that H.M.O.P No. 16 of 2010 has been dismissed as not pressed already. Copy of the order is not produced. The learned Counsel for the 1st respondent prays for time to produce the copy of the order. We are, in these circumstances, satisfied that one more posting can be given finally, before proceedings in this Writ Petition are closed.

20. Accordingly we direct that the case be called on 19.01.2011 for production of copy of the order/judgment in H.M.O.P No. 16 of 2010 and for final disposal.

21. The matter shall be treated as part heard.

Dated this the 23rd day of September, 2010

22. This order must be read in continuation of our earlier orders resting with the order dated 05.08.2010. Today when the case is called, the petitioner is present along with his counsel. The 1st respondent is present. He is represented by a counsel. The alleged detainee has also come to Court along with the 1st respondent.

23. Parties and counsel submit that all necessary steps have been taken to comply with the directions/undertaking issued/recorded in the order dated 05.08.2010. The alleged detainee has now joined the Noorulislam University, Kumaracoil, Thuckalay, Kanyakumari, Tamil Nadu. Fee receipt dated 25.08.2010 to evidence payment of tuition fee of Rs. 35,000/- (Rupees Thirty five thousand only) in respect of Sindhuja.P.A for the B.E Electronics and Communication Engineering Course is produced. The alleged detainee and the 1st respondent

state before us that the alleged detainee is residing at Brahmapuram along with her parents at her parental home and is attending the course as a day scholar. Provisional admit card issued by the Noorulislam Centre for Higher Education, Kumaracoil, Thuckalay, is produced to confirm such provisional admission of the alleged detainee to the First Year B.E Degree Course.

24. The petitioner has produced judgment dated 19.08.2010 in O.P. No. 234 of 2010 to confirm that in terms of the undertaking given before Court on 05.08.2010, the said O.P. No. 234/2010 has been dismissed as not pressed.

25. The alleged detainee and the 1st respondent state that steps have been taken to bring to termination H.M.O.P No. 16/2010. The same has not been withdrawn yet. The Subordinate Judges Court, Padmanabhapuram has posted the case to 18.10.2010 for further steps. On that day, H.M.O.P No. 16 of 2010 shall also be got dismissed as not pressed as already undertaken before this Court on 05.08.2010.

26. All other stipulations/undertaking are being abided by, submit both sides.

27. The alleged detainee and the 1st respondent submit that they have received communication from Women's Police Station, Kuzhithura, Tamil Nadu, to appear before that police station on 18.09.2010. On that day, when the 1st respondent contacted the said police station, they directed the 1st respondent to report before the police on 24.09.2010. Reading of the said direction in a post card in Tamil shows that such notice to appear has been issued in furtherance of a complaint lodged by Vignesh, the petitioner herein. The petitioner herein asserts that he has not taken any steps after the order dated 05.08.2010 and that he does not want to press for any relief against the alleged detainee or the 1st respondent on the basis of complaints filed earlier. The petitioner undertakes that he shall get his lawyer to appear before that police station on 24.09.2010 to apprise the police that he does not want any further action to be taken against the alleged detainee or the 1st respondent or any other on the basis of any complaints filed earlier and pending now.

28. Copies of this order shall be handed over to the learned Counsel for the 1st respondent and the learned Counsel for the petitioner, so that this order along with order dated 05.08.2010 can be produced before the police.

29. Call this petition again on 29.10.2010 by which day, we expect that H.M.O.P No. 16/2010 shall be withdrawn and the order closing the said proceedings produced before us.

30. Call this petition again on 29.10.2010. On that day, the petitioner, the alleged detainee and the 1st respondent shall appear before us in person.

Dated this the 5th day of August, 2010

31. Now for the second time, the petitioner has come to this Court with this petition for issue of a writ of habeas corpus to search for, trace and produce his

wife Sindhuja.P.A, a young woman, aged about 20 years (date of birth - 26.09.1990).According to the petitioner, he and Sindhuja (hereinafter referred to as `the alleged detainee`) were in love. They were known to each other for a long period of time. They had got married in accordance with the customary Hindu rites on 08.09.2009. Their marriage was registered and certificate No. 58083/2009 dated 23.10.2009 was issued by the local Registrar of Marriages, Trivandrum. The alleged detainee Sindhuja was a student of the B.E Course when the marriage took place and the same was registered. Even though the marriage was registered, they continued to reside separately. It is stated that they were together for a short period of 4 days. The petitioner came to this Court earlier with W.P(Cri) No. 46 of 2010 and the same was disposed of by the Court (another Bench) vide judgment dated 08.02.2010. We extract the entire judgment below for a clear understanding as to how the earlier proceedings came to an end.

Today the alleged detenu was produced before us. She would submit that she is not in any illegal detention as such. She submits that she is aged twenty. She would say that she likes to go with her parents for the time being, and she intends to go back with the petitioner whom she has married. Shri B.S. Swathi Kumar, learned Counsel for respondents 1 and 2 submits that respondents 1 and 2 will not stand in the way of the detenu telephoning the petitioner or the petitioner telephoning the detenu. We record the submission of the learned Counsel for respondents 1 and 2 and dispose of the Writ Petition. We also make it clear that this will be without prejudice to any other right available to the petitioner in law.

(emphasis supplied)

32. The alleged detainee Sindhuja left the Court with her parents. The petitioner to his shock realised that Sindhuja did not continue her studies. According to him Sindhuja did not contact him over the telephone, nor was he permitted by the parents of Sindhuja to contact her over the telephone. He had initiated proceedings for restitution of conjugal rights before the Family Court, Nedumangad.O.P. No. 234 of 2010 was filed by him on 15.03.2010. According to him, he filed that petition in exasperation as he could not ascertain the condition of his wife Sindhuja, who had gone from this Court along with her parents.It is the further grievance of the petitioner that though O.P. No. 234 of 2010 was posted before the Family Court on a number of occasions, the alleged detainee did not appear before Court personally.

33. To add to his discomfiture, he found that H.M.O.P No. 16 of 2010 was filed before the Subordinate Court, Padmanabhapuram on 22.03.2010 in the name of the alleged detainee Sindhuja claiming declaration of nullity of marriage. According to the petitioner, totally false, wild and weird allegations were raised in the said petition. The petitioner therefore felt that his wife Sindhuja was being compelled to subscribe her signature to such a totally false application. Even before that court, the alleged detainee Sindhuja did not appear/was not

produced. According to the petitioner, the desperate attempt made by him to contact his wife did not succeed notwithstanding the judgment dated 08.02.2010 in W.P (Cri) No. 46 of 2010. It is, in these circumstances, that he came to this Court with this petition on 26.07.2010 for the second time for issue of a writ of habeas corpus.

34. This petition was admitted on 27.07.2010. Notice was ordered to the respondents. The case was posted to 04.08.2010. On 04.08.2010, respondent Nos. 1 and 2, the father and paternal uncle of the alleged detainee, appeared before this Court through a counsel. They prayed for 7 days' further time to file a counter statement. This Court smelled foul play and did not grant the said request. The case was posted to this day (05.08.2010) with directions to respondent Nos. 1 and 2 to produce the alleged detainee before this Court.

35. Today when the case is called, the petitioner is present. He is represented by his counsel. Respondent Nos. 1 and 2 are present. They are represented by counsel. Another counsel, Mr. Salim Kumar, who claims to be appearing for the alleged detainee before the court below, has also come to Court along with respondent No. 1 and his wife. As the alleged detainee has come to Court along with respondent No. 1 and his wife, who are allegedly detaining her, we permitted the alleged detainee to remain alone in the Chamber without opportunity for anyone to interact with her. We pointedly asked her whether she wants to meet and interact with the petitioner. She stated that she did not want to meet or interact with him.

36. After the lunch recess, we interacted with the alleged detainee alone initially. Later we interacted with the petitioner alone. Subsequently we interacted with the petitioner and the alleged detainee together. Later respondent No. 1 and his wife were also involved in the interactions. The learned Counsel for the petitioner, the learned Counsel for respondent Nos. 1 and 2 Sri. Salim Kumar, another counsel as also the learned Government Pleader were present in the Chamber in the course of the final interactions.

37. We find that the alleged detainee is in a state of absolute confusion and mental turmoil. We gave her sufficient time to coolly collect herself and take decisions affecting her future. She, in a frenetic attitude stated before us that she loves the petitioner, but she wants divorce now. Her love for him will continue for all times, but she wants divorce now. Her family will be ruined if she were to go with the petitioner now. She wants to complete her studies. Until she completes her studies, she does not want to be disturbed. The filing of the cases frequently by the petitioner is disturbing the tempo of her studies. That is affecting the peace and harmony in her family. If the petitioner wants, he can marry any other woman after getting divorce. But she will not marry anyone and she will continue to remain unmarried. At any rate, she does not want to be disturbed till her education is complete.

38. The petitioner submitted before us that he is willing to wait for any length of

time to commence a harmonious marital life. He also wants the alleged detenue to complete her studies. The alleged detenue is in the second year of the B.E Course. The petitioner is also aggrieved that the alleged detenue has not continued her studies. He is willing to wait until she completes her B.E course. Till then, he will not disturb the alleged detenue at all. He will withdraw all the cases that have already been filed and shall not file any case till she completes her studies. To avoid indefiniteness in his submissions, it is agreed that he will wait for 5 more years for the alleged detenue to complete her studies. Till then, he shall not press his claim for restitution of conjugal rights.

39. The 1st respondent and his wife are unable to accept the relationship between the petitioner and the alleged detenue. They state that they cannot persuade themselves to accept the marital relationship between the petitioner and the alleged detenue. But they hasten to assert that their intention is to ensure that the alleged detenue completes her education at the earliest. She must be able to stand on her own feet and support herself. For this, she has to complete her education at the earliest. The alleged detenue and her parents agree that her educational course can be completed within a period of 5 years at the latest. Thereafter, the alleged detenue shall be at liberty to take appropriate decisions affecting her life.

40. Interactions with the parties with the help of the counsel, we happily note, have led them to agree on certain aspects. The parties agree and accordingly we issue the following directions:

- i) The alleged detenue shall return from Court today along with her parents (1st respondent and his wife);
- ii) This case shall be called again on 22.09.2010. On that day, the alleged detenue and her parents shall appear before Court. The petitioner shall also appear before Court;
- iii) On that day, the alleged detenue and her parents shall inform this Court the steps taken to resume the education of the alleged detenue for the B.E Course. It is agreed that by that date, she would have resumed her educational career (ie. continue her B.E Course);
- iv) The alleged detenue withdraws the allegations raised in H.M.O.P No. 16 of 2010 and agrees that the said case shall be brought to termination by that date stating before that court that no relief need be granted in H.M.O.P No. 16 of 2010;
- v) The petitioner agrees that by that date, O.P. No. 234 of 2010 pending before the Family Court shall be brought to termination by him by not pressing that petition;
- vi) The petitioner agrees that till the alleged detenue completes her B.E course, or for a period of 5 years from this date, whichever is shorter, he shall not initiate any proceedings against the alleged detenue and her parents before any

authority and will not disturb the education of the alleged detainee or her peaceful and harmonious residence and pursuit of her studies;

vii) The alleged detainee and her parents agree that no proceedings before any Court shall be initiated against the petitioner herein during the said period of 5 years;

viii) The parents of the alleged detainee agree and assert that the residence of the alleged detainee Sindhuja shall not be shifted from the residence of the 1st respondent or the place where she pursues her B.E degree course;

ix) It is agreed that the parties can approach this Court for any further directions/clarifications of these directions from time to time if the need arises;

x) The parents of the alleged detainee now accept and agree that the alleged detainee cannot and shall not be given in marriage to any other person during this period;

xi) The petitioner as well as the parents of the alleged detainee agree that they shall not in any way attempt to vex, harass or cause difficulties to each other hereafter.

41. Call this petition again on 22.09.2010 for report regarding compliance of the above conditions relating to withdrawal of the 2 cases and resumption of the studies of the alleged detainee.