

Reeja John Vs. State of Kerala

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Court : Kerala

Decided On : Jan-29-2013

Judge : Honourable Mr.Justice Pius C.Kuriakose

Appellant : Reeja John

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE PIUS C.KURIAKOSE & THE HON'BLE MR. JUSTICE P.D.RAJAN TUESDAY, THE 29TH DAY OF JANUARY 2013 9TH MAGHA 193 WP(Crl.).No. 32 of 2013 (S) -----

PETITIONER(S)/PETITIONER: ----- REEJA JOHN,D/O.K.J.JOHN, AGED 2 YEARS, KUZHIMATTATHIL HOUSE,PARIYAPURAM P.O., ANGADIPURAM,PERINTHALMANNA TALUK, MALAPPURAM DISTRICT. BY ADV. SMT.K.V.BHADRA KUMARI
RESPONDENT(S): ----- 1. STATE OF KERALA, REPRESENTED BY S. I. OF POLICE,MANNUTHY POLICE STATION, MANNUTHY P.O,THRISSUR(DT),PIN-68

2. BENNY K.M, S/O.LATE MATHEW,KOTTAYAIL HOUSE,MULAYAM P.O., VALAKKAVU ACHAMKUNNU (VIA),THRISSUR DIST.PIN-68

3. ALICE MATHEW, W/O.MATHEW,KOTTAYIL HOUSE,MULAYAM.P.O, VALAKKAVU ACHAMKUNNU(VIA),THRISSUR DIST,PIN-680 751 R1 BY STATE PUBLIC PROSECUTOR SRI.T.ASAF ALI R2 BY ADV.SRI.T.N.MANOJ THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON 29-01-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: sts WP(CRL)NO.32/2013 APPENDIX PETITIONER'S EXHIBITS: P1 COPY OF THE JUDGMENT IN S.C.NO.225/2011 DATED 13 8/2012 OF PRINCIPAL SESSIONS COURT, BANGALORE RURAL DISTRICT P2 COPY OF THE O.P.(G.W)NO.1120/2012 OF FAMILY COURT, MALAPPURAM P3 COPY OF THE ORDER DATED 24 12/2012 OF FAMILY COURT,MALAPPURAM P4 COPY OF THE COMPLAINT SUBMITTED BY THE PETITIONER BEFORE THE S.I.OF POLICE,MANNUTHY DATED 15 1/2013 RESPONDENT'S EXHIBITS: NIL /TRUE COPY/ P.A.TO.JUDGE sts PIUS.C. KURIAKOSE & P.D. RAJAN, JJ.

----- W.P.(Crl.) No.32 of 2013
----- Dated this the 29th day of January, 2013
JUDGMENT Pius.C. Kuriakose,J.

This writ petition is filed by the petitioner, the mother of 4 = years old girl child by name Aneeta Benny, alleging that the child was forcibly taken from her custody by the 2nd respondent and that respondent 2 and 3 are presently detaining the child in some unknown place. According to her, she apprehends that the life of the child is in danger. On considering this writ petition for admission, this Court on 23.1.2013 passed the following order: "Not admitted. Sri. C.R. Syam Kumar, the learned Senior govt. Pleader takes notice on behalf of the first respondent. Sri. Syam Kumar will seek instruction as to what is the status of investigation, if any, conducted by the first respondent under Ext.P4. Issue notice on admission by special messenger to respondents 2 and 3. The first respondent is directed to depute an officer under him to the house of respondents 2 and 3 and to impart instructions to the Senior govt. Pleader regarding the allegations of the petitioner that her 4 = year old child, Aneeta, is detained by respondents 2 and 3. Post on 29-1-2013." Accordingly, the 2nd respondent accompanied by his brother and sister-in-law has brought the child Aneeta Benny. The petitioner is W.P.(Crl)No.32/13 2 also present. We had a very brief interaction with the child.

The child appeared to be very happy in the company of its father. It appears to us that the child now prefers the company of its father to that of its mother. As desired by the petitioner, the mother of the child, we permitted her to have the company of the child for half an hour in this court.

2. It is submitted by Mr. Asaf Ali, State Public Prosecutor that, according to the Sub Inspector of Police, Mannuthy Police Station, the Karnataka Police has registered a case against the petitioner and one Devan for having attempted to do away with the 2nd respondent, who is the adopted son of the 3rd respondent. According to the Sub Inspector, the antecedents of the petitioner are not very clean and the 2nd respondent's marriage with the petitioner is the petitioner's second marriage. Her first marriage ended in divorce on allegations of her illicit relationship with others. The Sub Inspector reported that the child is in a custody of the 2nd respondent, who has put the child in a boarding school. But, the 2nd respondent did not reveal to the Sub Inspector, the name of the school, where the child is admitted. Mr. Asaf Ali placed before us not only the report given to him by the Sub Inspector but also a detailed statement, which was given by the 2nd respondent to the Sub Inspector. What is stated regarding the custody of the child is W.P.(CrI)No.32/13 3 that the child is given schooling in a convent and that the 2nd respondent fears that if the petitioner comes to know in which school the child is admitted, there is likelihood of the 2nd respondent abducting the child. The 2nd respondent, who was not ready to divulge the identity of the place, where the child is presently admitted, told us that the child is admitted to Christina Homes, Olary in the outskirts of Trichur, which is conducting a Kindergarten. According to the 2nd respondent, there is a boarding attached to the Convent and the child is an inmate in the boarding.

3. The immediate response of Smt. Bhadra Kumari, the learned counsel for the petitioner was that the child is put in an orphanage. We, therefore, directed the State Public Prosecutor Mr. Asaf Ali to get immediate instructions on the basis of the enquiries conducted through the District Police Chief, Thrissur on the issue whether the child is a student of LKG Classes in the Kindergarten conducted by Christina Homes, Thrissur and also whether the child is a boarder in the school. Pursuant to that, now when the case is taken up again by 2.30 p.m., Mr. Asaf Ali

has placed before us the following report given to him by the District Police Chief, Thrissur: "Kind attention is invited to the subject cited above. On enquiry, it is informed that Kumari Anitta Benny, 4 Yrs D/o Benny K.M. Had been admitted to St.Christina Homes, Pullazhi, Thrissur w.e.f 09/05/2011. This is a protection home and W.P.(CrI)No.32/13 4 nursery school being run by Holy Angels Holy Home. The said child had been entrusted to the institution by her father Shri Benny and she has been studying in the nursery school being conducted by the Home. There are a total of 35 children below 5 years of age being cared by this organisation." 4. Smt. Bhadra Kumari, the learned counsel for the petitioner addressed appealing submissions before us. According to her, the child being a tender girl child should be entrusted to the custody of the petitioner. All the submissions of Smt. Bhadra Kumari were strongly countered by Sri. T.N. Manoj. According to him, it is for a competent family court to settle the disputes between the parents over the custody of their only child. We are in agreement with Mr.Manoj. We find that no case is made out for issuing a writ of Habeas Corpus. In fact, the writ of Habeas Corpus is unnecessary now that the child is produced before us by the 2nd respondent, her father and we permitted the petitioner to have the company of her child for some time. Sri. T.N. Manoj submitted that the jurisdiction of the Thrissur Family Court to entertain and decide the dispute between the parties over the custody of Aneeta Benny will not be questioned by the 2nd respondent. We also find that the child is presently admitted to Christina Homes, Pullazhi, situated within the local limits of the Thrissur family court. We therefore, dispose of this writ petition W.P.(CrI)No.32/13 5 issuing the following directions:

5. The reliefs sought for by the petitioner in this writ petition are declined. The petitioner is directed to approach the family court, Thrissur with appropriate petition seeking custody of the child. It is open to the petitioner to file interlocutory application seeking immediate custody. If any such application is received by the family court within seven days from today, the family court should give priority to the application for immediate temporary custody and that application should be disposed of in accordance with law at the earliest. Issue copy to both sides and also to the State Public Prosecutor. PIUS.C. KURIAKOSE, JUDGE P.D. RAJAN, JUDGE. acd W.P.(CrI)No.32/13 6 W.P.(CrI)No.32/13 7