

Mariam Joshua Vs. Vijitha Mathews

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Court : Kerala

Decided On : May-05-2015

Judge : Honourable Mr.Justice a.M.Shaffique

Appellant : Mariam Joshua

Respondent : Vijitha Mathews

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE & THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW TUESDAY, THE 5TH DAY OF MAY 2015 15TH VAISAKHA, 1937 WP(Crl.).No. 178 of 2015 (S) ----- PETITIONER: ----- MARIAM JOSHUA AGED 52 YEARS D/O.N. JOHN MATHEWS, RESIDING AT 6264, SARNAGATI FLANK ROAD, SION(EAST) MUMBAI 400022 BY ADV. SMT.SANDHYA RAJU RESPONDENTS: ----- 1. VIJITHA MATHEWS THE CAMBRIDGE SCHOOL, P.O BOX 23533 DOHA QATAR 2 YOHANAN K VINCENT, PUTHOOR, KOOTANIKKAL, HILL VIEW NAGAR STREET, PEERIMAPADARI, MANARKADDU 678582 3. DIRECTOR ASSUMPTION HOSPITAL, KANJIRAP[UZHA PLAGHAT 678591 4. IG ERNAKULAM RANGE, SHANMUGHAM ROAD, MARINE DRIVE, ERNAKULAM, KOCHI-31 5. THE COMMISSIONER OF POLICE, KOCHI CITY, ERNAKULAM, KOCHI-31 6. DIRECTOR GENERAL OF POLICE, POLICE HEAD QUARTERS, KOCHI-31 R3 BY ADV. SRI.R.HARISHANKAR R1 & R2 BY ADV.SRI.P.B.SAHASRANAMAN BY

GOVERNMENT PLEADER SMT.LOUSEY THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON 05-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(Crl.).No. 178 of 2015 (S) ----- APPENDIX PETITIONER'S EXHIBITS ----- EXT.P1 A TRUE COPY OF THE COMPLAINT PREFERRED BEFORE THE 4th RESPONDENT 28th APRIL 2015 RESPONDENTS' EXHIBITS ----- NIL (sd/-) //true copy// PA TO JUDGE A.M.SHAFFIQUE, J & K.ABRAHAM MATHEW, J * * * * * W.P.(Crl) No.178 of 2015 ----- Dated this the 5th day of May 2015

JUDGMENT

Shaffique, J This writ petition is filed seeking a writ of habeas corpus to direct the respondents to produce the detainee Sri.N.J.Mathew, who is 83 years old. Petitioner who is the younger daughter of the detainee is residing at Mumbai. It is submitted that the affairs of the detainee was being looked after by the family of the petitioner's elder sister. The detainee was diagnosed to have cancer in the year 1992 and he was treated in Tata Memorial Hospital, Mumbai. The detainee has survived cancer and started to continue independently. It is further stated that the detainee was under the care of a male servant and residing in Vyttila from September 2004 to October 2012. Petitioner and her sister were in regular communication with the detainee and used to W.P.(Crl) No.178/2015 2 visit him once in two months. Petitioner's brother and his family were totally indifferent and were not taking care of the detainee. During 2002, the male servant left on account of ill health. During February 2014, petitioner received a frantic call from her father asking her to transfer Rs.2,00,000/- to his account. When the matter was enquired into, she was made to understand that there was no such necessity. The petitioner also narrates certain incident by which pressure was exercised on the detainee to transfer his property. Petitioner further submits that later her father had been admitted to Alexander Mathoma Memorial Centre at the Fellowship Mission Hospital Kumbanad on 08/11/2014. When the petitioner made enquiries, the whereabouts of the detainee was not known. It is stated that respondents 1 and 2 were allegedly looking after the detainee and put him in a place where petitioner does not have any access. Though the petitioner approached the 3rd respondent

hospital authorities, she was not permitted to see the detainee. It is W.P.(CrI) No.178/2015 3 also stated that the detainee is in a state of shock and trauma and is suffering from dementia. On these facts, the writ petition is filed.

2. We have issued notice to respondents 2 and 3. Respondents 1, 2 and 3 have appeared in person. Affidavit has been filed by the 3rd respondent inter alia stating that Sri.N.J.Mathew, aged 87 years, and father-in-law of the 1st respondent was brought in an ambulance to Assumption hospital by the 1st respondent on 14/04/2014 at 11.30 p.m. The detainee was admitted on the same day and the 1st respondent was informed by the hospital authorities that the patient requires detailed care on account of old age infirmities and diseases and also because of the fact that children of the detainee are residing outside Kerala. Since the 1st petitioner is employed in Qatar as a school teacher, it was intimated that the 2nd respondent, a cousin of the 1st respondent is to be contacted in case of any emergency. Further it is stated that the detainee is unable to undertake W.P.(CrI) No.178/2015 4 long distance travel in sitting posture due to rigidity of lower limbs and there is likelihood for a fall in blood pressure pressure and occasionally he exhibits mild violence and non- co-operation.

3. Learned counsel appearing for respondents 1 and 2 submits that they have to shift the detainee to Assumption Hospital at Palakkad since there was nobody else to look after the detainee and the 2nd respondent was stationed at Palakkad.

4. Having regard to the aforesaid factual situation, it is clear that the detainee is not under illegal confinement of any person. The representative of the 3rd respondent is also present before this Court. It is submitted that they have not exerted any pressure to continue the detainee at Palakkad.

5. Learned counsel for the petitioner would however submit that she, being the daughter, is entitled to take care of the detainee and she should be permitted to shift the W.P.(CrI) No.178/2015 5 detainee to their native place either at Thiruvalla or any other place of her choice.

6. Be that as it may, daughter is equally responsible to take care of the detainee. Since there is no illegal confinement, we do not think that any order as prayed for

need be issued. That apart, according to the hospital authorities, the detainee is not in a position to travel to appear before this Court and record his statement.

7. However, having regard to the factual situation that has arisen in this case, we are of the view that appropriate directions are to be issued to ensure safety of the detainee in the following manner. i) That the petitioner shall be at liberty to engage any Doctor of her choice to ensure medical condition of the detainee at the third respondent's hospital. ii) If the petitioner feels that the detainee has to be transferred to any other place, it shall be after getting the consent and approval of the detainee. W.P.(Crl) No.178/2015 6 lii) If the detainee is not in a position to express his opinion due to ill health or mental instability, on the advice of the Doctors, it shall be open for the petitioner to transfer the detainee to any place of her choice with notice to respondents 1, 2 and 3. iv) If the detainee wishes to continue in the very same hospital at Palakkad, the petitioner shall have access to visit him and the expenses in that regard shall be met by the petitioner and other near relatives. This writ petition is disposed of as above. (sd/-) (A.M.SHAFIQUE, JUDGE) (sd/-) (K.ABRAHAM MATHEW, JUDGE) jsr W.P.(Crl) No.178/2015 7

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