

Sreedevi Vs. the Director General of Police and ors.

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Court : Kerala

Decided On : Nov-23-2010

Judge : R.Basant; K.Surendra Mohan, Jj.

Acts : Special Marriage Act

Appeal No. : W.P.(crl.) No.452 of 2010

Appellant : Sreedevi

Respondent : The Director General of Police and ors.

Advocate for Pet/Ap. : SRI.B.SURESH KUMAR, Adv.

Judgement :

R.BASANT & K.SURENDRA MOHAN, JJ.

W.P.(crl.) No.452 of 2010

Dated this the 23rd November, 2010

1. The petitioner, a woman aged 44 years has come to this Court with this petition for the issue of a writ of habeas corpus to search for trace and produce her daughter Sreeja, a young woman aged 22 years (date of birth - 22.12.1988). Sreeja, the alleged detinue has passed the B.Com Degree. She was found missing from 6.10.2010. The petitioner apprehended that the alleged detinue was being detained illegally by the fourth respondent in active collusion with the fifth

respondent, his father. The parents had registered a crime, but they had not traced the alleged detainee. It is in these circumstances that the petitioner came to this Court with this petition on 15.11.2010. This petition was admitted on 16.11.2010. Notice was ordered to the respondents. The case was posted to this date.

2. Today when the case is called, the petitioner is present. She is represented by a counsel. Her husband Saju has also come to this court along with the petitioner. The fourth respondent is present. He is not represented by any counsel. Along with him, the alleged detainee Sreeja has also come to court.

3. As the alleged detainee comes to court along with/in the custody of the fourth respondent who is allegedly detaining him, we permitted the alleged detainee to remain alone in the chamber with no opportunity for the fourth respondent to interact with her. We permitted the parents of the alleged detainee to interact with her during the pre-lunch session.

4. After the lunch recess, we interacted with the alleged detainee alone initially and later in the presence of her parents. Subsequently, we interacted with the alleged detainee in the presence of the fourth respondent. The counsel for the petitioner was not present, when the case was called in the chamber after the lunch recess. The learned Government Pleader was present.

5. The alleged detainee and the fourth respondent state before us categorically that they have already got married in a temple. However, they wanted their marriage to be solemnised and registered under the Special Marriage Act. Notice has been given as early as on 7.10.2010, but the solemnisation and registration under the Special Marriage Act has not taken place so far. Though they assert that their marriage had taken place in accordance with the customary hindu rites in a local temple, they have not produced any materials before us to show that such marriage has taken place. They pray that they may be permitted to leave the court today together. They shall get their marriage solemnised and registered under the Special Marriage Act, immediately and produce the marriage certificate before this court.

6. The parents of the alleged detainee are unable to accept the decision of their daughter to get married to the fourth respondent. They have their own reasons for such inability to accept the relationship between the alleged detainee and the fourth respondent.

7. In a petition for the issue of a writ of habeas corpus, we are primarily concerned with the question whether the alleged detainee is under any illegal detention or confinement. We are satisfied after our interactions with the alleged detainee that she is not under any such illegal confinement or detention. The alleged detainee is an adult woman, she having crossed the age of 21 years (date of birth - 22/12/1988). We respect her decisional autonomy. We note that though they are not able to produce any certificate to prove the solemnisation of a customary hindu marriage between them, they have already given notice under the Special marriage Act and they can get their marriage registered any time now.

8. After our interactions with the parents of the alleged detainee, they also finally come round and agree that the alleged detainee, if that is her decision, can be permitted to leave the court along with the fourth respondent. The fourth respondent and the alleged detainee state before us that they have no intention of claiming and shall not be claiming any money, property or ornaments from the parents of the alleged detainee.

9. We are satisfied in these circumstances that no directions are necessary in this writ petition. The same can be dismissed.

In the result,

a) this writ petition is dismissed.

b) the alleged detainee Sreeja is permitted to leave the court along with the fourth respondent as desired by her.

c) The alleged detainee and the fourth respondent agree that their marriage shall be solemnised and registered under the Special Marriage Act at the earliest - at any rate within a period of three days and that a copy of the Certificate of Marriage shall be furnished to the petitioner through the third respondent - Sub Inspector of

Police, Kottiyam Police Station.

d) We record the statement of the learned Government Pleader that instructions shall be given to the third respondent to ensure that the marriage certificate is received from the fourth respondent and handed over to the petitioner within a period of two weeks.

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