

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

WEDNESDAY, THE 24TH DAY OF MAY 2023 / 3RD JYAISHTA, 1945

WP(CRL.) NO. 422 OF 2023

PETITIONER:

KIRANKUMAR T
AGED 42 YEARS
S/O. RAVI VARMA, FLAT NO.6Q,
KRISHNA PALACE, SANSKRIT COLLEGE ROAD
TRIPUNITHURA ERNAKULAM DIST., PIN - 682301

BY ADVS.DILISH JOHN
RESHMA MOHAN
AMBADI KANNAN

RESPONDENTS:

1 SHO OF POLICE
HILL PALACE POLICE STATION,
TRIPUNITHURA, ERNAKULAM DIST., PIN - 682301

2 GOVINDANKUTTY P C
AGED ABOUT 48 YEARS
S/O.CHANDRASEKHARAN PILLAI,
PLANTHOTTATHIL HOUSE, NELIMUKAL, MANAKAL P.O.,
KADAMPANADU, PATHANAMTHITTA, PIN - 691551

BY ADVS.MANU RAMACHANDRAN
M.KIRANLAL(K/963/2009)
R.RAJESH (VARKALA) (K/78/2000)
SAMEER M NAIR(K/000481/2017)
GEETHU KRISHNAN(K/001199/2021)
SAILAKSHMI MENON(K/1518/2021)
ABHISHEK JOHNSON(K/1145/2023)
P.NARAYANAN, SENIOR G.P. AND ADDL.PUBLIC PROSECUTOR

OTHER PRESENT:

SRI.E.C.BINEESH, P.P.
SRI.ALEX M.THOMBRA, SR.P.P.

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR FINAL HEARING ON
24.05.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR & C.S.SUDHA, JJ.

W.P.(Crl.) No.422 of 2023

Dated this the 24th day of May, 2023

J U D G M E N T

C.S.Sudha, J.

The petitioner alleges that his legally wedded wife, namely, Saranya B.Raja is in the illegal custody/detention of the second respondent, who has a criminal background. Though the petitioner complained to the first respondent, no action has been taken so far and hence the present petition seeking a writ of habeas corpus directing the first respondent to produce the Saranya B.Raja, aged 38 years, the petitioner's wife and their minor child from the illegal detention of the second respondent and to produce them before the court.

2. The first respondent, the SHO of the Police Station concerned, has filed a report relating to the action taken by him on the complaint preferred by the petitioner. It is stated that on 08/04/2023, the petitioner had lodged a complaint through registered post alleging that his wife and minor son are being kept in the illegal custody of the second respondent. On

receiving the complaint, the first respondent made several attempts to contact the petitioner and record a statement. However the petitioner never turned up before him. Thereafter the first respondent was informed that the complaint had been lodged merely for the purpose of informing the police about the incident so as to avoid future complications. After the filing of the present petition also, the first respondent contacted the petitioner, pursuant to which, he appeared before the first respondent. Crime No.844/2023 under Section 57 of the Kerala Police Act has been registered and investigation is going on. From the FI Statement in the aforesaid crime, it is understood that the wife of the petitioner has already moved the Family Court, Ottapalam, in September 2022, seeking divorce.

3. The second respondent has filed a counter affidavit contending that the present petition has been filed suppressing material facts and that is a clear abuse of the process of Court. The alleged detinue, the wife of the petitioner, had left him in the year 2020 itself and since then, she and her minor son have been living with the second respondent at his residence. As the marriage between the petitioner and the alleged detinue has irretrievably broken down, the latter has initiated proceedings before the Family Court concerned. She has filed O.P.(HMA)No.665/2022 seeking divorce;

O.P.No.664/2022 seeking return of gold ornaments and money as well as M.C.No.125/2022 seeking maintenance from the petitioner, before the Family Court, Ottapalam. In all the aforesaid matters, notice has been served on the petitioner and he has entered appearance before the court also. The parties have been referred for mediation and the case stands posted to 08/05/2023 for mediation report. The petitioner's wife and son are not in the illegal custody of the second respondent as alleged in the petition and hence, he is not entitled to the reliefs prayed for.

4. Heard Sri.Dilish John, the learned counsel for the writ petitioner and Sri.Alex M.Thombra, the learned Senior Public Prosecutor.

5. The fact that several proceedings have been initiated by the alleged detinue in the Family Court against the petitioner is not disputed. It is also not disputed that the petitioner herein has entered appearance in all the aforesaid cases. It is also admitted that the parties have now been referred for mediation in the proceedings before the Family Court. Therefore, it is quite clear that it was by suppressing all the material facts, the present writ petition has been filed. This is nothing but a clear abuse of the process of the Court. There appears to be no illegal detention of the petitioner's wife or son as alleged in the petition and hence, the petitioner is

not entitled to the reliefs prayed for.

In the result, the writ petition is dismissed.

Interlocutory applications, if any pending, shall stand closed.

Sd/-

P.B.SURESH KUMAR
JUDGE

Sd/-

C.S.SUDHA
JUDGE

ami/

APPENDIX OF WP(CRL.) 422/2023

PETITIONER EXHIBITS

- EXHIBIT P1** THE TRUE COPY OF THE COMPLAINT GIVEN BEFORE THE SHO OF POLICE HILL PALACE POLICE STATION TRIPUNITHURA IS PRODUCED HERewith AND MARKED AS EXHIBIT-P1
- EXHIBIT P2** THE TRUE COPY OF THE BOTH SIDES OF THE POSTAL ACKNOWLEDGE CARD DATED 10.04.2023 IS PRODUCED HERewith AND MARKED AS EXHIBIT-P2.

RESPONDENT EXHIBITS

- EXHIBIT R2 (a)** THE TRUE COPY OF THE O.P (HMA) NO.665/2022 FILED BY SMT. SARANYA B. RAJA SEEKING DIVORCE AGAINST THE PETITIONER BEFORE FAMILY COURT, OTTAPALAM
- EXHIBIT R2 (b)** THE TRUE COPY OF THE O.P NO.664/2022 FILED BY SMT. SARANYA B. RAJA SEEKING REALIZATION OF GOLD AND MONEY AGAINST THE PETITIONER HIS MOTHER BEFORE FAMILY COURT, OTTAPALAM
- EXHIBIT R2 (c)** THE TRUE COPY OF THE M.C NO.125/2022 FILED BY SMT. SARANYA B. RAJA AND MINOR SON SEEKING MAINTENANCE AGAINST THE PETITIONER BEFORE FAMILY COURT, OTTAPALAM
- EXHIBIT R2 (d)** THE TRUE COPY OF THE CASE STATUS IN O.P (HMA) NO.665/2022 BEFORE FAMILY COURT, OTTAPALAM
- EXHIBIT R2 (e)** THE TRUE COPY OF THE CASE STATUS IN O.P NO.664/2022 BEFORE FAMILY COURT, OTTAPALAM
- EXHIBIT R2 (f)** THE TRUE COPY OF THE CASE STATUS IN M.C NO.125/2022 BEFORE FAMILY COURT, OTTAPALAM
- EXHIBIT R2 (g)** THE COMPLAINT DATED 03.05.2023 PREFERRED BY SMT. SARANYA B. RAJA TO THE ASST.

COMMISSIONER OF POLICE, THRIKKAKARA
ALONG WITH EMAIL COMMUNICATION THROUGH
WHICH THE SAME WAS PREFERRED

EXHIBIT R2 (h)

THE RECEIPT VIDE PETITION NO.46132/2023
DATED 03.05.2023 ISSUED BY THE OFFICE OF
ASST. COMMISSIONER OF POLICE,
THRIKKAKARA TO SMT. SARANYA B. RAJA WITH
EMAIL COMMUNICATION THROUGH WHICH IT WAS
SERVED