

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN
&
THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

Monday, the 6th day of December 2021 / 15th Agrahayana, 1943
WP(CRL.) NO. 413 OF 2021(S)

PETITIONER:

BALAKRISHNAN, AGED 76 YEARS, S/O.KOCHUKUTTAN,
RESIDING AT PACHERY HOUSE, PUTHENCHIRA P.O.,
PUTHENCHIRA VILLAGE, KODUNGALLOOR THALUK,
THRISSUR (DT), PIN-680 682.

RESPONDENTS:

1. THE DEPUTY INSPECTOR GENERAL OF POLICE, ERNAKULAM RANGE, HIGH COURT JUNCTION, ERNAKULAM, PIN-682 031.
2. THE STATION HOUSE OFFICER, THODUPUZHA POLICE STATION, THODUPUZHA, PIN-685 584, ERNAKULAM DISTRICT.
3. THE STATION HOUSE OFFICER, MUVATTUPUZHA POLICE STATION, MUVATTUPUZHA, PIN-686 661, ERNAKULAM DISTRICT.
4. RAJMOHAN, AGED 50 YEARS, S/O.LAILADHARAN, RESIDING AT VATTATHATTEL HOUSE, MUVATTUPUZHA P.O., MARADY VILLAGE, MUVATTUPUZHA THALUK, PIN-685 584, ERNAKULAM DISTRICT.
5. THE MANAGING DIRECTOR, SACRED HEART MENTAL HOSPITAL, PAINKULAM, PAINKULAM P.O., THODUPUZHA, IDUKKI, PIN-685 605.

ADDL. R6 TO R8 IMPLEADED

6. THE KERALA STATE COMMISSION FOR PROTECTION OF CHILD RIGHTS, SREE GANESH, VANROSS JUNCTION, NEAR BAKERY JUNCTION, THIRUVANANTHAPURAM-695 034.
7. THE STATION HOUSE OFFICER, KODUNGALLOOR.
8. SNDP HIGHER SECONDARY SCHOOL, MUVATTUPUZHA-686 661, REPRESENTED BY THE MANAGER.

ADDL. R6 TO R8 ARE SUO MOTU IMPLEADED AS PER
ORDER DATED 06/12/2021 IN WP(CRL.).

P.T.O.

Writ petition (criminal) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(CrL.) the High Court be pleased to direct the 2nd respondent to produce the 1st detinue, and the 3rd respondent to produce 2nd and 3rd detenues before this Honourable Court and set them free, during the pendency of the writ petition, in the interest of justice.

This petition again coming on for admission upon perusing the petition and the affidavit filed in support of WP(CrL.) and this Court's order dated 04/12/2021 and upon hearing the arguments of SMT.LISY T.SKARIA, Advocate for the petitioner, the court passed the following:

P.T.O.



K.VINOD CHANDRAN & C.JAYACHANDRAN, JJ.

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Dated this the 06th day of December, 2021

ORDER

Vinod Chandran, J.

A very distressing story unfolds before us in the above writ petition, seeking a writ of Habeas Corpus, directing the production of the daughter and grand children of the petitioner. The writ petition narrates a sad tale of marital discord, from the very inception of the marriage and the wife being evicted from the marital home after giving birth to two children. The mother and children resigned to their fate were residing in a rental accommodation when the husband-the 4th respondent relentlessly harassed them in one manner or other. The wife filed an application for divorce before the Family Court, Muvattupuzha and this provoked the husband who attempted to portray the wife as a mental patient, which till date was not successful. The petitioner also produced Ext.P2, order of the Judicial First Class Magistrate Court, Muvattupuzha, wherein an application made by the 4th respondent under the Mental Health Care

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Act, 2007 was rejected. While so, it is alleged by the hapless father/grandfather that the eldest grandson had called him on 14.11.2021 and informed the forceful removal of the daughter and grand children from their rented residence at Kodungalloor on 23.10.2021 at around 10.00 P.M, when they came back after attending the case in the Family Court, Muvattupuzha.

2. It was the allegation that the 4th respondent, the son-in-law of the petitioner and the father of the children, with about ten persons trespassed into the rental house of the detenu and forcefully took them away. It is also the allegation that all the three, the mother and the children were injected with some medicines making them unconscious. The petitioner apprehended that the 4th respondent has admitted them in the 5th respondent hospital, without valid cause. The Bench which admitted the matter directed a statement to be taken from the detenues, the mother and the children. While the matter was pending, one of the Judges who admitted the matter received a letter from the eldest son, which was transmitted to us. We marked the same as Ext.C1 in the above writ petition. We also marked a copy of the order issued by the Kerala State Commission for Protection of Child Rights dated

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06.09.2021, along with the covering letter dated 18.09.2021, as Ext.C2; which was enclosed with Ext.C1. We hence, posted the case peremptorily, on Saturday at 1.45 P.M. and asked the petitioner's counsel to come on video conferencing. At 1.45 P.M, the learned Government Pleader informed us that on enquiry it has been revealed that the mother has been admitted to the Sacred Heart Hospital, Paynkulam, the 5th respondent and that the children were with the father, the 4th respondent. We, hence, directed the mother and children to be produced before us today at 1.45 P.M. We also directed that a Psychiatrist be present in chambers to assess the mental status of the wife and children, who are said to have some psychiatric illness.

3. Today, we had in our chambers, Dr.Priya Govindankutty Menon, Lecturer, Department of Psychiatry, Government Medical College, Ernakulam. At our request, Dr.Priya interacted with the mother, the children, the father (petitioner) and also the husband (4th respondent). We too interacted with each of them. The children with whom we first interacted tell us the sad story of their being taken forcefully from their house and separated from their mother at the instance of the father. On our specific query, both

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children have said that their mother does not have any psychiatric illness and she has been very caring towards them. They also had very many complaints against the father, with whom they did not want to continue residence. We then interacted with the mother who at first blush, did not seem to have any psychotic traits. She too narrated the incident that happened on 23.10.2021 and also narrated the earlier travails she had to undergo at the husband's hands at the marital house and later in a rented residence. She has been living separate for sometime now, with her children, in a rented residence at Kodungalloor, from where she had been taken away forcefully and admitted to the 5th respondent Hospital. The petitioner too, on interaction corroborated the story of marital discord and the continued harassment by the 4th respondent; employed in the Law Department of the State and was also once appointed as a temporary Magistrate, who was wont to use his official clout to witch-hunt the wife and children.

4. We then interacted with the learned counsel appearing for the petitioner and the 4th respondent. The learned counsel for the 4th respondent submitted before us that only since the wife of the 4th respondent was suffering from psychotic illness and had also

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undergone treatment at various places, the father apprehended that the mother would indoctrinate the children, resulting in shared psychosis. It is also stated before us that the mother-in-law of the 4th respondent and the sister-in-law have been suffering from psychotic illness and the family has a history of the same.

5. The Doctor after interaction with all the parties, inform us categorically that, as of now, the petitioner's daughter does not seem to be suffering from any psychotic illness and that her disturbed mental status as of now, is only due to the stress she has undergone in her life and the horrendous incident she was subjected to recently, of forceful admission in a mental institution and separation from her children. The Doctor however, wanted further consultation to give us a definite opinion and requested at least two sittings at the Government Medical College, Ernakulam. The daughter of the petitioner and grand children together, and the husband at one separate sitting. In such circumstances, we direct the petitioner to ensure that his daughter and the children are taken to Dr.Priya, at the Government Medical College, Ernakulam on 10.12.2021 and 17.12.2021 at 11.00 A.M. The 4th respondent is directed to appear before the Doctor on 13.12.2021 at 11.00 A.M.

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The Doctor shall file a report through the learned Government Pleader on 21.12.2021.

6. As we observed earlier, the case is very distressing insofar as, the 4th respondent, *prima facie* has been attempting to style his wife as a mental patient before various forums. We have before us the order of the Judicial First Class Magistrate Court-I, Muvattupuzha, the operative portion of which, is extracted hereunder:

“9. On perusal of the case records, documents and statements of the above persons, it is brought out that the respondent and her children are now leading a peaceful life. The respondent being a bold lady can manage her family without the help of the petitioner. Due to the marital issues and the pendency of divorce petition before Hon'ble Family Court, Muvattupuzha, she is little bit emotional and worried. But she can manage all those problems. It is crystal clear from her demeanours and general appearance that she is very bold and confident. At the same time it is noticed that she has no intention to live with the petitioner. She and her children are not ready to accept the companionship of the petitioner. As such, there is no need for sending her for mental treatment for the time being”.

7. The said order was passed on 20.02.2021. Obviously, after that, the petitioner has approached the State Commission for Protection of Child Rights and an order was passed on 06.09.2021 in CRMP 8175/07/LA1/2021/KeSCPCR. We are more distressed by the manner in which the State Commission for Protection of Child

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Rights has proceeded, which is evident from para 3, 4, 5 and 6 which we extract here under:

"3. എറണാകുളം ജില്ലാ ശിശു സംരക്ഷണ ഓഫീസർ സമർപ്പിച്ച റിപ്പോർട്ടിൽ അന്വേഷണ സമയത്ത് രണ്ടു ആൺകുട്ടികൾ വീട്ടിലുണ്ടായിരുന്നെന്നും തീരെ മെലിഞ്ഞ ശരീര പ്രകൃതമാണ് സിന്ധുവിന്റേതെന്നും കഴുത്തിൽ 5 രൂദ്രാക്ഷ മാലകൾ ധരിച്ചിട്ടുണ്ടെന്നും വീട്ടിൽ ക്രിസ്ത്യൻ, ഹിന്ദു, ഇസ്ലാം മതങ്ങളുടെ ആരാധന മുർത്തിയുടെ ഫോട്ടോകൾ വെച്ചിട്ടുണ്ടെന്നും രാവിലെയും വൈകീട്ടും വീട്തുടച്ച് വൃത്തിയാക്കുന്ന ശീലമുള്ളതായി മകൻ പവൻ പറഞ്ഞതായും സാമൂഹ്യമായുള്ള ഇടപെടൽ കുറവാണെന്നും ഉൾവലിഞ്ഞ രീതിയിലാണ് ജീവിക്കുന്നതെന്നും ആയതിനാൽ കുടുംബത്തിലെ എല്ലാ അംഗങ്ങൾക്കും കൃത്യമായ സൈക്യാട്രിക് നിരീക്ഷണവും ആവശ്യമെങ്കിൽ ചികിത്സ എടുക്കുന്നതിനും കുട്ടികളുടെ മാനസികവും ശാരീരികവും വിദ്യാഭ്യാസപരവുമായ ക്ഷേമത്തെ മുമ്പിൽ കണ്ട് പിതാവായ രാജമോഹന്റെ സഹകരണത്തോടെ പ്രശ്നങ്ങൾ പരിഹരിക്കേണ്ടതാണെന്നും ബോധിപ്പിക്കുകയുണ്ടായി.

4. ഹർജിയിലെയും എറണാകുളം ജില്ലാ ശിശു സംരക്ഷണ ഓഫീസർ സമർപ്പിച്ച റിപ്പോർട്ടിലേയും വസ്തുതകൾ പരിശോധിക്കുമ്പോൾ ഹർജിക്കാരന്റെ ഭാര്യക്കൊപ്പമാണ് കുട്ടികൾ ജീവിക്കുന്നതെന്നതിനാൽ കുട്ടികളുടെ ഉത്തമ താല്പര്യ സംരക്ഷണത്തിന് ഹർജിക്കാരന്റെ ഭാര്യക്ക് സൈക്യാട്രിക് നിരീക്ഷണവും ചികിത്സയും ആവശ്യമാണെന്ന് കമ്മീഷൻ കരുതുന്നു. ആയതിനാൽ വിദഗ്ധ ഡോക്ടർമാരുടെ ചികിത്സ പരാതിക്കാരന്റെ ഭാര്യക്ക് ലഭ്യമാക്കാനും കുട്ടികൾക്ക് കൗൺസിലിങ് നൽകുന്നതിനുള്ള നടപടി സ്വീകരിക്കാനും ശുപാർശ ചെയ്യേണ്ടത് അനിവാര്യമാണെന്ന് കമ്മീഷൻ കാണുകയും സൈക്യാട്രിക് ചികിത്സ ഹർജിക്കാരന്റെ ഭാര്യക്ക് നൽകാൻ കൽപ്പിച്ച് 17.06.2021 തീയതിയിൽ ഉത്തരവ് പുറപ്പെടുവിക്കുകയുണ്ടായി.

5. എന്നാൽ പരാതിക്കാരൻ സമർപ്പിച്ച മേൽ ഹർജിയിൽ പരാതിക്കാരന്റെ ഭാര്യയും മക്കളും തൃശൂർ ജില്ലയിലേക്ക്

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താമസം മാറ്റിയതാലും ആയതിനാൽ ബന്ധപ്പെട്ട അധികാരികൾക്ക് ഉത്തരവ് നൽകണമെന്നും ബോധിപ്പിക്കുകയുണ്ടായി.

6. മേൽ വിവരിച്ച വസ്തുതകളുടെ പശ്ചാത്തലത്തിൽ 2005 ലെ ബാലാവകാശങ്ങൾ സംരക്ഷിക്കുന്നതിനായുള്ള കമ്മീഷനുകൾ നിയമത്തിലെ 15-ആം വകുപ്പ് പ്രകാരം താഴെപറയും ശുപാർശകൾ പുറപ്പെടുവിച്ച് ഇതിനാൽ ഉത്തരവാകുന്നു.

എ) ഹർജിക്കാരൻറെ ഭാര്യക്കും കുട്ടികൾക്കും സൈക്യാട്രിക് നിരീക്ഷണവും ആവശ്യമായ ചികിത്സയും ലഭ്യമാക്കുന്നതിന് 3-ആം എത്യുക്ക്ഷി നടപടി സ്വീകരിക്കേണ്ടതും കുട്ടികൾക്ക് 3-ആം എത്യുക്ക്ഷി തന്നെ കൗൺസലിംഗ് ഉൾപ്പെടെയുള്ള കാര്യങ്ങൾ ചെയ്ത് നൽകേണ്ടതുമാണ്.

ബി) മേൽക്കാര്യങ്ങൾക്ക് ഹർജിക്കാരൻ സഹകരിക്കേണ്ടതും ഹർജിക്കാരൻറെ കുടുംബത്തിൽ ചികിത്സ ലഭ്യമാക്കുന്ന നടപടിക്കു 3-ആം എത്യുക്ക്ഷി രേഖാമൂലം ആവശ്യപ്പെട്ടാൽ 2-ആം എത്യുക്ക്ഷി ആവശ്യമായ സഹായങ്ങൾ ചെയ്ത് നൽകേണ്ടതാണ്.

സി) ഹർജിക്കാരൻറെ കുട്ടികളുടെ ജീവിത സാഹചര്യങ്ങൾ 3-ആം എത്യുക്ക്ഷി നിരീക്ഷിച്ച് ആവശ്യമായ പിന്തുണ നൽകേണ്ടതാണ്."

8. It is appalling that the Commission thought it fit to direct the District Child Protection Officer (DCPO), to submit a mental status report of the persons. The DCPO submitted a report pointing out that the mother is very lean and that she wears five Rudraksha chains and there are photographs of Christian, Hindu and Islam religions in their house. The mother also is said to have the habit of

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cleaning the residential premises in the morning and in the evening. It was also reported that the mother and children were living without much social contacts. On the above grounds, the DCPO recommended that the welfare of the mother and children should be monitored, with the assistance of the 4th respondent. The Commission based on the report of the DCPO directed psychiatric treatment to be given to the wife of the 4th respondent by an order dated 17.06.2021, which is totally without jurisdiction. We cannot also, at first blush, accept the further orders passed putting the DCPO in charge of the children and directing him to approach the Station House Officer for appropriate treatment to be given to the family without any mental status examination by a competent Doctor. More distressing is the fact that on the strength of this order, the 4th respondent along with ten persons have trespassed into the rented residence of his wife and children and forcefully taken them away. It is surprising that the 4th respondent took it upon himself to separate the wife and the children and admit the wife in a Mental Hospital, when, a valid proceeding initiated for providing psychiatric treatment to the wife was rejected by the competent Court as per Ext.P2.

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9. We are of the *prima facie* opinion that the State Child Welfare Commission exceeded its jurisdiction. We hence, *suo motu* implead the Kerala State Commission for Protection of Child Rights as the additional 6th respondent herein. The Registrar of the State Commission for Protection of Child Rights will ensure that the entire files regarding CRMP 8175/07/LA1/2021/KeSCPCR is produced before the Registrar of this Court within two days. The Registrar, (District Judiciary), is directed to communicate our directions to the Registrar of the State Commission for Protection of Child Rights immediately and report before us by Tuesday as to the receipt of the records. The Commission shall file an affidavit in explanation of the orders passed; which order at Ext. C2, we stay for the time being.

10. We are told that the petitioner was a lawyer and is now a Section Officer, Law Department, Thiruvananthapuram. He is also said to have served as a temporary Magistrate in the judicial service and it is not as if he doesn't know the tone and purport of the order produced as Ext.C2, which, even if passed with jurisdiction, does not clothe the 4th respondent with the authority to take the children or admit the wife, forcefully to a mental institution

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for psychiatric treatment.

11. We, hence, direct The Station House Officer, Kodungalloor, who is impleaded *suo motu* as the additional 7th respondent to go to the house of the petitioner and record the statement of his daughter Smt.Sindhu. P.B and her children Pavan.R.Mohan and Rohan.R.Mohan who are alleged to have been abducted from their rental residence at Ambadi House, Chanthapura, Kodungalloor P.O. If any cognizable offence is detected, investigation shall be carried out and taken to its logical conclusion.

12. We direct the petitioner to take out notice on the 5th respondent hospital by speed post. The 5th respondent shall produce the entire treatment records of Smt.Sindhu P.B, within a week from today. The 2nd respondent also shall intimate the pendency of the above writ petition and our directions to the 5th respondent hospital. We also implead the school in which the daughter of the petitioner is a teacher : SNDP Higher Secondary School, Muvattupuzha 686661, as the additional 8th respondent, on whom notice shall be issued by speed post. The School shall also file an affidavit regarding the disciplinary action taken against the

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daughter of the petitioner.

13. On an evaluation done by the Psychiatrist and also on our personal evaluation, we are of the opinion that the daughter of the petitioner and the children be allowed to go with the petitioner. The 4th respondent shall not interfere in their life and if any threat is caused to them, they can approach the jurisdictional Police, who shall immediately take action to avert any such threat.

With the above directions, we post the case on 09.12.2021.



**Sd/-
K.VINOD CHANDRAN
JUDGE**

**Sd/-
C.JAYACHANDRAN
JUDGE**

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APPENDIX OF WP(CRL.) 413/2021

Exhibit P2

THE TRUE COPY OF THE ORDER IN CMP 58/2021 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, MUVATTUPUZHA DATED 20-02-2021.

Court Exhibit C1

LETTER RECEIVED FROM PAVAN R.MOHAN.

Court Exhibit C2

ORDER OF THE KERALA STATE COMMISSION FOR PROTECTION OF CHILD RIGHTS.

