

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

FRIDAY, THE 30TH DAY OF SEPTEMBER 2022 / 8TH ASWINA, 1944

WP(CRL.) NO.546 OF 2022

PETITIONER:

SOLAMAN, AGED 46 YEARS, S/O.SILUAMMA,
AMMINI NIVAS, THOTTAMPURAYIDATHI PUTHIYATHURAIL,
KARUMKULAM DESOM, KARIKULAM DESOM,
KARIKULAM VILLAGE, NEYYATTINKARA,
THIRUVANANTHAPURAM-695 121.

BY ADV V.G.ARUN (K/795/2004)

RESPONDENTS:

- 1 THE STATE POLICE CHIEF,
POLICE HEAD QUARTERS, VAZUTHACAUD,
THIRUVANANTHAPURAM, PIN-695 010.
- 2 THE DISTRICT POLICE CHIEF,
THIRUVANANTHAPURAM,
UNIVERSITY SENATE HOUSE CAMPUS, PALAYAM,
THIRUVANANTHAPURAM-695 033.
- 3 THE STATION HOUSE OFFICER,
POOVAR POLICE STATION, POOVAR,
NEYYATTINKARA, THIRUVANANTHAPURAM-695 525.
- 4 ALEX, S/O.SINGARJAN,
PARITHIYOOR VALIYAVILA VITTIL POZIYOOR DESOM,
KULATHOOR TALUK, NEYYATTINKARA,
THIRUVANANTHAPURAM-695 525.
- * 5 REGIONAL PASSPORT OFFICER
REGIONAL PASSPORT OFFICE,
SNSM BUILDING, KALLADA JUNCTION,
PETTAH P.O., THIRUVANANTHAPURAM,
KERALA-695024.
- * [ADDL.R5 IS SUO MOTU IMPLEADED AS PER ORDER DATED
07/07/2022 IN WP(CRL.)546/2022.

* 6 SANTHI NILAYAM CONVENT
 KUZHUR, THRISSUR

* [ADDL.R6 IS IMPLEADED AS PER ORDER DATED 19/09/2022
 IN WP(CRL.)546/2022.]

BY ADVS.

R.GOPAN

S.MANU

JOMY GEORGE GEORGE

R.PADMARAJ(K/191/1989)

M.J.BENNY(K/1145/2003)

DEEPAK MOHAN(K/588/2012)

CHITRA N.DAS(K/001228/2018)

RISHAB S.(K/000757/2019)

FATHIMA AFEEDA P.(K/001993/2022)

R.AJITH KUMAR [V.K.EDOM](K/000629/2016)

DIRECTOR GENERAL OF PROSECUTION(AG-10)

P.NARAYANAN, SENIOR G.P. AND ADDL.PUBLIC PROSECUTOR

SRI.E.C.BINEESH, GOVERNMENT PLEADER

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 30.09.2022, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

K.VINOD CHANDRAN & C.JAYACHANDRAN, JJ.

W.P(Crl.) No.546 of 2022

Dated this the 30th September, 2022

JUDGMENT

The petitioner filed the above writ petition concerned with the disappearance of his maternal aunt Lucy. His maternal grandparents had six issues, of which only the maternal aunt and the 4th respondent, the maternal uncle, were alive. Together with the alive siblings, the petitioner is the co-owner of the properties left behind by the maternal grandparents. The petitioner filed a suit for partition before the II Addl.Munsiff's Court, Neyyattinkara and on issuance of summons, the same was returned without service. The petitioner apprehended that the 4th respondent, with a dubious intent to grab the properties of his sister, had illegally detained her. At the time of admission, we suspected a dubious intention on the part of the petitioner to effect service in the suit through a habeas corpus writ, rather than a genuine concern for the maternal aunt.

We hence directed the petitioner to prove his bonafides by deposit of Rs.25,000/-; on deposit of which we directed the learned Government Pleader to get instructions from the official respondent.

2. The Police searched in vain and was unable to trace out the lady. In fact, the specific contention of the petitioner was that she had been spirited away to a foreign country, where the 4th respondent is also residing. We hence impleaded the Regional Passport Officer, Thiruvananthapuram and directed them to file the details of the Passport issued to the alleged detenu. No such details were forthcoming, since the addl.6th respondent could not trace out a Passport issued in the name of the alleged detenu on a search made with the date of birth given by the petitioner.

3. Later, the 4th respondent was said to be in the State for a function, upon which the Police questioned him and he revealed that his sister was suffering from mental ailments and was admitted to a Convent, the addl.6th respondent. We hence directed the addl.6th respondent to appear and also directed

them to provide the petitioner an opportunity to interact with his aunt. The petitioner interacted with the subject and was convinced that her affairs are being looked after well by the addl.6th respondent. The learned counsel for the addl.6th respondent also submitted before us a Certificate issued by the Government Mental Health Centre, Thrissur, which indicates that the subject is suffering from schizophrenia and has 45% mental disability. She was brought to the convent by the 4th respondent and admitted in the year 2003, as revealed from the letter of the 4th respondent dated 22.02.2003. Both these documents were produced across the Bar. The Medical Certificate issued by the Government Mental Health Centre, Thrissur and the letter of the 4th respondent are marked as Exts.C1 & C2.

4. We are of the opinion that the writ petition can be disposed of with a direction to the addl.6th respondent to permit the petitioner to interact with the maternal aunt in such periodicity as the addl.6th respondent would permit, which shall

not be less than atleast 3 times in an year. However, if any summons or service is sought to be served on the subject, who is admitted to the addl.6th respondent's Convent, it shall be replied to by the Convent specifying the mental illness and requesting the Court which issued the summons to appoint a guardian, who does not have interest in the properties.

5. Before we leave the matter, we cannot but notice the invaluable assistance rendered to us by the different Police Personnel within the local jurisdiction of the State in tracing out persons from within and outside the State; who were alleged to have been illegally detained. Though eventually the subjects would assert that they went on their freewill, the police machinery was put into considerable use for tracing out the missing persons. We cannot but appreciate the good work done by the entire State Police and especially the Liaison Officers of the Police Department, especially (i) Bijoy Chandran C.K, Circle Inspector of Police & Liaison Officer, High Court of Kerala, Kochi City,

(ii) Pradeep Kumar G., Sub Inspector of Police (G), Police Liaison, High Court of Kerala, District Head Quarters, Kochi City and (iii) Gireesh K.P, S.I of Police, DHQ, City A.R, Kochi City, who have successfully communicated our orders and ensured their due compliance; who in our opinion require a good service entry in their service records.

A certified copy of this judgment shall be transmitted to the Home Secretary, State of Kerala and the State Police Chief and the 6th respondent shall be issued with one, free of cost.

Rs.25,000/- deposited by the petitioners before the Registry of this Court shall be returned to the petitioner.

Sd/-

K.VINOD CHANDRAN, JUDGE

Sd/-

C.JAYACHANDRAN, JUDGE

APPENDIX

PETITIONER EXHIBITS:-

- EXHIBIT P1 TRUE COPY OF THE SUMMONS ISSUED UNDER ORDER V RULE 1-5 CIVIL PROCEDURE CODE, 1093 DATED 30.07.2021 ISSUED BY THE II ADDITIONAL MUNSIFF COURT, NEYYATTINKARA ALONG WITH THE REPORT OF THE PROCESS SERVER.
- EXHIBIT P2 TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE THE STATION HOUSE OFFICER, POZHIYOOR DATED 22.12.2021 ALONG WITH THE ACKNOWLEDGMENT RECEIPT.
- EXHIBIT P3 TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE THE DISTRICT POLICE CHIEF (RURAL), THIRUVANANTHAPURAM DATED 23.12.2021 ALONG WITH THE ACKNOWLEDGEMENT RECEIPT.
- EXHIBIT C1 THE MEDICAL CERTIFICATE ISSUED BY THE GOVERNMENT MENTAL HEALTH CENTRE, THRISSUR.
- EXHIBIT C2 THE LETTER OF THE 4TH RESPONDENT.