

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K. VINOD CHANDRAN

&

THE HONOURABLE MRS. JUSTICE M. R. ANITHA

WEDNESDAY, THE 20TH DAY OF JANUARY 2021 / 30TH POUSHA, 1942

WP (Cr1.) .No. 309 OF 2020

PETITIONER/S:

DR. KAILAS NATARAJAN
AGED 52 YEARS
S/O. NATARAJAN, RESIDING AT KALPAKAM. FFRA-03A, S.N.
COLLEGE JN., KOLLAM DISTRICT 691 001

BY ADVS.
SRI. S. SUDHEESHKAR
SRI. C. UNNIKRISHNAN (KOLLAM)

RESPONDENT/S:

- 1 THE DISTRICT POLICE CHIEF
ALAPPUZHA DISTRICT 688 012
- 2 STATION HOUSE OFFICER
NOORNAD POLICE STATION, NOORNAD, ALAPPUZHA DISTRICT
690 530
- 3 MADHUSOODANAN V.
MUDAKOOTTU ILLAM, MEKKUM MURI, THAMARAKULAM VILLAGE,
MAVELIKARA THALUK, ALAPPUZHA DISTRICT 690 530
- 4 PRIYA
W/O. MADHUSOODANAN V., MUNDAKOTTU ILLAM, MEKKUM MURI,
THAMARAKULAM VILLAGE, MAVELIKARA THALUK, ALAPPUZHA
DISTRICT-690 530
- 5 SREEKALA
W/O. GOPINATHAN, MUNDAKOTTU ILLAM, MEKKUM MURI,
THAMARAKULAM VILLAGE, MAVELIKARA THALUK, ALAPPUZHA
DISTRICT-690 530
- 6 ADDL. R6. THE DISTRICT POLICE CHIEF,
KOLLAM CITY.

IS SUO MOTU IMPEADED AS ADDITIONAL 6TH RESPONDENT
VIDE ORDER DATED 04/01/2021 IN WP (CRL). 309/2020.

R1-2, R6 BY GOVERNMENT PLEADER
R3-5 BY ADV. SRI.K.SURESH BABU (PUNALUR)
R3-5 BY ADV. SMT.BHANU THILAK

OTHER PRESENT:

SENIOR GOVERNMENT PLEADER SRI.K.B.RAMANAND

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON
20.01.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. Vinod Chandran & M.R. Anitha, JJ.

W.P (Crl) No.309 of 2020

Dated, this the 20th day of January, 2020

JUDGMENT

Vinod Chandran, J.

The learned Counsel for the petitioner, at the outset produced before us an order of the Hon'ble Supreme Court in a Special Leave Petition, filed against our interim order, which permits us to proceed with the matter. We have heard the learned counsel for the petitioner and the party respondents 3 to 5 as also the learned Senior Government Pleader appearing for respondents 1, 2 and 6.

2. The learned Counsel for the petitioner argued that the petitioner is not seeking that the subject should be allowed to live with the petitioner, but she should be let free. It is argued that the subject is a brilliant student and her mark sheets would show the outstanding performance in examinations; which was produced across the Bar. It cannot at all be said that she is not capable of deciding for herself. It is argued

that she is a major, quiet competent to decide on her own way of life as held by the Hon'ble Supreme Court in 2009 (16) SCC 360 Girish vs. Radhamony and 2018 (16) SCC 368 Shafin Jahan vs. Asokan K.M.

3. The learned counsel for the respondents however submits that there is no illegal detention and the respondents are trying to provide psychiatric help to their daughter. The counter-affidavit filed admits that the daughter of the respondents 3 & 4, the subject of this writ petition, was a brilliant student who suffered a bout of depression for which the parents had consulted the petitioner. The petitioner in the guise of counseling and therapy insisted on solitary sessions with the subject after which the subject developed an obsessive attachment to the petitioner. The parents believe that her obsessive thoughts are not normal and that she require treatment.

4. In the interim order dated 04.01.2021 we have detailed the circumstances under which we refused to remove the subject from the custody of her parents though she insisted that she wanted to go with the petitioner.

Today we specifically asked the learned counsel as to whether there is anything to prove the proclaimed status of the subject as the 'sishya' of the petitioner and the petitioner's credentials to declare himself to be a spiritual teacher/guru. The learned counsel for the petitioner does not offer us anything other than the assertions made in the writ petition.

5. We had, in our earlier order specifically called for a report from the sixth respondent - the District Police Chief as to the antecedents of the petitioner, especially since there were serious apprehensions raised by the parents of the subject. The learned Senior Government Pleader has placed on record a report filed by the Assistant Commissioner of Police who conducted the enquiry as authorized by the District Police Chief. It is stated that the petitioner's parents were Government employees belonging to a well settled family with good financial background and he was married in 2001, to a woman coming from similar circumstances. The petitioner is said to have completed MBBS from Medical College, Thiruvananthapuram and after marriage

proceeded to U.K for Post Graduation in Psychiatry. After returning from U.K, initially he pursued the medical profession, but later proclaimed himself to be a Vedic Yogacharya/Instructor. Still later the 1st floor of his family house is said to have been converted to an Ashram, in the ground floor of which building his aged mother is still residing. The petitioners father is no more.

6. It is further reported that for the last few years the petitioner is living in a rented house at Mundakkal along with his wife and children and according to the petitioner's own statement he gives minimum attention to his wife and children. The wife and children sustain on their own means and his two girl children aged 17 and 9 study at KIMS International School, Kottiyam. The petitioner is said to have no communication with his relatives. The mother of the petitioner, who gave a statement to the police, which she refused to sign, expressed suspicion over the activities of the petitioner and disapproves of his actions. The mother who is living alone in the family house, the upstairs of which the petitioner uses as Ashram, is not convinced about the

so-called spiritual life led by the petitioner.

7. It is also reported that the petitioner was arrayed as third accused in crime No.1950/2013 registered, under the various provisions of the IPC, Kerala Police Act and Protection of Children from Sexual Offences Act, 2012 at East Police Station on the strength of the statement of a 14 year old girl. It was alleged that the petitioner while working as a Psychiatric Consultant misbehaved with the victim and sexually abused her at his residence; where she was brought for psychiatric consultancy. However during investigation she retracted from the allegation and since there was no factual evidence other than her statement, the petitioner was removed from the list of accused.

8. In the interaction with the petitioner, he is said to have stated that there are pending disputes and legal proceedings with his mother; the details of which were not divulged. The petitioner is also stated to have not cooperated for a direct and detailed inquiry and was unwilling to disclose his personal and professional

details. The petitioner claimed to be getting fees and gifts from his followers and he had no other regular means of income. On local inquiry it is reported that there is no information of the petitioner having any followers. It is reported that the petitioner is not leading a socially acceptable life and has difficulty in explaining the means and goals of his spirituality.

9. As to the contentions raised in the writ petition the petitioner asserts that he has a live-in relationship with the subject for the last 2 ½ years as spiritual partners. However there is no allegation that the parents had illegally removed the subject from the custody of the petitioner. The petitioner also admits that he is married with two children. But goes on to say that they are under the care and shelter of the petitioner, living separately. We recall our earlier interaction with the subject, wherein she categorically denied that she was married and asserted the relationship with the petitioner to be divine. We offered her assistance for counseling and tried to persuade her to at least, at our behest, to interact with a Psychiatrist or

Psychoanalyst for us to get an expert opinion; which she refused point blank. We attempted such a course of action since the subject, on our assessment was incapable of taking a decision for herself and the parents too had raised serious concerns of her obsessive behaviour; which we too witnessed during our interaction. We do not find any good ground to detract from our earlier opinion recorded in our order dated 04.1.2021. We also recorded that there was no visible evidence of any physical violence perpetrated on the subject and her allegations were very vague.

10. Before we look at the law declared in the decisions cited at the Bar, we briefly recount the facts in the individual cases. In Girish a mother filed a habeas corpus petition before the High Court alleging that her minor daughter was kidnapped. The detenue was produced before Court who asserted that she was a major and that she was married to the respondent. The High Court directed registration of a case for offences punishable under the Penal Code against the respondent. It was held that the High Court has no jurisdiction to

pass such an order. When the alleged detenu appears in Court and states that she had left her parental home on her own free will, then, there could be no further orders passed in the writ petition filed under Article 226, was the dictum.

11. Shafin Jahan had more complex facts in which the missing girl had first left her parental home expressing a desire to convert and later married a person from the faith to which she converted. The father was the petitioner before the High Court who moved twice for issuance of a writ of habeas corpus. The first of such writ petitions was dismissed finding that the daughter of the petitioner is not under any illegal confinement and is residing in an institution on her own wish and will, having embraced a different faith. The father and other family members were allowed to visit her at the above institution subject to the institutional regulations. Then a further writ petition was filed alleging that his daughter was likely to be transported out of the country. The daughter of the petitioner appeared and refuted the contention of the father and on her free will was allowed

to go along with the 7th respondent, her friend. Later, she appeared before the High Court and made a statement that she had entered into a marriage with Shafin Jahan. The High Court invoking the *parens patriae* jurisdiction annulled the marriage and directed the subject to be escorted to her parental residence.

12. The Hon'ble Supreme Court set aside the judgment of the High Court allowing the major girl to join her husband. Reversing the judgment of the High Court the Hon'ble Supreme Court held so:

28. In the instant case, the High Court, as is noticeable from the impugned verdict, has been erroneously guided by some kind of social phenomenon that was frescoed before it. The writ court has taken exception to the marriage of Respondent 9 herein with the appellant. It felt perturbed. As we see, there was nothing to be taken exception to. Initially, Hadiya had declined to go with her father and expressed her desire to stay with Respondent 7 before the High Court and in the first writ it had so directed. The adamant attitude of the father, possibly impelled by obsessive parental love, compelled him to knock at the doors of the High Court in another habeas corpus petition whereupon the High Court directed the production of Hadiya who appeared on the given date along with the appellant herein whom the High Court calls a stranger. But Hadiya would insist that she had entered into marriage with him. True it is, she had gone with Respondent 7 before the High Court but that does not mean and can never mean that she, as a major, could not enter into a marital relationship. But, the High Court unwarrantably took exception to the same forgetting that parental love or concern cannot be allowed to fluster the right of choice of an adult in choosing a man to whom she gets married. And, that is where the error has crept in. The High Court should have, after an interaction as regards her choice,

directed that she was free to go where she wished to.

29. The High Court further erred by reflecting upon the social radicalisation and certain other aspects. In a writ of habeas corpus, especially in the instant case, it was absolutely unnecessary. If there was any criminality in any sphere, it is for the law-enforcing agency to do the needful but as long as the detinue has not been booked under law to justify the detention which is under challenge, the obligation of the Court is to exercise the celebrated writ that breathes life into our constitutional guarantee of freedom. The approach of the High Court on the said score is wholly fallacious.

13. In the present case we find the facts to be quite different. The alleged detinue is residing in her parental home and is aged 21 years, definitely a major. The petitioner who is 52 years old allege illegal detention of the subject by her own parents on the ground that he has a live-in relationship with her for the last two and half years. It is pertinent that though the assertion is of a live-in relationship there is no contention that the subject ever lived with him and was illegally taken away by her parents. The petitioner has moved the Court as the live-in spiritual partner of the subject and does not speak of any marriage between them. The petitioner also is married and has two children in the wedlock.

14. The petitioner's association with the subject also commenced with the Psychiatric consultation

the parents initiated; which has now taken a very different turn. As we noticed in the interim order dated 04.01.2021, on interaction, we did not find the subject to be capable of taking a decision for herself. We have also recorded the submission made by the parents before us that their daughter had shown signs of obsession coupled with hysteria. We sought her permission to summon a Psychiatrist or a Psycho-analyst to talk to her so as to better assess her mental state. The subject adamantly refused to talk to anybody. It was in these circumstances that we found no reason to remove the 21 year old from the custody of the parents who, we thought were best equipped to deal with her present situation.

15. In this context we refer to the consideration made by the Hon'ble Supreme Court in Shafin Jahan to the scope and ambit of the *parens patriae* jurisdiction. We extract here under paragraphs 31, 39 and 45 .

31. Another aspect which calls for invalidating the order of the High Court is the situation in which it has invoked the *parens patriae* doctrine. *Parens patriae* in Latin means "parent of the nation". In law, it refers to the power of the State to intervene against an abusive or negligent parent, legal guardian or informal caretaker, and to act as the parent of any child or individual who is in need of protection. "The *parens patriae* jurisdiction is sometimes spoken of as 'supervisory' "¹⁵.

39. Constitutional courts in this country exercise *parens patriae* jurisdiction in matters of child custody treating the welfare of the child as the paramount concern. There are situations when the court can invoke the *parens patriae* principle and the same is required to be invoked only in exceptional situations. We may like to give some examples. For example, where a person is mentally ill and is produced before the court in a writ of habeas corpus, the court may invoke the aforesaid doctrine. On certain other occasions, when a girl who is not a major has eloped with a person and she is produced at the behest of habeas corpus filed by her parents and she expresses fear of life in the custody of her parents, the court may exercise the jurisdiction to send her to an appropriate home meant to give shelter to women where her interest can be best taken care of till she becomes a major.

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45. Thus, the constitutional courts may also act as *parens patriae* so as to meet the ends of justice. But the said exercise of power is not without limitation. The courts cannot in every and any case invoke the *parens patriae* doctrine. The said doctrine has to be invoked only in exceptional cases where the parties before it are either mentally incompetent or have not come of age and it is proved to the satisfaction of the court that the said parties have either no parent/legal guardian or have an abusive or negligent parent/legal guardian.

16. The Hon'ble Supreme Court found that though the Constitutional Courts normally exercise *parens patriae* jurisdiction in matters of child custody there are other exceptional situations where it can be invoked. A person mentally ill, if produced before Court and cases where minor girls elope and on production, expresses fear to go with their parents, are treated as exceptional situations. In the present case, the petitioner has

sought for releasing the daughter of respondents 3 and 4 from their custody. We directed the subject to be produced before us and we interacted with her. On finding her to be incapable of taking a decision for herself we directed her to be retained with her parents at her parental home. We in fact found nothing to remove the subject from the custody of her parents; in her present mental state, which they are the best persons to address. We are not satisfied that the parents are in any manner incapable of or dis-entitled from retaining custody of their daughter; who though a major was showing signs of mental disturbance. The parents were also exploring ways and means to enable treatment for their daughter. We once again extract from Shafin Jahan to observe that from our interaction with the subject the suggestion was of a vulnerability occasioned by mental disturbance, which persuaded us to refuse invocation of the extra ordinary remedy under Article 226 since the subject was in the safe custody of her parents.

51. Relying upon the aforesaid decisions, Mr Divan emphasised on the concept that when the major is a vulnerable adult, the High Court under Article 226 of the Constitution of India can exercise the parens patriae doctrine which has been exercised in this case. The

aforesaid judgments, in our considered opinion, are not applicable to the facts of the present case. We say so without any hesitation as we have interacted with Respondent 9 and there is nothing to suggest that she suffers from any kind of mental incapacity or vulnerability. She was absolutely categorical in her submissions and unequivocal in the expression of her choice.

(Underlined for emphasis)

17. We were also of the opinion that the antecedents of the petitioner are not such as to trust him with the custody of a young girl of 21 on mere statement of she being tutored; by the petitioner, in spirituality. This is especially so when the parents of the subject had initially approached the petitioner with their daughter for psychiatric consultation and their trust in him as a Doctor and therapist was breached to the extent of the petitioner declaring his patient to be a live-in partner; when he himself was married with two children. We also did not adopt the step of putting her in a safe home, since she refused vehemently and her mental state was also not conducive to that. We dismiss the writ petition leaving the parties to suffer their respective costs. We direct that the Registry shall not issue certified copy of the report of the Police, unless

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on orders of this Court, since it contains the name of the victim in a POCSO case.

Sd/-
K.VINOD CHANDRAN
JUDGE

Sd/-
M.R.ANITHA
JUDGE

Shg/jma

APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 THE TRUE COPY OF THE EMAIL RECEIVED BY THE PETITIONER FROM THE DETINUE REGARDING THE PETITION FILED BEFORE THE STATE HUMAN RIGHTS COMMISSION DATED 3.10.2020
- EXHIBIT P2 THE TRUE COPY OF THE PRINT OUT OF THE CASE STATUS
- EXHIBIT P3 THE TRUE COPY OF THE PRINT OUT OF THE EMAIL COMPLAINT BEFORE THE 1ST RESPONDENT DATED 13.11.2020
- EXHIBIT P4 THE TRUE COPY OF THE PRINT OUT OF THE EMAILS FROM MS LEKSHMI DATED 29.11.2020
- EXHIBIT P5 THE TRUE COPY OF THE PRINT OUT OF THE EMAILS FROM MS LEKSHMI 2.12.2020

RESPONDENT'S/S EXHIBITS:

- EXHIBIT R3 A A TRUE COPY OF THE SAID OP NO 880/2020 FILED ON 22.09.2020 IN THE FILE OF THE FAMILY COURT, MAVALIKKARA
- EXHIBIT R3 B A TRUE COPY OF THE SID TEMPORARY INUNCTION APPLICATION VIDE IA 1/2020 IN OP 880/2020 BEFORE THE FAMILY COURT, MAVELIKKARA
- EXHIBIT R3 C A TRUE COPY OF THE SAID ORDER IN IA 1/2020 IN OP 880/2020 DATD 22.09.2020