



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

WEDNESDAY, THE 8TH DAY OF NOVEMBER 2023 / 17TH KARTHIKA, 1945

WP(C) NO. 24416 OF 2023

PETITIONERS:

1 XXXX

2 YYYYY

BY ADVS.
GODWIN JOSEPH
NAVEEN.R

RESPONDENTS:

1 CHILD WELFARE COMMITTEE (KOTTAYAM)
REPRESENTED BY ITS CHAIRMAN
WOMEN AND CHILD DEVELOPMENT DEPARTMENT,
THIRUVANCHOOR, KOTTAYAM DISTRICT, PIN - 686019

2 CHAIRMAN, CHILD WELFARE COMMITTEE (KOTTAYAM),
WOMEN AND CHILD DEVELOPMENT DEPARTMENT,
THIRUVANCHOOR, KOTTAYAM DISTRICT, PIN - 686019

SRI. RAJEEV JYOTHISH GEORGE, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
08.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

The petitioners are parents of a child, against whom a sexual offence was committed by her own twin brother. They say that the child has consequently been shifted to a Care Home; and assert that she is being virtually penalised for no fault that can be attributed to her. They seek that, therefore, the child be directed to be returned to them.

2. The learned counsel for the petitioners, Sri.Godwin Joseph, vehemently argued that there is no purpose for the child being denied the company of her parents because, her twin brother – against whom the allegation was made – had been arrested and enlarged on bail, on the specific condition that he shall not enter Kottayam District. He asserted that the child is now suffering severe mental stress in the Care Home, without any access to her parents; and that this is causing her deep psychological scars.

3. Noticing the afore submissions of the learned counsel for the petitioners, on 12.10.2023 when this matter was listed, I had passed the following order:



Though the report has been filed on record by the 1st respondent, he says that the child cannot be sent to the parents because her twin brother, who is accused of impregnating her is also there.

2. However, the learned counsel for the petitioners vehemently says that the twin brother is not there and he is at Idukki. He also submitted that his client is willing to make sure that the child is given full schooling.

3. I, therefore, direct the 1st respondent to depute a competent official to the house of the petitioners to verify the afore facts and file an additional report. Post on 25.10.2023.

Thereafter, this matter was listed on 31.10.2023, on which day, the subsequent order as under was issued:

The learned Government Pleader says that the girl in question is presently staying at Girls Town Kozhuvinal, near Pala, Kottayam; and studying at St. John Nephumsian's HSS, Kozhuvinal, for Plus One.

2. For some reason, in matters like this, the views of the girl are seldom taken into account. I am of the view that this should be done, particularly when the various reports on record are inconclusive.

3. The material on record would indicate that the twin brother of the petitioner is no longer in the house; and it is certainly possible for this Court, with the assistance of the Police Authorities, to ensure that he does not reach there, or meet the girl.

4. In such circumstances, I direct the Secretary, DLSA, Kottayam, to meet the girl and her parents in question and interact with her; thus filing a Report before this Court in a sealed cover, taking into account the requirement for protecting her privacy.

List for Report on 06.11.2023, to interact with the girl and her parents.

4. Today, the Report from the Secretary of the Kerala State



District Legal Services Authority, Kottayam, is on record, in which, the said Authority says that she has interacted with the child, who has expressed her intense desire to be with her parents.

5. I, therefore, asked the learned Government Pleader as to the conditions of bail, under which the twin brother of the child has been enlarged; and he submitted that it is true that he cannot enter Kottayam District without further orders from the Court.

6. Since the perpetrator of the crime is facing trial and has been incapacitated from even entering the district - much less the house where the parents of the child are residing - I am of the view that they ought to be granted the reliefs sought for in this Writ Petition. However, this can only be on certain safeguards being provided.

In the afore circumstances, this Writ Petition is allowed with the following directions:

a) The child will be returned to the petitioners – her parents, on proper documentation received by the Care Home, forthwith on receipt of a copy of this judgment.

b) The petitioners are directed to ensure that the twin



brother of the child does not see her and is not allowed access to the house or any other area where she normally uses. Any violation of this will visit them with very serious consequences and they will lose the benefit of this judgment.

c) The 1st respondent – Child Welfare Committee, through a competent officer/entity, shall ensure that the afore directions are implicitly complied with; and should they find any violation, they will be at liberty to intimate the Police Authorities also, particularly if the perpetrator is to violate the bail conditions and attempt to see the child.

d) Needless to say, the petitioners will ensure that the child completes her studies without any impediment and this shall also be ensured by the 1st respondent effectively.

e) I leave liberty to the 1st respondent to seek any clarification, by filing an appropriate application through the learned Government Pleader; and if it is done, the Registry will list it before this Court for necessary orders.

f) I direct the Registry to maintain the papers of this case with the secrecy it deserves, including the report now placed on



WPC 24416/23

6

record by the Secretary, DLSA.

RR

Sd/ -
DEVAN RAMACHANDRAN
JUDGE

**APPENDIX OF WP(C) 24416/2023**

PETITIONER EXHIBITS

- Exhibit P1 A TRUE COPY OF THE ORDER NO.1970/23 DATED 14.07.2023 IN CASE NO.278/5A/23 ISSUED BY THE 1ST RESPONDENT.
- Exhibit P2 A TRUE COPY OF THE FIR DATED 25.04.2023 IN CRIME NO.1031/2023 OF PALA POLICE STATION.
- Exhibit P2(A) A TRUE COPY OF THE FIS DATED 25.04.2023 IN CRIME NO. 1031/2023 OF PALA POLICE STATION.
- Exhibit P3 A TRUE COPY OF THE ORDER DATED 28.04.2023 IN CMP NO. 107/2023 OF THE HON'BLE JUVENILE JUSTICE BOARD, KOTTAYAM.
- Exhibit P3(a) A TRUE COPY OF THE AFFIDAVIT DATED NIL SWORN BY THE 2ND PETITIONER BEFORE THE HON'BLE JUVENILE JUSTICE BOARD, KOTTAYAM, IN CRIME NO.1031/2023 OF PALA POLICE STATION ALONG WITH ITS TRANSCRIBED COPY.
- Exhibit P4 A TRUE COPY OF THE MEDICAL CERTIFICATE DATED 06.05.2023 ISSUED BY THE CONCERNED MEDICAL OFFICER, DEPARTMENT OF OBSTETRIC & GYNECOLOGY, GOVERNMENT MEDICAL COLLEGE, KOTTAYAM.
- Exhibit P5 A TRUE COPY OF THE REPRESENTATION DATED 09.05.2023 SUBMITTED BY THE 1ST PETITIONER TO THE DISTRICT COLLECTOR, KOTTAYAM.
- Exhibit P6 A TRUE COPY OF THE REPRESENTATION DATED NIL SUBMITTED BY THE 1ST PETITIONER TO THE 1ST RESPONDENT ON 24.05.2023 ALONG WITH ITS TRANSCRIBED COPY.
- Exhibit P7 A TRUE COPY OF THE REPRESENTATION DATED 25.05.2023 SUBMITTED BY THE 1ST PETITIONER TOT HE DISTRICT CHILD PROTECTION OFFICER, KOTTAYAM.
- Exhibit P8 A TRUE COPY OF THE APPLICATION DATED 05.06.2023 SUBMITTED BY THE 1ST PETITIONER BEFORE THE 1ST RESPONDENT.
- Exhibit P9 A TRUE COPY OF THE ORDER NO.1045/2023 DATED 26.04.2023 IN CASE NO.278/SA/23 ISSUED BY THE 1ST RESPONDENT.
- Exhibit P10 A TRUE COPY OF THE FIRST SUPPLEMENTARY ALLOTMENT DETAILS OF THE CHILD/VICTIM DOWNLOADED FROM THE WEBSITE OF DIRECTORATE OF GENERAL EDUCATION (HIGHER SECONDARY WING)



WPC 24416/23

8

- Exhibit P10(a) A TRUE COPY OF THE RECEIPT NO.835 DATED 13.07.2023 ISSUED FROM THE ST.MICHAEL'S HIGHER SECONDARY SCHOOL, PRAVITHANAM.
- Exhibit P11 A TRUE COPY OF THE REPRESENTATION DATED 14.07.2023 IN CASE NO.278/SA/23 SUBMITTED BY THE 1ST PETITIONER BEFORE THE 1ST RESPONDENT COMMITTEE.
- Exhibit P12 A TRUE COPY OF THE ORDER NO.1969/23 IN CWC/KTM/OP.NO.278/SA/23 DATED 14.07.2023 ISSUED BY THE 1ST RESPONDENT COMMITTEE.
- Exhibit P13 A TRUE COPY OF THE JUDGMENT DATED 21.07.2023 IN W.P.(CRL) NO.616/2023 OF THIS HON'BLE COURT.
- Exhibit P14 A TRUE COPY OF THE JUDGMENT DATED 22.03.2022 IN W.P(C) NO.8691/2022 OF THIS HON'BLE COURT.