

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

MONDAY, THE 31ST DAY OF JANUARY 2022 / 11TH MAGHA, 1943

WP(CRL.) NO. 62 OF 2022

PETITIONER/S:

RADHAKRISHNAN
AGED 37 YEARS
S/O. UNNIKUTTAN, RESIDING AT KUNDALAMPADATH HOUSE,
THRIPALAMUNDA, PARASSERY P.O., KONGAD, PALAKKAD
DISTRICT - 678 631.

BY ADVS.
T.C.SURESH MENON
B.DEEPAK

RESPONDENT/S:

- 1 THE STATION HOUSE OFFICER
KANHANGAD POLICE STATION, HOSDURG, KASARGODE -
671315.
- 2 ASWANI M.
AGED 28 YEARS
W/O. RADHAKRISHNAN, KALLAPPUNAR HOUSE, AJANUR,
HOSDURG, KANHANGAD, AYANNUR P. O., KASARGOD - 671
531.

OTHER PRESENT:

SRI.E.C.BINEESH, GOVERNMENT PLEADER

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 31.01.2022, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

K.VINOD CHANDRAN & C.JAYACHANDRAN, JJ.

WP(CrI.) No.62 of 2022

Dated this the 31st day of January, 2022

J U D G M E N T

Jayachandran, J.

The petitioner is the husband. He seeks issuance of a writ of habeas corpus commanding production of his children before this Court, on the premise that they are under the illegal custody of the petitioner's wife, the second respondent herein. The petitioner would aver there exists marital discord between himself and the second respondent and that various litigation are pending by and between them. O.P. No. 1080/2021 seeking custody of the children preferred by the petitioner is pending consideration of the Family Court, Palakkad. According to the petitioner, the whereabouts of the second respondent, as also, the two minor children, are not known, wherefore, the

present petition is preferred, seeking issuance of a writ of habeas corpus.

2. As per Order dated 19.1.2022, we directed the first respondent/S.H.O to enquire the whereabouts of the children and to file a report. Such report is filed before us, along with a statement of the second respondent. A perusal of the said statement would indicate that the petitioner and his mother used to humiliate and harass the second respondent/wife and that the second respondent left to her parental home, along with the children. Thereafter, she shifted the residence to a rented house at Kanhangad. The address of the house at Kanhangad was found out by the petitioner, which compelled the second respondent to shift her residence to Babel. According to the second respondent, her children are presently attending online classes and she is not interested at all to continue with the petitioner as husband and wife, any more. The

second respondent contemplates to initiate proceedings for divorce.

3. Having heard the learned counsel for the petitioner and the second respondent and having perused her statement, we find that the petitioner's children are not under any illegal detention of the second respondent. The second respondent is none other than the mother of the children and the custody of the children with the mother cannot, by any stretch of imagination, be portrayed as an illegal detention. The petitioner's remedy to seek custody of the children has already been initiated vide O.P. No.1080/2021 in the Family Court, Palakkad. We find no ground to interfere in the matter. The learned counsel for the petitioner contends that notice to the wife in the Guardian & Wards O.P is not served because of the constant shifting of residence. The jurisdiction under Article 226 is not a mode of

substituted service. The petitioner would have to take appropriate steps before the Family Court.

This writ petition fails. The same is therefore dismissed.

Sd/-
K.VINOD CHANDRAN
JUDGE

Sd/-
C.JAYACHANDRAN
JUDGE

jg

APPENDIX OF WP (CRL.) 62/2022

PETITIONER EXHIBITS

Exhibit P1	A TRUE COPY OF THE NOTICE DATED 03.08.2021 ISSUED TO THE PETITIONER IN C.M.P.NO.2701 OF 2008.
Exhibit P2	A TRUE COPY OF O.P.NO.1080 OF 2021 BEFORE THE FAMILY COURT, PALAKKAD.