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SLP(Crl.)No. 7174 OF 2001

ITEM No.38

Court No. 1

SECTION II
A/N MATTER

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No. 7174/2001
(From the judgement and order dated 13/11/2001 in OP 33112/01
of The HIGH COURT OF KERALA AT ERNAKULAM)

GIRISH

Petitioner (s)

VERSUS

RADHNAMONY K. & ORS.

Respondent (s)

(With Appln(s). for directions and stay)

Date : 11/02/2002 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. KIRPAL
HON'BLE MR. JUSTICE ARIJIT PASAYAT

For Petitioner (s) Mr. P V Dinesh, Adv.
Ms. Sindhu T P, Adv.
Ms. Kusum Chaudhary,Adv.

For Respondent (s) Mr. K R Sasiprabhu, Adv.

UPON hearing counsel the Court made the following
O R D E R

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(D.P. WALIA)
COURT MASTER

(SHELLY SENGUPTA)
COURT MASTER

(Signed Order is placed on the file)

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IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2002@@
EE
[arising out of S.L.P.(Crl.) No. 7174/2001]

Girish ..Appellant
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Versus

Radhamony K. & Ors. ..Respondents

O R D E R@@
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Special leave granted.

In the instant case, respondent No. 1 had filed a habeas corpus petition in the High Court of Kerala alleging that the appellant herein had kidnapped her daughter Anjana Devi who was stated to be a minor. In support of this, a certificate was produced alleging that the girl was born on 28th April, 1984.

Anjana Devi appeared in Court and stated that she was a major and that she had married the appellant herein and she was living with him. Curiously enough, the High Court, instead of dismissing the petition and leaving the parties to take recourse to such other remedy which may be available to them in accordance with law, passed the impugned order directing registration of a case for offences allegedly punishable under Section 366, 366A and 376 of the Indian Penal Code. In our opinion, the High Court had no jurisdiction to give this direction. In a habeas corpus petition, all that is required is to find out and produce in Court the person who is stated to be missing. Once the person appeared and she stated that she
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had gone of her own free will, the High Court had no further jurisdiction to pass the impugned order in exercise of its writ jurisdiction under Article 226 of the Constitution.

For the aforesaid reason, this appeal is allowed and the impugned judgment of the High Court set aside.

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.....J
(B.N. KIRPAL)

.....J
(ARIJIT PASAYAT)

New Delhi;
February 11, 2002.