

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 07.12.2015

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR.JUSTICE P.N.PRAKASH

H.C.P. NO. 2581 OF 2015

K.Hamsavalli ... Petitioner

- Vs -

1. State, rep. by
The Inspector of Police
Shevapet Police Station
Salem.

2. G.Madhavan

3. Geetha

4. Jegan

5. K.K.Padmanabhan

... Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of a writ of habeas corpus directing the respondents to produce the petitioner's husband, G.Kesavan, S/o N.R.Govinda Rao, aged about 55 years, before this Court and set him at liberty.

For Petitioner : Mr. Prabhakaran

for M/s.For and Fair Associates

For Respondents : Mr. A.N.Thambidurai, APP for R-1

Mr. V.Sekar for RR-2 to 5

ORDER

(DELIVERED BY R.SUDHAKAR, J.)

This petition has been filed by the petitioner for a direction to respondents to produce the petitioner's husband, G.Kesavan, S/o N.R.Govinda Rao, aged about 55 years, before this Court and set him at liberty.

2. Heard the learned counsel appearing for the petitioner, learned Addl. Public Prosecutor appearing for the first respondent and the learned counsel appearing for respondents 2 to 5.

3. The petitioner, aged about 48 years, has filed this petition stating that her husband has gone missing since 9.12.2010. The cause for the absence of the petitioner's husband, viz., the detenu, Kesavan, is shown in para 3 and 4 of the affidavit and for better clarity, the same is extracted hereinbelow :-

"3. I state that the said Mr.N.R.Govinda Rao had two sons, namely, Mr.G.Kesavan, my husband and his younger brother Mr.G.Madhavan and one daughter named Mrs.Geetha. The said Mr.N.R.Govinda Rao had been admitted for the respiratory problems at SKS Hospital Salem on 07.06.2010 and has been discharged on 11.06.2010. It is pertinent to note and it is learnt that a settlement deed has been registered by Mr.N.R.Govinda Rao on the very same day, i.e., on 11.06.2010 in favour of Mr.Madhavan by settling the above said property on his behalf. Suspiciously my father in law died on 14.06.2010 itself.

4. I state that there was a dispute between my husband and the said Mr.Madhavan regarding the property. to the dismay the said Mr.Madhavan has advertised a publication in a daily newspaper about his ownership on the above said property dated 05.12.2010. There arose a wordy quarrel and dispute regarding that."

4. From the above averment, it is evident that there is a family dispute between the husband of the petitioner/detenu and his siblings.

5. Pursuant to the complaint given by the petitioner, the respondent police, after enquiring into the matter, have, registered a case in Crime No.483/2015 on 3.12.2015. It is submitted by the learned Addl. Public Prosecutor that investigation is in progress.

6. The second respondent, G.Madhavan, has filed a counter affidavit giving the details of various disputes that subsists between the detenu and himself and has stated that there are number of litigations between the detenu and the respondents relating to property disputes at Salem and reference is made to a suit for declaration and possession in O.S. No.75/2011 on the file of the District Court, Salem, filed by the second respondent against the detenu, the petitioner and their daughter. For better clarity, the relevant portion of the counter affidavit of the second respondent is extracted hereunder :-

"6. I respectfully submit that in respect of Paragraph No.6 of the affidavit, it is not true that the petitioner has been starving for food and standing in the streets along with his daughter. It is the fact the petitioner and her daughter are residing in my house. I have filed a suit for declaration and for possession in O.S. No.75 of 2011 on the file of the District Court, Salem, against my brother and my sister-in-law and her daughter. The petitioner herein is the 2nd defendant in the suit. The 1st defendant is my brother. I have taken service of summons through paper publication against my brother. Neither myself nor the respondents 3 to 5 know the whereabouts of my brother G.Kesavan. He is neither in our custody nor under our wrongful confinement. The petitioner alone knows about the whereabouts of my brother G.Kesavan.

7. I respectfully submit that in respect of paragraphs No.7 & 8, I deny the allegations that my brother has been kidnapped by us. The petitioner purposely suppressed the material facts before this Hon'ble Court. The petitioner in her written statement in paragraph No.11 of the same in O.S. No.75 of 2011 has clearly stated that her husband has returned to her home in the 1st week of January, 2011. The petitioner has further stated in her written statement that her husband is not co-operating with her to pursue the suit filed by me. The petitioner has also stated that her husband has left the house without any intimation. Even according to the statement of the petitioner, my brother was lost only at the hands of the petitioner. It is the fact that my brother has returned back and stayed at the residence of his elder daughter namely, Mrs.Prahavathy after returning Salem. After that my brother has met me along with his daughter Mrs.Prabavathy and his son-in-law, Jagadeesh, once or twice and told me that his wife is giving him a lot of mental torture to get back the house in his name. He was even ready to offer Rs.10 Lakhs for the house. But I refused to accept the suggestion. After that I have received two caveat notices in C.O.P. No.19 of 2011 on the file of the Sub Court, Salem and in C.O.P. No.19 of 2011 on the file of the Sub Court, Salem. I have reliably learnt that my brother has filed the above two caveat petitions 10.01.2011 as against me only at the instigation of the

petitioner. As such the petitioner has come to the Court with unclean hands. It is totally wrong, unwarranted and misleading that the petitioner's husband was kidnapped or might have been killed at our place.

8. I respectfully submit that the petitioner has unnecessarily made false allegations against me and the other respondents. We do not aware the whereabouts of my brother. We undertake to abide any order passed by this Hon'ble Court for the investigation process of the 1st respondent. The petitioner has come with the present petition as the petitioner has no defence in the suit. The petitioner has filed the present petition to bring us to her terms. The petition is highly misleading and unwarranted."

7. Further, the second respondent has also categorically denied any involvement in the absence of the alleged detenu and further claims that it is a false allegation made by the petitioner against him. It is therefore clear from the above averment of the second respondent in the counter affidavit that for one or other reason, the detenu, viz., the husband of the petitioner, has been evading court proceedings.

8. In the above circumstances it is clear that there is no question of illegal detention of the detenu by any person, much less respondents 2 to 5 herein. It is more of a case of the parties fighting out their rights before the competent civil court in relation to some property.

9. In the above background, there being no illegal detention of the detenu by any person, much less the respondents, issuance of a writ of habeas corpus does not arise. Accordingly, this habeas corpus petition is closed.

gln

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

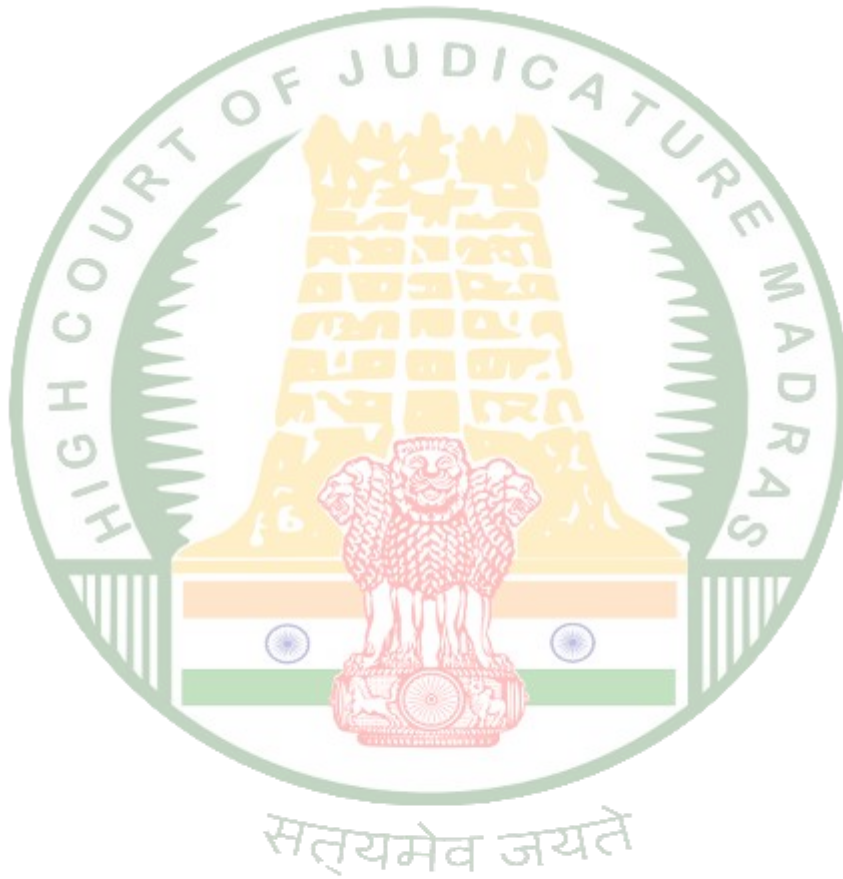
1. The Inspector of Police
Shevapet Police Station
Salem.
2. The Public Prosecutor
High Court, Madras.

+ 1 cc to M/s.For and Fair Associates, Advocate SR 66078

+ 1 cc to Mr.V.Sekar, Advocate SR 65588

vd(co)
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