



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P(MD)No.1075 of 2015

E.Ganesan

.. Petitioner

Vs.

1. The Commissioner of Police,
Madurai.

2.The Inspector of Police,
Subramaniyapuram Police Station(C2),
Madurai.

3.Anbu

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, directing the respondents 1 and 2 to produce the minor detainee or her corpus namely Esakkiammal D/o. Ganesan, Female, aged about 14 years before this Court after securing her from the illegal detention of the third respondent and hand over to the custody of the petitioner forthwith and pass such other or further order as this Court may deem fit and proper in the circumstances of the case.

For Petitioner	: Mr.V.P.Rajan
For R1 and R2	: Mr.K.S.Duraipandian
	Additional Public Prosecutor.

O R D E R

[Order of the Court was made by S.NAGAMUTHU,J]

This Habeas Corpus Petition has been filed by the petitioner alleging that his female child by name Esakkiammal, hardly aged about 14 years, has been kidnapped by the third respondent herein. On a complaint made by the petitioner, a case was registered by the second respondent in Crime No.663 of 2015 on 25.06.2015 for 'girl missing'. Since no progress was made by the second respondent to secure the minor girl, the petitioner filed the present Habeas Corpus Petition on 20.07.2015. Notice was ordered by this Court in the Habeas Corpus Petition. Despite adjournments taken, there was no progress made by the second respondent to secure the girl. Therefore, this Court passed an interim order on 27.08.2015 as follows:

"The petitioner is the father of the one minor girl by name Esakkiammal, aged about 14 years. It is alleged that she has been kidnapped by the third respondent. The second respondent has registered a case in Crime No.663 of 2015. But, so far the girl has not been secured. Therefore, the petitioner is before this Court with this Habeas Corpus Petition. Though the girl has been found missing from 24.06.2015, she has not been so far secured by the second respondent.

2. Having regard to the age of the girl, her safety,



security and all other attending circumstances, we are of the view that there would be no purpose served in allowing the second respondent to continue the investigation. We deem it appropriate to issue a direction to the first respondent to forthwith transfer the said case to the Assistant Commissioner of Police, Central Crime Branch, Madurai. The transferee officer shall do the investigation expeditiously, secure the girl and produce the girl before this Court or before the jurisdictional Magistrate Court. At any rate, he shall submit a report to this Court within two weeks."

2. Today, when the Court assembled, the learned Additional Public Prosecutor made a mention that the victim girl has been secured and he wanted to produce her before this Court. Accordingly, this Court permitted and the Habeas Corpus Petition was taken up for hearing.

3. The learned counsel for the petitioner was present. In the morning session, the minor girl was produced by the second respondent. The petitioner and his wife were also present before this Court. But, it was informed to this Court that the investigation is still done only by the second respondent and not by the Assistant Commissioner of Police, Central Crime Branch, Madurai, as directed by this Court on 27.08.2015. This Court also perused the Case Diary, which is not to the satisfaction of the Court at all. So far, the statement under Section 164 Cr.P.C has not been recorded from the victim girl and there is only a statement under Section 161 Cr.P.C recorded by the Investigating Officer. Sub Section 5(A)(a) of Section 164 of Cr.P.C states that the Judicial Magistrate shall record the statement of the person against whom such offence has been committed in a manner prescribed under Section 5 of the Protection of Children from Sexual Offences Act, 2012 as soon as the commission of offence has been brought to the knowledge of Magistrate.

4. Here, in this case, the Inspector of Police would say that a request has been made to the learned Judicial Magistrate No.V, Madurai, to record her statement, but he has not recorded. In our considered view, the learned Judicial Magistrate No.V, Madurai should immediately record the statement of the victim girl as provided under sub section 5(A) (a) of Section 164 of the Code of Criminal Procedure and Section 25 of the Protection of Children from Sexual Offences Act, 2012. The matter was, thereafter, passed over.

5. When the matter was taken up in the afternoon session, the Assistant Commissioner of Police, Central Crime Branch appeared before this Court and he would submit that he received the order from the Superintendent of Police transferring the case only about 1.45 p.m today i.e on 03.09.2015. This is again a distressing feature.

6. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents. We have also perused the records carefully.

7. In the above said circumstances, going by the Protection of Children from Sexual Offences Act, 2012, and considering the seriousness of the offences involved in this case, more particularly, considering the age of the victim girl, we deem it appropriate to transfer the



investigation. The investigation should be hereafter taken up by a Women Police Officer as required under Section 25 of the Protection of Children from Sexual Offences Act, 2012 in which there are certain mandatory requirements to be followed by the police.

8. When we enquired the learned Additional Public Prosecutor, we were informed that there is no Women Police Officer in the rank of the Deputy Superintendent of Police and Assistant Superintendent of Police. Further, we were informed that there is a women Police Officer in the rank Deputy Commissioner of Police (Crimes) by name, Ms. Umaiyal. Hence, it is ordered that the investigation is forthwith transferred to the said Deputy Commissioner of Police (Crimes). The said Officer shall do the investigation expeditiously. It is further directed that the victim girl shall be produced before the learned Judicial Magistrate No.V, Madurai today itself, who shall record her statement as required under Sub Section 5(A) (a) of Section 164 Cr.P.C and Section 25 of the Protection of Children from Sexual Offences Act, 2012.

9. The minor girl states that she is willing to go with her parents and the petitioner and his wife are willing to take her and keep her in their custody. The said statement is recorded.

10. The Habeas Corpus Petition is disposed of with the above direction, entrusting the child to the petitioner and his wife by name, Santhalakshmi for safe custody.

11. The Registrar (Judicial) of this Bench shall inform the learned Judicial Magistrate No.V, Madurai over phone asking him to record the statement of the victim today i.e. on 03.09.2015 itself without waiting for the copy of this order.

12. The press and media is requested not to report this case as it may affect psychologically the victim girl.

Sd/-
Assistant Registrar(Co)

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner of Police, Madurai.
2. The Inspector of Police, Subramaniyapuram Police Station (C2), Madurai.
3. Ms. Umaiyal, The Deputy Commissioner of Police (Crimes), Madurai.
4. The Superintendent of Police, Madurai District.
5. The Judicial Magistrate No.V, Madurai.
6. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

Copy to: The Registrar (Judicial), Madurai Bench of Madras High Court, Madurai.

ORDER MADE IN
H.C.P (MD) No.1075 of 2015
03.09.2015

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