

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

and

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

H.C.P.No.3214 of 2015

V.Radha

.. Petitioner

- Vs -

1. The State by
Inspector of Police,
Kachirapalayam Police Station,
Villupuram District.

2. Ravindran

.. Respondents

Prayer:- Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus directing the 1st respondent to secure the body of the minor daughter namely Vigneshwari aged about 15 years and to produce before this Court, who is under the illegal custody of the 2nd respondent.

For Petitioner : Mr.A.Gokulakrishnan

For Respondent 1 : Mr.V.M.R.Rajentren
Additional Public Prosecutor

O R D E R

(The Order of the Court was made by S.NAGAMUTHU,J.)

The petitioner, the mother of the minor girl Ms.Vigneshwari, aged 15 years has come up with this Habeas Corpus Petition alleging that the said minor girl was missing from 29.11.2015 onwards. She made a complaint to the first respondent herein upon which the first respondent registered a case in Crime No.183/2015 under Section 366(A) I.P.C. Since the petitioner expressed that the minor girl might have been kidnapped by the second respondent herein, the said case was registered against the second respondent. Since the girl was not secured by the first respondent, the petitioner filed this Habeas Corpus Petition as early as on 16.12.2015.

2. When the matter came up for hearing on 21.12.2015, the learned Additional Public Prosecutor took notice for the first respondent and this Court ordered notice to the second respondent. The second respondent has not made appearance. Despite several adjournments, the first respondent did not secure the minor girl.

3. On 25.02.2016, when the matter came up for hearing, the Inspector of Police filed a status report, wherein, he had stated that it is true that the minor girl was missing but she was not kidnapped by the second respondent. Therefore, according to the Inspector of Police, it was a false case. Accordingly, the first respondent closed the case as mistake of fact and a notice to the said effect was issued to the petitioner as early as on 07.12.2015 itself.

4. Having gone through the said status report, this Court could not restrain itself from making certain adverse remarks against the Inspector of Police. Since, in the status report itself it was stated that the girl was missing and she was kidnapped by somebody else, this Court was not satisfied with the closure of the case by the Inspector of Police. Therefore, this Court directed the Inspector of Police to be present before this Court. Accordingly, he appeared before this Court on 26.02.2016 and expressed his regrets for having closed the case. We directed the first respondent to reopen the investigation and take expeditious steps to locate the minor girl and produce the minor girl before this Court at the earliest.

5. In pursuance of the said direction, when this writ petition came up for hearing today, the first respondent produced the minor girl "Vigneswari". Admittedly, her date of birth is 25.02.2000 and thus as on her date of missing, she had not even completed 16 years of age. The Deputy Superintendent of Police Mr.V.Mathivanan of Kallakurichi Sub-Division was present before this Court. He would submit that during investigation, it has come to light that the minor girl was kidnapped by one Mr.Anand and accordingly the case has been altered into by including the penal provisions of "Protection of Children from Sexual Offenses Act, 2012". He would further submit that Mr.Anand was arrested on 10.03.2016 at Kachirapalayam and on being produced before the jurisdictional Court, he was remanded to judicial custody. He would further submit that during investigation, it has come to light that Mr.Anand is already married and he has got one child also. It is also informed to this Court by the Deputy Superintend of Police that on an earlier occasion, there was a complaint that the minor girl was kidnapped by the very same Mr.Anand and a case was registered and when the girl was secured, she told that she was not kidnapped by Mr.Anand and therefore the case was closed.

6. The Deputy Superintendent of Police would further submit that the minor girl was found in the company of the accused at 2.00 p.m. on 10.03.2016 and she was taken into his safe custody. He would further submit that she was kept in the Karunalaya Social Welfare Organisation at Thanthai Periyar Nagar, Villupuram during the night of 10.03.2016 / 11.03.2016 and from where she was brought to the Court and produced.

7. He would further submit that for want of time, after the minor girl was secured, medical examination could not be conducted on her. He would further submit that now she has to be taken for medical examination also and also for recording statement of the minor girl by the learned Judicial Magistrate as required under law. The said statement is recorded.

8. We enquired the minor girl. She submitted that she was taken by Mr. Anand and kept in Coimbatore where he had sexual intercourse with her on several occasions and as a result of the same, she is now eight weeks pregnant. She would further submit that she is willing to go and live with her parents and be in their custody. The petitioner viz., the mother of the victim girl and her husband Velumani also made appearance before this Court today. When we enquired them, they told the Court that they are apprehensive of the safety of the minor girl. They submitted that both of them are very poor people who are able to eke out their family expenses only by going for coolie work everyday. They further submitted that if they go out for coolie work in the morning, they could return only in the evening and in the meantime, the minor child would be alone in the home. They further submitted that on an earlier occasion when the minor girl was alone in the home, she had gone to the extent of attempting to commit suicide. Therefore, they expressed apprehension that the minor girl could make yet another attempt. They further expressed that if anything happens to her safety and security, they may be taken to task by the law enforcing agencies. In fact the parents are not willing to take the minor girl with them.

9. When we enquired the minor girl, she was not free to speak and we felt that she was in a mental depression. Therefore, we wanted to ascertain whether she is mentally fit, so that we can pass some order so as to ensure her safety and security. So, we passed an interim order today, during the morning session, directing the Deputy Superintendent of Police to take her to the Director of Institute of Mental Health, Chennai to examine her and to give a report forthwith.

10. Accordingly, she was taken by the Deputy Superintendent of Police with the assistance of a woman police constable to the said institute.

11. We posted the matter to be taken up for hearing at 3.30 p.m. By 4.30 p.m., the Deputy Superintendent of Police again brought the minor girl and produced her before us. He also submitted a report from Dr.S.Nakeeran, Senior Civil Surgeon, Institute of Mental Health, Chennai, wherein, the said Doctor has opined that during the period of observation today for a short period, she did not exhibit any gross Psychiatric pathology. However the Doctor opined that for further detailed assessment, she may be sent back to the Institute of Mental Health.

12. Again we enquired with the minor girl, she stated that she was willing only to go with her parents and she was not willing to go to any home for children. The parents of the minor girl appeared to be in double minds and they are not willing to take back the child. In the light of the stand of the parents, this being the Constitutional Court, we have to ensure the life and liberty of the minor girl. We are concerned with her safety and security of her life and her modesty.

13. Though, the minor girl told us that she is pregnant, the same has not been confirmed by any medical examination. Whether her health would permit her to bear a child in her womb are all matters to be taken into account in the larger interest of her health and according to the Statutes governing the children. We do not want to express any opinion about the same.

14. Having regard to the above factual position and by way of ensuring the safety, security and modesty of the minor girl, we deem it appropriate to direct the production of the minor girl before the "Child Welfare Committee" Villupuram District constituted under Section 29 of the Juvenile Justice (Care & Protection of Children) Act, 2000. On such production by the Deputy Superintendent of Police along with a women police constable it is for the said Committee to pass appropriate orders under the provisions of the Juvenile Justice (Care and Protection) Act, 2000 in respect of the minor girl as she happens to be a child requiring care. In view of the fact that the investigation into the offence allegedly committed by Mr.Anand is in progress, if the child is required for medical examination and also for recording her statement under Section 164 of the Cr.P.C., on a request made by the Investigating Officer, he shall be permitted to do so.

15. In view of the foregoing discussion, this Habeas Corpus Petition is disposed of in the following terms:

(i) The minor girl-Vigneswari, shall be taken by the Deputy Superintendent of Police, assisted by a woman constable and produced before the Child Welfare Committee at Villupuram District, constituted under Section 29 of the Juvenile Justice

(Care and Protection of Children) Act, 2000 and the said Committee is directed to pass appropriate orders as per the provisions of the said Act to ensure the safety, security of the minor child. We make it clear that for the purpose of investigation, the Investigating Officer shall be permitted to send the minor girl for medical examination and also for production before the Court for recording her statement under Section 164 of the Cr.P.C.

(ii) Since the minor child was kept in the Karunalaya Social Welfare Organisation at Thanthai Periyar Nagar, Villupuram during the night 10.03.2016 / 11.03.2016, the Deputy Superintendent of Police is permitted to keep the child in the said organisation during the night of 11.03.2016 / 12.03.2016 for safety purpose.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police,
Kachirapalayam Police Station,
Villupuram District.
2. The Officer Incharge,
The Karunalya Social Welfar Organisation,
Thanthai Periyar Nagar,
Villupuram.
3. The Deputy Superintendent of Police,
Kallakurichi.
4. The Director,
Institute of Mental Health Kilpauk,
Medical College,
Chennai.
5. Dr.Jayaprakash
Director,
Kilpauk Medical College hospital,
Chennai.g

6. The Public Prosecutor,
Madras High Court.
7. The Officer Incharge,
Child Welfare Committee,
Villupuram.

+ 1 cc to Mr.A.Gokulakrishnan, Advocate Sr 16374 (15/3/16)

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