

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 8-01-2016

Coram

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

and

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

H.C.P.No.1616 of 2012

Sangeetha

..Petitioner

Vs.

1. State of Tamil Nadu, rep.by
The Secretary to Government,
Home Department, Secretariat,
Chennai - 600 009.

2. The Additional Director General of Police &
Inspector General of Prisons,
Gandhi Irwin Road,
Chennai - 600 008.

3. The Superintendent,
Central Prison,
Cuddalore.

..Respondents

Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India, with a prayer to issue a writ of Habeas Corpus directing the respondents to produce the petitioner's husband namely, Venkatesan, S/o.Natesan, aged 37 years, now confined in Central Prison, Cuddalore, before this Court and set him at liberty.

For Petitioner : Mr.M.Radhakrishnan

For Respondents : Mr.A.N.Thambi Durai,
Additional Public Prosecutor

Reserved on	Pronounced on
15-12-2015	8-01-2016

O R D E R

This Habeas Corpus Petition is filed to direct the respondents to produce the petitioner's husband namely, Venkatesan, S/o.Natesan, aged 37 years, now confined in Central Prison, Cuddalore, before this Court and set him at liberty.

2. It is the case of the petitioner that the name of her husband is Venkatesan and not Saravanan, and that, he has been wrongly convicted and sentenced by the Courts below, as if he is Saravanan.

3. It may be relevant to briefly narrate the requisite facts for deciding this petition. On a complaint lodged by one Venkatesan, the Sub-Inspector of Police, Brammadesam Police Station registered a case in Cr.No.289 of 1999 under Sections 147, 148, 323, 324, 506(ii) and 302 IPC against Arumugam (A-1); Hari @ Harikrishnan (A-2); Saravanan, S/o.Natesan Gounder (A-3); Natesan (A-4); Rajavelu (A-5); Rajendiran (A-6); Singaram (A-7); and Thangarasu (A-8). During the course of investigation, it came to light that the said accused had also committed the offence under the SC/ST Act, and hence the investigation was taken over by Ramamoorthy, Deputy Superintendent of Police. After completing the investigation, Final Report was filed in PRC No.1 of 2000 on 3.1.2000 before the jurisdictional Magistrate and the case was committed to the Court of Sessions, Villupuram in S.C.No.58 of 2000. Charges for various offences were framed against the above named accused, and they pleaded 'Not guilty'. On behalf of the prosecution, 15 witnesses were examined, 28 exhibits were marked and 11 material objects were produced. The accused were questioned under Section 313 Cr.P.C. about the incriminating circumstances against them. The Sessions Court convicted and sentenced the accused by judgment dated 31.1.2008.

4. We are now concerned only with the case of Saravanan (A-3), on whose identity, petitioner has raised this dispute. Saravanan (A-3) was convicted under Section 302 IPC and Section 3(2)(v) of the SC/ST Act and sentenced to undergo imprisonment for life and imposed fine of Rs.2,000/-, in default to undergo three months Simple Imprisonment, and he is presently confined in the Central Prison, Cuddalore. Challenging the said conviction and sentence, Saravanan (A-3) preferred CrI.A.No.127 of 2008 before this Court, and the same was dismissed on 30.4.2009. His further appeal to the Supreme Court in SLP(Criminal)No.6460 of 2009 was also dismissed on 7.9.2009.

5. It is contended by the petitioner that the name of her husband is Venkatesan and it is he who is undergoing

sentence in the name of Saravanan. At the first blush we thought that the petitioner's husband was made to impersonate Saravanan for the purpose of undergoing imprisonment in the Prison. Fortunately that is not the case. It is her case that one Saravanan was involved in the offence, and instead of Saravanan, her husband Venkatesan was wrongly arrested by the Police and made to face the trial.

6. The Deputy Superintendent of Police, Tindivanam Sub Division, Villupuram District has filed a Status Report dated 14.12.2015 refuting the contentions of the petitioner. In the Status Report it is stated that two witnesses by name Mary (PW-3) and Kumaravel (PW-2), who were examined on behalf of the prosecution, had identified Saravanan in the dock as the person who was involved in the offence, and spoke about his overt acts.

7. Be that as it may, admittedly, Saravanan [A3] did not tell the Trial Court either at the time of framing charge, or at the time of questioning under Section 313 Cr.P.C. that he is not Saravanan, but Venkatesan and that has nothing to do with the real accused Saravanan. When this was pointed out to Mr.M.Radhakrishnan, learned Counsel appearing for the petitioner, he has stated that the accused has got an absolute right of silence and his silence cannot be put against him. We are not able to countenance this argument for the simple reason that under our Criminal Jurisprudence, though the accused cannot be compelled to be a witness, yet he does not enjoy an unqualified right of silence at all circumstances during trial. For example, under Section 106 of the Indian Evidence Act, a burden is cast upon the person of proving facts, that are especially within his knowledge.

8. In this case, Saravanan (A-3) never pleaded before any Court that he is Venkatesan and he has been falsely roped into the case by the Police, conferring on him the moniker Saravanan. Though a person's name may play a significant role for identification purpose in the world of humans, yet that is not the only source of identification in a criminal prosecution. The person standing in the dock, whatever name he bears, has been identified by the Prosecution witnesses vis-a-vis the crime. On appreciation of the evidence and being satisfied that the person standing in the dock has committed the offence in question, the trial Court convicted and sentenced him as stated above, which conviction and sentence was upheld by the superior Courts. Hence it is not open to the petitioner to set up the plea of wrong person suffering conviction. Reviewing the judgment of the three Courts which were decided as per the procedure prescribed in law, in exercise of the powers under Article 226 of the Constitution of India, especially in the teeth of Section 362 Cr.P.C. is totally impermissible.

In the result, this petition is devoid of merits and the same is dismissed.

sd/-
Assistant Registrar (cS-v)

/TRUE COPY/

Sub-Assistant Registrar

vr

To

1. The Secretary to Government,
Home Department, Secretariat,
Chennai - 600 009.
2. The Additional Director General of Police &
Inspector General of Prisons,
Gandhi Irwin Road, Chennai - 600 008.
3. The Superintendent, Central Prison, Cuddalore.
4. The Public Prosecutor, High Court, Madras.

+1 CC to MR.M.Radhakrishnan Advocate. SR.NO.1596

+1 CC to MR.vIJAY Advocate. SR.NO. 1516

Pre-Delivery Order in
H.C.P.No.1616 of 2012

CO-sv
JD 29/01/2016

सत्यमेव जयते

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