

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

H.C.P.No.1312 of 2016

Ismail

..... Petitioner

Vs

1. The State rep. by
The Inspector of Police,
C-5, Kothwal Chavadi Police Station (L & O),
Chennai 600 033.

2. The State, Rep by
The Commissioner of Police,
Greater Chennai Police,
No.132, Commissioner Office Building,
EVK Sampath Road,
Vepery, Chennai 600 007.

3. Mrs. Razina Begum

..... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS directing the respondents herein to produce the body and person of the detainee by name Ms.Sofiya Fathima, aged about 21 years, before this Court and set her at liberty.

For Petitioner	:	Mr.V.Venkadasalam
For R1 & R2	:	Mr.V.M.R.Rajentren Additional Public Prosecutor
For R3	:	Mr.N.A.Nissar Ahmed

ORDER

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

The petitioner claims to be the husband of one Sofia Fathima, aged 21 years. According to him, the marriage between them was celebrated on 26.11.2015. This was a love marriage. It is further stated by the petitioner that from 27.4.2016 onwards, he was not able to contact the detainee, namely, his wife and her whereabouts are not known. In this regard, according to him, a complaint was made to the Commissioner of Police in the month of February 2016. The second respondent advised for counselling. Even for that the detainee did not turn up. Thereafter, he has made a complaint to the police, but the third respondent has not allowed the detainee to join the petitioner.

2. Today, when the matter was taken up, the detainee was produced by the first respondent. The third respondent, the mother of the detainee has also made appearance. She has filed an affidavit wherein in paragraph 5 to 8, she has stated as follows:

"5. I humbly submit that my daughter vide letter dated 31.3.2016 had pronounced khula and had also given a public notice through her counsel in a newspaper.

6. I humbly submit that the petitioner treated my daughter cruelly and she has been living separately with us. The petitioner's father gave a complaint to the 2nd respondent and the 2nd respondent after enquiry found the complaint to be false. And suppressing all the facts the above petition has been filed.

7. I humbly submit that therefore the allegation that I have forcibly detained my daughter and that my daughter's whereabouts are not known and that my house is locked continuously and that my daughter had contacted the petitioner and that she is willing to live with him and that her life is under danger are all false. In such matters this Hon'ble Court had held that the above HCP is not maintainable.

8. I humbly submit that my daughter Sofia Fathima is not under any illegal confinement and therefore the above petition is liable to be dismissed with cost. The allegations contained in the petition are all false."

3. The Inspector of Police has produced a certificate known as Khula certificate dated 31.03.2016 issued by Shariyad Theerpayam, India Davheet, Jamaad, at No.5/3, Post Office Street, Mannady, Chennai. The said

certificate reads that the marriage was dissolved on 23.01.2016 itself.

4. We enquired the detinue and she said that she has been all along only with her mother.

5. The learned counsel for the petitioner would submit that under Mohamedan law, the Khula Certificate issued by Shariyad Theerpayam is not a valid document and thus, the petitioner continues to be the husband of the detinue.

6. This is disputed by the learned counsel appearing for the third respondent. He would submit that by suppressing the fact that the petitioner has already married and without the consent of the detinue, the marriage was celebrated.

7. In our considered view, in the Habeas Corpus Petition jurisdiction, we cannot go into all these issues. They are civil in nature and has to be resolved only in civil court.

8. Thus, without going into these disputed facts, we are dismissing the Habeas Corpus Petition, leaving it open to the detinue to chose her own way

of life as we cannot pass any order regarding her custody as she is a major. The parties are at liberty to work out their remedies before the appropriate civil court.

kua

(S.N.J.,) (V.B.D.J.,)
12.07.2016

To

1. The Inspector of Police,
C-5, Kothwal Chavadi Police Station (L & O),
Chennai 600 033.

2. The Commissioner of Police,
Greater Chennai Police,
No.132, Commissioner Office Building,
EVK Sampath Road,
Vepery, Chennai 600 007.

3.The Public Prosecutor, High Court, Madras.

**S.NAGAMUTHU J.,
AND
V.BHARATHIDASAN, J.**
kua

H.C.P.No.1312 of 2016

12.07.2016