



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.09.2016

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CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

H.C.P. (MD) No.1211 of 2016

M.S.Sivaraman

: Petitioner

Vs.

State rep. by,

1.The Commissioner of Police,
Madurai City,
Madurai.

2.The Inspector of Police,
Koodalnagar Police Station,
Madurai District.

3.Murugesan

4.Amsavalli

5.Ravikumar

: Respondents

Prayer: Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, directing the second respondent to produce the person or body of the petitioner's wife, detenu, namely Shanmugapriya (aged 21 years) before this Court and set her at liberty.

For Petitioner : Mr.J.Sivaram

For Respondents 1&2 : Mr.A.Ramar,
Additional Public Prosecutor

Assisted by : Mr.Gopalakrishna Lakshmana Raju,
Senior Counsel (Amicus Curiae)

ORDER

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

The petitioner has come up with this Habeas Corpus Petition alleging that his wife Mrs.Shanmugapriya was abducted by the respondents 3 to 5 on 05.09.2016 and he made a complaint to the police in connection with the same on 05.09.2016 itself, but, so



far, no action has been taken. This Habeas Corpus Petition was filed on 06.09.2016.

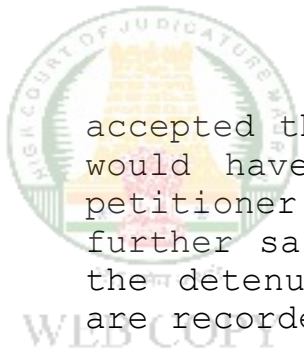
2. In the affidavit filed in support of the petition, the petitioner Mr.M.S.Sivaraman has stated that the marriage between him and the detenu-Shanmugapriya was performed on 18.06.2016 and after the marriage, they were living together as husband and wife for about three months. He has further stated that on 05.09.2016 the respondents 3 to 5 abducted her. In support of the affidavit, the petitioner has produced a copy of the birth certificate of the detenu and a document issued by the Canara Bank to prove the identity of the petitioner. He has also filed a copy of the complaint allegedly made by him to the police on 05.09.2016 and a xerox copy of a marriage photograph, which reflects the petitioner and the detenu in garlands.

3. When this Habeas Corpus Petition came up for admission this morning, the learned counsel for the petitioner Mr.J.Sivaram represented that he did not press for any order in this Habeas Corpus Petition. The learned Additional Public Prosecutor submitted that the detenu was being produced by the second respondent. Therefore, we allowed the second respondent to produce the detenu before us. Accordingly, the detenu appeared before us.

4. When we enquired the detenu, she said that she is aged 21 years and that she went out of her parental home only on 06.09.2016 in the morning. Thereafter, according to her, she went along with the petitioner to meet a friend and through whom, they met Mr.J.Sivaram, the learned counsel for the petitioner, whose Enrolment Number is 2686 of 2009 at Madurai.

5. The petitioner also made appearance. When we enquired him, he told us that it is true that the detenu came to meet him only on 06.09.2016 in the morning and thereafter, they decided to marry. He further submitted that they met a cousin of the petitioner, who, in turn, took them to Mr.J.Sivaram, the counsel, in this regard. Thereafter, it is alleged that accompanied by the counsel Mr.J.Sivaram, they went to Narasingam Temple in Y-Othakadai, Madurai, where they married each other. The petitioner, further, told us that after the marriage, since he was afraid of the parents of the detenu, he wanted the help of the learned counsel Mr.J.Sivaram. According to him, Mr.J.Sivaram, the learned counsel told that he would take care of them. Therefore, they both went together. He further told that he immediately met the parents of the detenu on 06.09.2016 itself. When the parents were informed about the marriage, they immediately accepted the marriage and wished them a happy marital life.

<https://hcservices.courts.gov.in/hcservices> 6. Before this Court, the parents of the detenu also made appearance. When we enquired them, they told us that when the petitioner informed Yesterday about the marriage, they readily



accepted the marriage and they only told them that they themselves would have arranged for the marriage, if the intention of the petitioner and the detenu to marry was informed to them. They further said that they would be very happy, if the petitioner and the detenu live a long life as married couple. These statements are recorded.

7. When we enquired the petitioner further, he told that there was no marriage between him and the detenu on 18.06.2016, as it is stated in paragraph No.2 of the affidavit. The detenu also told so. They both said in categorical terms that the marriage was celebrated only on 06.09.2016. The detenu, further, told that she was not abducted by the respondents 3 to 5 on 05.09.2016, as it is alleged in the affidavit. When we enquired the petitioner further, he told us that it is not true that the petitioner and the detenu were living together as husband and wife for three months as stated in paragraph No.2 of the affidavit. He further told that there is no truth in the allegation made in paragraph No.2 of the affidavit that the detenu was abducted by the respondents 3 to 5 on 05.09.2016. He narrated that the marriage was only on 06.09.2016 and thereafter, he met the parents of the detenu and informed about the marriage. He further told us that there was no complaint given by him at all on 05.09.2016, as it is alleged in paragraph No.4 of the affidavit. When we further enquired as to why he made such false allegations in the affidavit, to our shock, he told us that he is not aware of the averments made in the affidavit, because he did not sign the affidavit at all. When we brought to his notice the vakalat filed allegedly signed by him, nominating Mr.J.Sivaram, as his advocate, to appear in this case on his behalf, he told us that the signature found in the vakalat was not at all made by him. Then, when we brought to his notice the signatures found in the affidavit in all the four pages, he told us that these signatures were not made by him at all. Then, we invited the learned counsel Mr.J.Sivaram, to make his submissions regarding the statements made by the petitioner and the detenu. He told us that he was not aware as to whether the signatures were made in the affidavit and in the vakalat by the petitioner or not. He told us that he has got two unregistered Advocate Clerks, by name Murugan and one S.Ravichandran. He further told us that these papers were made ready including the vakalat and the affidavit only by Mr.Murugan. Therefore, we requested the counsel to cause the appearance of Mr.Murugan before this Court, so that, we could afford an opportunity to explain about the allegation of forgery of the signatures of the petitioner. At his request, the case was passed over.

8. About 12 noon, when the case was again taken up, the learned counsel caused the appearance of one Mr.S.Ravichandran, residing at Plot No.20, Sri Annai Meenakshi Nagar, Oomatchikulam, Madurai. The learned counsel submitted that Mr.S.Ravichandran is also practising as an unregistered Clerk in



this High Court Bench. When we brought to his notice that as per the Advocates' Clerks Rules, 1988, only a recognized Clerk alone could practise in the High Court and no lawyer is entitled to engage an unregistered Clerk, he submitted that he would tender unconditional apology for having done so.

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9. Mr.S.Ravichandran, who appeared before us, told us that he has been acting as unregistered Clerk in this Madurai Bench. He further told us that he was a driver earlier by profession and he was dismissed by the Government Owned State Transport Corporation. He was dismissed from service on few charges. He tendered his unconditional apology to this Court.

10. When we wanted the learned counsel Mr.J.Sivaram and Mr.S.Ravichandran, the unregistered Clerk, as to who made the signatures in the vakalat and the affidavit, they said that they are not aware of as to who signed the papers. But, they do not deny the fact that the signatures found in the vakalat and the affidavit are forged signatures.

11. Mr.J.Sivaram, the learned counsel, filed an affidavit tendering unconditional apology for the above acts committed by him. Mr.S.Ravichandran, filed a separate affidavit, where also he tendered unconditional apology and he further submitted that he shall not hereafter practise as an unregistered Clerk before this Court or in any other Court.

12. Having considered the above facts and circumstances, we need to clarify certain aspects. The practice of Advocates' Clerks in various Courts including the High Court in this State is governed by the Advocates' Clerks Rules, 1988, issued in exercise of the powers conferred under Article 225 and 227 of the Constitution of India. The said Rules prescribe certain minimum qualifications for a person to get himself recognized as an Advocate Clerk so as to practise. There is a long procedure prescribed in the Rules as to how such recognition should be given and as to how a recognized Clerk should conduct himself.

13. Rule 10 of the said Rules reads as follows:

"Every recognised clerk shall, while attending the Court or the offices attached to the Court, come properly dressed with a black coat on, and display the certificate of registration issued to him on, the left side of the coat."

14. Rules 11 and 12 are also relevant in the present context, which also read as follows:

"11. No person registered as a recognised clerk of one advocate shall be business in Court and offices on behalf of any other advocate unless he has registered himself as a recognised clerk of that advocate as well:



Provided that one person cannot be recognised clerk of more than two advocates. He may, however, serve any advocate other than the advocate, as whose employee, he has been registered, if such other advocate stands in the relation of husband, wife, father, son, brother or partner of such advocate.

12. A recognised clerk shall be liable to be removed by the competent authority from the register of recognised clerks and his certificate of registration shall be liable to be cancelled in the following circumstances, namely:-

(i) When the advocate who had employed him ceases to practise or has terminated his services;

(ii) When he ceases to be under the employment of the advocate as whose recognised clerk he has been registered;

(iii) When he is convicted of an offence involving moral turpitude;

(iv) When he is declared as a tout;

(v) For contravention of the Rules framed herein;

or

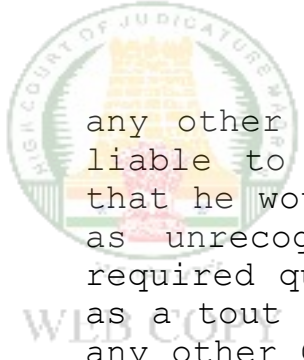
(vi) For any good and sufficient reason."

15. From these Rules, it is crystal clear that no person other than a recognized Clerk shall be eligible to practise as an Advocate Clerk in the Court. The Legal Practitioners Act of 1879 deals with tout. As per the said Act, the term '**tout**' means a person-

"(a) who procures, in consideration of any remuneration moving from any legal practitioner, the employment of the legal practitioner in any legal business; or who proposes to any legal practitioner or to any person interested in any legal business to procure, in consideration of any remuneration moving from either of them, the employment of the legal practitioner in such business; or

(b) who for the purposes of such procurement frequents the precincts of Civil or Criminal Courts or of revenue-offices, or railway stations, landing stages, lodging places or other places of public resort."

16. In the instant case, from the affidavit filed by Mr.S.Ravichandran, admitting that he has been practising as an unregistered Clerk before this Court under a particular advocate, it is crystal clear that he falls within the meaning of the term tout under the said Act, he can be declared as a tout and restrained from entering into any Court either as a Clerk or under



any other name. In the instant case, though Mr.S.Ravichandran is liable to be punished, since he himself has given an affidavit that he would not practise either in this Court or any other Court as unrecognized Advocate Clerk and since he does not possess required qualification also, we deem it appropriate to declare him as a tout and to restrain him from entering into this Court or in any other Court in this State to practise as a Clerk. We take such lenient view without initiating any other action, on accepting the unconditional apology tendered by him.

17. Mr.Gopalakrishna Lakshmana Raju, the learned Senior Counsel, who was present in Court, assisted the Court as Amicus Curiae. He told us that new entrant lawyers require intensive training as to how they have to conduct themselves to follow the Ethics of the profession. He further submitted that being a designated Senior Advocate, he himself would organise a seminar soon for the benefit of the new entrants into the profession. He further submitted that having regard to the age and other circumstances, the matter may be dropped without taking any further action in the matter. We appreciate the sentiments expressed by the learned Senior Counsel and accordingly, we drop the proposal to proceed against anyone in this matter in respect of the above serious case of forgery. So far as the learned counsel Mr.J.Sivaram, is concerned, though the matter requires further probe by the Bar Council, we take a lenient view in the matter, considering the young age of the learned counsel and, therefore, we do not initiate any action against him.

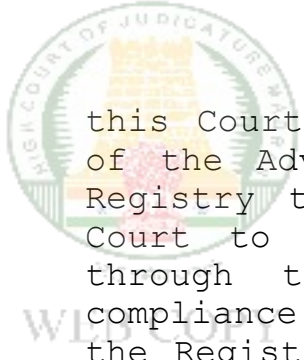
18. We would also like to bring to the notice of one and all a circular issued by the Registry of this Court in R.O.C.No.4654-A/07/F2, dated 28.11.2007, wherein the following directions have been issued in tune with Rule 10 of the Advocates' Clerks Rules, 1988, which read as follows:

"1. All the Advocate Clerks are directed to wear Black Coats and to display their identity Cards issued to them by this Registry prominently on the left side of the Coat, whenever they enter into the Court Hall or the Sections of the Registry.

2. No Advocate Clerks shall approach the Court Officers or the P.A., to the Hon'ble Judges during the functioning of the Court.

3. Indiscriminate entry of the Recognised Clerks into the Court Hall, various Sections of this Registry without wearing Black Coats and displaying the Identity Cards issued to them by this Registry, will entail the cancellation of their identity Card and consequently their access to the Court Halls and Sections of the Registry, will be barred."

19. We are informed that many Advocates' Clerks recognized by



this Court and elsewhere do not follow this circular and Rule 10 of the Advocates' Clerks Rules, 1988. Therefore, we direct the Registry to forward a copy of the above circular of this High Court to all the Advocates' Clerks Associations in the State through the respective Principal District Judge for strict compliance. So far as this Bench is concerned, it is directed that the Registry shall strictly implement the above circular and Rule 10 of the Advocates' Clerks Rules, 1988, and the Registry shall not entertain any Advocate Clerk, who does not comply with the above Rule and the instructions issued by the High Court.

20. Now, reverting back to the facts of the case, since the petitioner and the detenu have married on their own volition and since their parents have also accepted the marriage and wished them a happy marital life, no further direction is required in this matter. We set the detenu at liberty to live with her husband.

21. The Habeas Corpus Petition is closed with the above directions.

Sd/
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

- 1 The Registrar General,
Madras High Court, Chennai-104
- 2 The Registrar (Administration)
Madras High Court, Chennai-104
- 3 The Registrar (Judicial)
Madras High Court, Chennai-104
- 4 The Registrar (Administration)
Madurai Bench of Madras High Court, Madurai
- 5 The Registrar (Judicial)
Madurai Bench of Madras High Court, Madurai
6. The Commissioner of Police,
Madurai.



7.The Inspector of Police,
Koodalnagar Police Station,
Madurai District.

8.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order made in
H.C.P. (MD) No.1211 of 2016

Dated:

07.09.2016

SMA/CK/21/09/2016 :8P/9C