



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

and

THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P (MD) No.34 of 2016

A.Sankar

.. Petitioner

Vs.

1.The Superintendent of Police,
Thanjavur District.

2.The Inspector of Police,
Kumbakonam Taluk Police Station,
Kumbakonam, Thanjavur District.

3.Karthik

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, directing the respondents 1 and 2 to produce the body or person of the petitioner's wife namely Bhagirathi, aged about 26 years, W/o.A.Sankar and minor child namely Mukhaneswaran, S/o.A.Sankar, aged about 5 years, before this Court and set them at liberty.

For petitioner

: Mr.B.Jameel Arasu

For respondent Nos.1&2

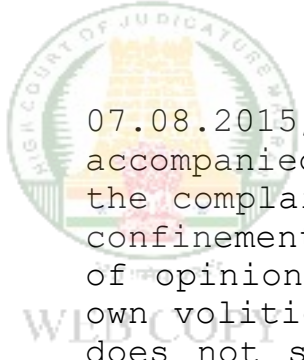
: Mr.R.Ramachandran

Additional Public Prosecutor

O R D E R

[Order of the Court was made by P.R.SHIVAKUMAR, J.]

Mr.B.Jameel Arasu, the learned counsel for the petitioner, submitted that the petitioner might be permitted to withdraw the Habeas Corpus Petition with liberty to move the Family Court for the custody of the child. Such a representation was made when this Court pointed out that no *prima facie* case for any illegal confinement of his wife was made out and the complaint itself revealed the fact that she had intimacy with the third respondent pursuant to which, the petitioner tendered advise to his wife not to continue the relationship with the third respondent. The complaint also proceeds to state that due to the said circumstances, there was difference of opinion between the petitioner and his wife for a period of one month and on



07.08.2015, while he was sleeping, his wife seems to have accompanied the third respondent. The above said averments made in the complaint makes it clear that there is no abduction or illegal confinement and that the wife of the petitioner, due to difference of opinion developed between the petitioner and his wife, on her own volition, has gone out of her matrimonial home. The complaint does not speak about the missing of the child of the petitioner. However, in the Habeas Corpus Petition, a development was made by including an averment that his wife and his child were missing. The prayer made in the complaint is that steps should be taken to make his wife along with the child to come and live with him. A matrimonial relief for restitution of conjugal rights against the wife, who had voluntarily gone with another man, is sought to be obtained by filing the present Habeas Corpus Petition. Much against the initial representation, the learned counsel for the petitioner made an endorsement that he must be given liberty to approach the competent Court for the production of the detenu. There is no averment making a *prima facie* case that either his wife or his unnamed son is in the custody of any person. The mother being the natural guardian, it cannot be said that she detains the child. Under the said circumstances, we are not inclined to admit the Habeas Corpus Petition.

2. Accordingly, this Habeas Corpus Petition is dismissed, since the endorsement made by the learned counsel for the petitioner is not in the proper manner and an ingenious method has been adopted. We decline the liberty sought for by the petitioner. Anyhow, it shall be open to the petitioner to approach the Family Court for restitution of conjugal rights, if he is so advised.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub-Assistant Registrar

To:

1. The Superintendent of Police, Thanjavur District.

2. The Inspector of Police,
Kumbakonam Taluk Police Station,
Kumbakonam, Thanjavur District.

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

+One cc to Mr. B. Jameel Arasu, Advocate, SR.No.1949

NB

RL/5C/SKS/RR/22/1/2016

ORDER MADE IN
H.C.P (MD) No.34 of 2016