

In the High Court of Judicature at Madras

Dated: 07.03.2017

Coram:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

H.C.P.No.250 of 2017

K.Govindammal

Petitioner

vs.

1.The Superintendent of Police,
Thiruvannamalai District,
Tiruvannamalai.

2.The Inspector of Police,
Thiruvannamalai Town Police Station,
Thiruvannamalai,
Thiruvannamalai District.

3.Kalviarasan

Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to direct the respondents to produce the body of Meena, d/o.Tamil Selvam, aged 16 years, having permanent residence at No.36/25-A, New Street-2nd Street, Tiruvannamalai Town, Tiruvannamalai District, before this Court and set her at liberty forthwith.

For Petitioner ..

Mr.B.Jawahar

For Respondents ..

Mr.V.M.R.Rajendran, Addl.P.P.

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O R D E R

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

The petitioner is the paternal grandmother of one Ms.Meena, daughter of Tamil Selvam, aged 16 years. She is presently doing 12th standard in a Minicipal Girls Higher Secondary School, at Tiruvannamalai. Her date of birth is 24.5.2000. According to the petitioner, the third respondent

was residing in a portion of the house on rent, which belongs to her. It is further stated that few days before Ayudhapooja festival in the year 2016, the third respondent kidnapped the minor Miss.Meena. With great difficulty, she was brought back to the house of the petitioner. The parents of the detainee-Miss.Meena are no more. It is further stated that while she was in the custody of the petitioner and her husband, on 9.12.2016 again the third respondent kidnapped the minor girl. In this regard, on a complaint made by the petitioner, a case in Crime No.793 of 2016, under Section 366(A), has been registered against the third respondent. Since the girl was not secured, the petitioner has approached this Court with this habeas corpus petition.

2. Today when the habeas corpus petition was taken up for hearing, the second respondent produced the minor girl Miss.Meena. We enquired her. She told us that the third respondent married her on 14.12.2016 in a temple at Chengam and after that she went along with the third respondent to Kerala, where they are residing. She further stated that she had been living with the third respondent as his wife. The third respondent, in the meanwhile, had sexual intercourse with her. She would further state that the Doctor, whom she met in Kerala, told her that now she is more than two months pregnant. She would further state that she was not kidnapped by the third respondent, but she went on her own volition. She further told us that her parents died and after their demise, the petitioner and her husband are ill-treating her citing the same reason. She further stated that the petitioner and her husband are trying to grab certain properties, which she is entitled to. For these reasons, according to her, she is not willing to go back either with the petitioner or with her husband.

3. The third respondent made appearance before us. He simply reiterated what the detainee told before us. The petitioner and her husband also made appearance. They told us that they never ill-treated the minor girl. They only brought her up and educated her. We further told that the third respondent has stealthily kidnapped the minor girl and spoiled her future. They further told that the minor girl may be entrusted to their custody.

4. The learned Additional Public Prosecutor would submit that the case has now been altered into one under the Prevention of Children from Sexual Offences Act (hereinafter referred to as 'POCSO Act'). The Inspector of Police, who is present before this Court, would submit that during the course of investigation, he may arrest the third respondent for the purpose of further investigation. The learned Additional Public Prosecutor would submit that the girl was rescued from Kerala.

He would also submit that the Inspector of Police would produce her before the Special Court under the POCSO Act.

5. We have considered the rival submissions.

6. From the narration made by the petitioner in the affidavit as well as the statements made by the petitioner and her husband and also from the narration made by the detinue, it is clear that the detinue was taken by the third respondent and kept her in Kerala. The allegation that she is now pregnant or not is the matter for investigation. At any rate, since the case has been altered into one under the POCSO Act, we do not want to express any opinion regarding these allegations. So far as the custody part is concerned, in our considered view, it is for the Special Court under the POCSO Act, to decide the same, following the judgement of the Full Bench of this Court in T.Sivakumar vs. The Inspector of Police, Tiruvallur Town Police Station and others , reported in [(2011) 5 CTC 689].

7. In view of the above, since the minor girl is not willing to go with the petitioner and since she is willing to go only with the third respondent, we are unable to entrust her custody either to the petitioner or to the third respondent. Therefore, we dispose of the habeas corpus petition directing the second respondent to produce the detinue before the Special Court under the POCSO Act, in Thiruvannamalai, and the said Court shall pass necessary order for the custody of the detinue minor Miss.Meena, in terms of the judgement of the Full Bench of this Court T.Sivakumar's case referred to supra.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

To

- 1.The Superintendent of Police,
Thiruvannamalai District,
Tiruvannamalai.
- 2.The Inspector of Police,
Thiruvannamalai Town Police Station,
Thiruvannamalai,
Thiruvannamalai District.

3.The Special Court under the
POCSO Act, Thiruvannamalai.

4.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.B. Jawahar, Advocate, S.R.No.14582

rj(CO)
md(07/03/2017)

H.C.P.No.250 of 2017



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