

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2018

Coram

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Crl.R.C.No.200 of 2018

Manoj Kumar

... Rev.Petitioner/Petitioner

-vs-

1. State Rep. by

Inspector of Police,
AVS-I, Chindadripet,
Chennai-600 002.

... Respondent/Complainant

2. Asha

.... Victim Girl

Prayer : Criminal Revision Petition filed under Section 397(1) & 401 Cr.P.C., praying to call for the records pertaining to the order dated 04.01.2018 passed in C.M.P.No.4286 of 2017 by the IV Metropolitan Magistrate, Saidapet, Chennai-600 015 and set aside the same and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the above case.

For Petitioner : Mr.P.Prince Prem Kumar

For Rl : Mr.R.Suriya Prakash
Govt. Advocate (Crl.Side)

O R D E R

The petitioner, claiming himself to be the husband of the 2nd respondent / victim, had filed a petition in C.M.P.No.4286 of 2017 before the learned IV Metropolitan Magistrate, Saidapet, Chennai, seeking her custody with him and the said petition was dismissed by the learned IV Metropolitan Magistrate, Saidapet, Chennai. Aggrieved by the same, the petitioner is before this Court with the above prayer.

2. The case of the prosecution is that on 18.11.2017, the Inspector of Police, AVS Police Station, during his search in respect of Crime No.125 of 2017 registered under Sections 3 (2)a, 4(1), 5(1)a, 6(1)(a) and 7(1)(a) of Immoral Traffic (Prevention) Act, 1956 (in short "ITP Act"), had rescued the victim, by name Asha and produced her before the learned Magistrate, Saidapet on 18.11.2017. Thereafter, the victim was subjected to medical examination and was ordered to be kept

under interim safe custody at Government Vigilance Home, Mylapore, Chennai as per Section 17(4) of ITP Act.

3. It is the case of the petitioner/husband that he is a road side vendor, selling clothes and he fell in love with the victim, who is also residing in the same locality and subsequently, married her in a Temple and after their marriage, he rented a house at Rajaji Nagar, Bengaluru for Rs.3,000/- as rent per month. It is the further case of the petitioner that due to some difference of opinion, she left the house and had come to Chennai without his knowledge. He has also produced a copy of the Aadhar Card to show his relationship with that of the victim. The Trial Court, finding bereft of materials to prove his association with her, has refused to send her with him and the victim lady was ordered to be kept in a Government Home.

4. Learned counsel for the petitioner has assailed the order of the learned Magistrate, Saidapet, Chennai, stating that the Trial Court, ignoring the fact that the petitioner has been residing with the victim for the past 30 years jointly in Bengaluru, has simply detained her in the Government Home for observation, counselling and rehabilitation for a period of one year, which is an arbitrary exercise of power and is against the provisions of law. The order has been passed on the basis of the conjectures and surmises and not based on the evidence available on record. The petitioner has furnished sufficient materials to show his bona fide that the victim is his wife and the Trial Court, disbelieving all these material aspects and throwing the same in air, has taken a contradictory view, which is illegal, improper and liable to be set aside.

5. Per contra, learned Government Advocate (Crl.Side) appearing for the first respondent has vehemently contended that it is the duty of a husband to take care of his wife and in this case, there is a strong ray of suspicion as to their relationship as husband and wife, because both the petitioner and the victim lady have given different statements before the Court, which led to the Court in disbelieving the version of the husband. Moreover, even though they lived together for the past 30 years, they did not possess a Ration Card in their name, which is far from the truth. Learned Government Advocate (Crl.Side) has further contended that the victim was forced to trafficking on account of her vulnerable condition and she has no parents to support her and under these circumstances, handing over her custody with the petitioner will further deteriorate her condition and there is every possibility of her being involved in the trafficking again. Therefore, it is prayed that the petition filed by the petitioner seeking custody of the victim is liable to be dismissed and the petitioner is not entitled to the relief.

6. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for R1. There is no representation for R2.

7. It is seen that the victim was rescued during the search operation by the Inspector of Police, AVS Police Station in respect of Crime No.125 of 2017 registered under the ITP Act. The victim, on production before the the learned IV Metropolitan Magistrate, Saidapet, Chennai through video conferencing, has categorically stated that she has been living in Bengaluru from her childhood and got married to the petitioner. After their marriage, they occupied in an isolated house, covered by asbestos sheet surrounded by a hospital and a Temple. It is further stated by her that due to some quarrel, she left the company of her husband and came to Chennai without his knowledge, under the guidance of her friend and her friend subsequently cheated her and pushed her into the flesh trade.

8. On being examined on the very same date, namely, 03.01.2018, the petitioner / husband has stated that he married the victim against the wishes of his relatives and friends and therefore, nobody attended their marriage. It was deposed by him that they started their matrimonial life in a rented house in Rajaji Nagar at Bengaluru, which is surrounded by many houses on payment of Rs.3,000/- as rent and Rs.25,000/- as advance. He has also reiterated the same version of his wife regarding their quarrel and the subsequent separation.

9. The Trial Court, by pinpointing the contradictions in the statements made by the petitioner and the victim, viz., the victim has stated that the rented house was an isolated place covered with asbestos sheet only, whereas the husband has stated that his house is surrounded by many houses, had suspected the conduct of the petitioner to the extent that he would have forced the victim to enter into the flesh trade and finding no genuine documents in order to prove his case, the Trial Court did not adhere to the request of the petitioner and refused to hand over the custody to him, thereby she was kept under the custody of the Government Protection Home under Section 17(4) of ITP Act. Section 17(4) of ITP Act is extracted hereunder for the purpose of clarity:

"17(4) Where the Magistrate is satisfied, after making an inquiry as required under sub-section (2) -

- (a) that the information received is correct; and
- (b) that he is in need of care and protection,

he may, subject to the provisions of sub-section (5), make an order that such person be detained fro such period, being not less than one year and not more than three years,as may be specified in the order, in a

protective home, or in such other custody as he shall, for reasons to be recorded in writing, consider suitable:

Provided that such custody shall not be that of a person or body of persons of a religious persuasion different from that of the person and that those entrusted with the custody of the person including the persons in charge of a protective home, may be required to enter into a bond which may, where necessary and feasible, contain undertakings based on directions relating to the proper care, guardianship, education, training and medical and psychiatric treatment of the person as well as supervision by a person appointed by the Court, which will be in force for a period not exceeding three years."

10. It is worthwhile to refer to Section 17-A of ITP Act before taking a decision in this matter and the said sections reads as under:

"17-A. Conditions to be observed before placing persons rescued under section 16 to parents or guardians - Notwithstanding anything contained in sub-section (2) of section 17, the Magistrate making an inquiry under section 17 may, before passing an order for handing over any person rescued under section 16 to the parents, guardian or husband, satisfy himself about the capacity or genuineness of the parents, guardian or husband to keep such person by causing an investigation to be made by a recognised welfare institution or organisation."

11. The reason for refusal to hand over the custody to the petitioner is that there is no strong iota of proof adduced on the side of the husband to substantiate that the victim is his wife, as he did not possess a ration card, by incorporating his wife name thereon. However, a scrutiny of the report filed by the Inspector of Police, Anti Vice Squad-I, Chintadripet, Chennai would show the clinching evidence that both the petitioner and the victim lived as husband and wife at Door No.82, 3rd Cross Street, WOC Road, Indira Nagar, Rajaji Nagar, Bengaluru, which is evident from the authorization given by the Deputy Tahsildar, Hubli City Circle, Bengaluru North Taluk, Bengaluru District. In the report, the Inspector of Police has further stated that the petitioner has opened a Bank Account both in his name and in the name of his wife and also obtained Aadhaar, by showing the above residential address.

12. A perusal of the statement of the victim would reveal that nowhere she has refused to go with the petitioner, even though she had stated that due to some misunderstanding

with her husband, she left the matrimonial house, that too, without her husband's consent. There is not even a single substantial piece of evidence to the effect that the victim was tortured by the petitioner/husband and she was compelled to involve in the trafficking activities by him. In addition to the above, the victim has stated that she was cheated by her friend and her present status was on account of her own mistake in believing a wicked person in the guise of friend.

13. Under these circumstances, this Court finds force in the contention raised by the learned counsel for the petitioner that the order of the Trial Court is based on the conjectures and surmises. It cannot be said that mere non production of ration card will disentitle the petitioner to have the custody of the victim / wife, as probably he would not have been interested in obtaining ration card in his name. Hence, I am of the view that the order dated 04.01.2018 passed in C.M.P.No.4286 of 2017 by the learned IV Metropolitan Magistrate, Saidapet, Chennai is liable to be set aside.

14. In the result,

a) this Criminal Revision Petition is allowed, thereby, setting aside the order dated 04.01.2018 passed by the learned IV Metropolitan Magistrate, Saidapet, Chennai in C.M.P.No.4286 of 2017 and the petitioner is entitled to the custody of the victim / wife;

b) the petitioner is directed to furnish an undertaking before the learned IV Metropolitan Magistrate, Saidapet, Chennai to the effect that he will take care of the victim / wife with utmost care and affection and produce her before the Court of Law, as and when required for enquiry/examination;

c) the learned IV Metropolitan Magistrate, Saidapet, Chennai, on receipt of such undertaking from the petitioner, is directed to issue a letter to the concerned Government Protection Home for handing over the custody of the victim / 2nd respondent herein to the petitioner forthwith.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

ar

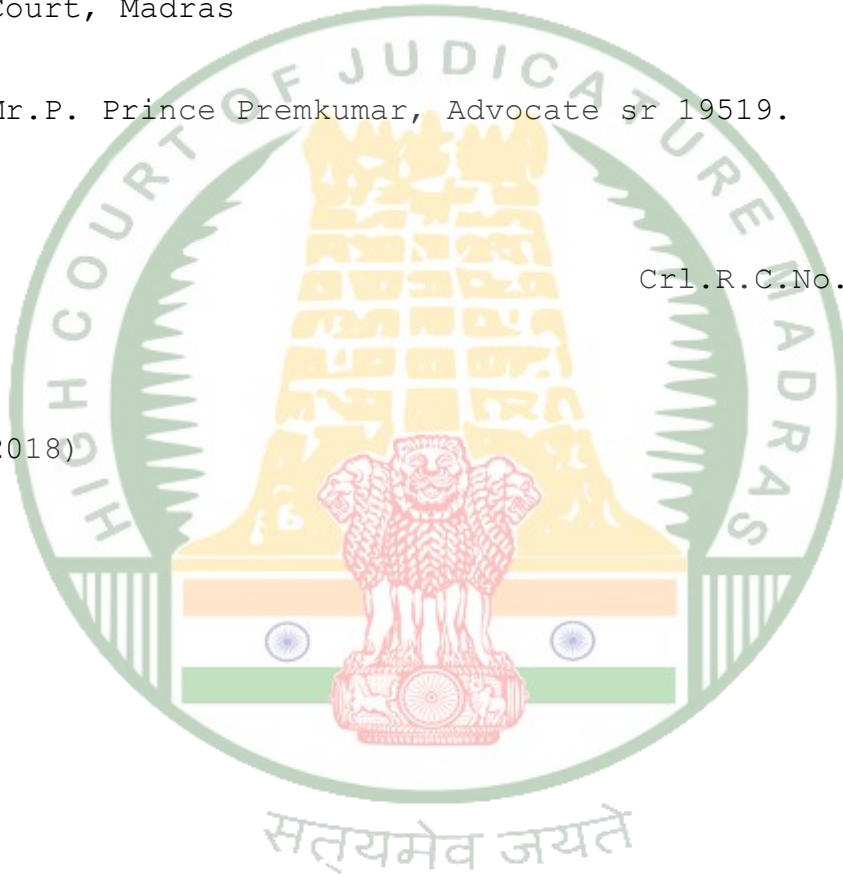
To:

1. IV Metropolitan Magistrate,
Saidapet,
Chennai.
2. The Inspector of Police,
AVS-I, Chindadripet,
Chennai-600 002.
3. The Public Prosecutor
High Court, Madras

+1 CC to Mr.P. Prince Premkumar, Advocate sr 19519.

Cr1.R.C.No.200 of 2018

SP(28/06/2018)



WEB COPY