

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2018

CORAM

THE HONOURABLE DR.JUSTICE S.VIMALA
AND
THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

Habeas Corpus Petition No.1404 of 2018

E.Venkatesan .. Petitioner
/ Father of the detenue

Versus

1.The Deputy Commissioner of Police,
Chennai City Police, Anna Nagar Division,
Anna Nagar, Chennai - 40.

2.The Inspector of Police (L & O),
V-6, Kolathur Police Station,
Chennai - 600 082

3.S.Anandh ... Respondents

Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Habeas Corpus, directing the 2nd respondent to rescue the detained the petitioner's daughter, namely, Sivananthini, aged about 21 years, the detenue herein, and to produce her before this Court and to set her at liberty.

For Petitioner : M/s.Prof.M.Udaya Bhanu

For Respondents : Mr.R.Prathap Kumar
A.P.P., for R1 and R2

ORDER

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

This Writ of Habeas Corpus is a remedy available to the lowest citizen, ensuring freedom, against the most powerful authority. But the question is, whether this precious remedy can be availed for the purpose of forcible separation of the eloping partners, though it is legal or illegal and when there is no element of threat or coercion or undue influence.

2. This petition is filed by the petitioner / father of the detenu seeking production of his married daughter, namely, Sivananthini, aged about 21 years, allegedly with the third respondent.

3. In the supporting affidavit, it is stated by the petitioner that Sivananthini, his daughter, got married to one Velu, on 26.02.2018 at Chennai and the said marriage was an arranged marriage and on 11.07.2018, she left the house and did not return late in the evening. Therefore, the petitioner has preferred a complaint before the second respondent / Police on 12.07.2018 at about 10 a.m., and based on the said complaint, the second respondent / Police has registered a case in C.S.R.No.164 of 2018. It is also stated that the third respondent is also missing and therefore, he might have abducted her. The possibility of sexual abuse of the detenu by the third respondent is also alleged.

4. A perusal of the complaint, which is enclosed in the typed set of papers, would reveal the following startling facts, which is against the nature of the allegations made before the Court.

5. It is stated that the marriage of Sivananthini was arranged with one Velu; prior to that, she had been in love affair with the third respondent and that she wanted to marry the third respondent; however, the petitioner had persuaded her to accept Velu as the husband and thereafter, the marriage of the detenu with Velu took place; thereafter, for the first time, during the month of March 2018, the detenu was taken away by the third respondent and she was brought back; thereafter, after 20 days, for the second time, she was taken away by the third respondent; during the attempt to trace out, both of them attempted to commit suicide by tearing their veins using blades; later the detenu was treated and she was brought back; allegedly, third time, she is missing.

6. From the very nature of the allegations made in the complaint, the averments in the complaint itself is a telltale amounting to res ipsa loquitur. The way in which the marriage has taken place, the pre-marital relationship between the detenu and third respondent and the attempt of suicide by both of them when they were rescued speak very loudly against the case of the petitioner.

7. When a married woman having sufficient knowledge and awareness leaves the company of the father and the husband, on her own volition and not out of threat, coercion or force, then the absence of the detenu from the house of the petitioner cannot be equated to abduction / illegal detention by the third respondent.

8. Even though it is alleged that the third respondent had abducted the detenu the way in which the incident had taken place right from the marriage of the detenu from one Velu speaks against the theory of illegal detention of the detenu by the third respondent.

9. As pointed out already, the remedy of Writ of Habeas Corpus is a very precious remedy which can be effectively used for the purpose of securing the liberty of those who are illegally detained. In this case, there is no question of illegal detention.

10. When two adult person want to be in the company of each other and the association between them is achieved even opposing the parents and other relatives and when this incident is happening repeatedly, the Police cannot be expected to run after this partners in order to disassociate them.

11. It is relevant to point out that this petition is not filed by the husband. It is open to the parties to take out appropriate proceedings before the appropriate forum, if the husband or the father is aggrieved over the conduct of the detenu. But the remedy of Habeas Corpus cannot be misused when there is no illegal detention.

12. It is appropriate to point out that though it is the duty of the Police to assist the people at the time of crisis and need, they are likely to face allegations, if they interfere in the private affair between two individuals, especially, in family matter (unless there is evidence to show that one of them is illegally detained by the other).

13. At this juncture, it would be relevant to quote the role of Police. Police are one of the most ubiquitous organizations of the the society, being named as friends of people. They are at the service of the people in an hour of need, danger, crisis and difficulty, when a citizen is entangled in any problem. Their roles, functions and duties in the society are natural to be varied, and multifarious on the one hand; and complicated, knotty and complex on the other. Broadly speaking the twin roles, which the police are expected to play in a society, namely, the maintenance of order, the role cannot be extended by directing them to separate the voluntarily eloping individuals, as that is not job / role / duty.

14. We are of the considered view that this Writ of Habeas Corpus is not maintainable, on the face of the allegations made in the complaint itself. Hence, this Habeas Corpus Petition is rejected.

Sd/-
Assistant Registrar(CS VIII)

//True copy//

Sub Assistant Registrar

ia/srk

To:

- 1.The Deputy Commissioner of Police,
Chennai City Police,
Anna Nagar Division,
Anna Nagar, Chennai - 40.
- 2.The Inspector of Police (L & O),
V-6, Kolathur Police Station,
Chennai - 600 082.
- 3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Udhaya Bhanu, Advocate SR.No.47754

H.C.P.No.1404 of 2018

KK(CO)
GN(10/08/2018)

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