

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
and
THE HON'BLE MRS. JUSTICE S. RAMATHILAGAM

H.C.P. No.187 of 2018

Prakash

... Petitioner

Versus

1. The Superintendent of Police,
Kancheepuram,
Kancheepuram District.

2. The Inspector of Police,
Chengalpattu Town Police Station,
Kancheepuram District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, directing the respondents to produce the body or person of the petitioner's father Selvaraj S/o. Elumalai aged about 55 years before this Court.

For petitioner : Mr.S.Sengodi

For respondents : Mr.R.Ravichandran,
Government Advocate

ORDER

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

The relief sought for in this Habeas Corpus Petition is for a direction to direct the respondents to produce the body or person of the petitioner's father Selvaraj S/o. Elumalai aged about 55 years before this Court.

2. The petitioner has stated that his father Selvaraj aged about 55 years was working as senior Conductor in Tamil Nadu State Transport Corporation at Kancheepuram District and the petitioner's mother, is housewife and both are residing in Chengalpattu, Kancheepuram District. On 20.10.2014, the petitioner's father met with an accident and he lost his

memories and he could not continue his work in Tamil Nadu State Transport Corporation. He was also taking treatment for the ailment of loss of memories. He is also of the habit of going outside to take tea in the tea stall. On 12.05.2017, he went outside and did not return home. The petitioner searched his father every where including his relatives house, but his whereabouts are not known to the petitioner and he preferred a complaint before the Chenglepet Town Police Station on 20.05.2017 and the second respondent police has also registered a case in Crime No.364 of 2017 under Section "man missing". Hence, the petitioner has filed this petition and sought for a direction.

3. The respondent police registered the FIR and proceeded for securing the missing person. The respondent police has also filed a status report. The status report reveals that the case was taken for investigation on 20.05.2017, seven witness, who are son, wife, daughter, brother of the missing person and two neighbours of the missing person were examined. The respondent also sent the pamphlet containing the details of the missing person along with his photo to the District Crime Record Bureau, Kanchipuram and the same was sent to the Police Stations in and around Kanchipuram and nearby places. The pamphlets were pasted in public places like railway station, bus stand, auto stand, market, hospital, temple. But no clue was obtained. The fact of the missing with details were also telecasted in the local TV. On 31.05.2017, the respondent deputed the police team consisting of Tr.Nataraj, Grade 1 PC 492 and Tr. Venkatesan, HC 1294 and they have visited the nearby places for the search of the missing person. Special Team also went to the Government Hospital, Mortuary at Chenglepet. On 05.06.2017, the then respondent compared the photo of the missing person with the unidentified bodies at the age group of the missing person in the CCTNS and one body which resembles, the body of the missing person belongs to the Pothanur police station in Crime No.95 of 201 under Section 174 of CRPC.

4. Again on 09.06.2017, unknown body in the Pothanur Government Hospital mortuary was also compared with the photo of the missing person and the same mis matched. Further investigation made by the respondent on several dates did not serve any purpose but still the investigation continues and one co-employee of the missing person was also examined on 07.04.2018, but no purpose was served and the missing person could not be secured. The respondent also represented that still they are taking continuous and sincere steps to trace the missing man, Selvaraj and stated that the missing person will be produced, once he is traced.

5. On perusal of the FIR, it is observed that the petitioner's father is aged about 53 years and due to the accident that occurred three years back, the petitioner's father Selvaraj has lost his memories and he could not continue his job as Conductor in the Tamil Nadu State Transport Corporation. Whenever, he goes out he will come back. On 12.05.2017, he was missing and the petitioner's family were also of the thought that he will return by himself. The petitioner also made a search of the missing person in many places and his relatives house and he could not be secured and hence, the petitioner preferred the complaint.

6. The complaint preferred by the petitioner does not contain any allegation of illegal detention of his father by anybody.

7. When there is no allegation of illegal detention or any suspicion of any person for the detention of the petitioner's father and the only fact in the complaint is that the petitioner's father was missing from 12.05.2017. The respondent police has registered a case under Section "man missing". The respondent police has also made investigation and all effective steps of securing the missing person were made and they were unable to secure the body of the missing person.

8. The preliminary issue in respect of the maintainability of the Habeas Corpus Petition is to be considered in view of the fact that there is no positive allegations or illegal detention of the detainee established in this petition. The Habeas Corpus Petition cannot be entertained in a routine manner. Unless there is an allegation of illegal detention or a strong suspicion with substantial proof are established, this petition cannot be entertained.

9. The status report reveals that the respondent police has taken effective and possible steps to secure the missing person Selvaraj on several occasions and also continuously taking steps till date. Efforts taken by the respondent police is made clear by their status report filed before this Court. Here in this case, there is no fact of illegal detention or at least a suspicion in respect of such illegal detention. In the absence of any of these ingredients, no Habeas Corpus Petition can be entertained under Article 226 of the Constitution of India. The violation of fundamental right enshrined in Part III of the Constitution of India must be established for the purpose of filing Habeas Corpus Petition.

10. Clear grounds must be made out for issuance of such writ. Man / woman missing cases cannot be brought under the purview of Habeas Corpus petition. Man / woman missing cases are to be registered under the regular provisions of the Indian Penal Code and the police officials concerned are bound to investigate the same in the manner prescribed under the Code of Criminal Procedure. Such cases are to be dealt as regular cases by the competent Court of law and the extra ordinary jurisdiction of the Constitutional courts cannot be invoked for the purpose of dealing with such man / woman missing cases.

11. Based on the complaint by the petitioner, a case was registered by the respondent and effective steps have also been taken and the status report filed by the respondent reveals the fact that they are adopting proper procedure in securing the missing person.

12. In the present Habeas Corpus Petition, there is not even an Iota of doubt in respect of any illegal detention nor any such allegations are made out and no cause has been established by the petitioner for the purpose of entertaining the present Habeas Corpus Petition and accordingly, the same stands dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

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To

1. The Superintendent of Police,
Kancheepuram,
Kancheepuram District.
2. The Inspector of Police,
Chengalpattu Town Police Station,
Kancheepuram District.

3. The Public Prosecutor,
Madras High Court,
Chennai.

+1cc to M/S.S.Rajanikanth, Advocate Sr.39777

H.C.P. No.187 of 2018

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srg 06/07/2018



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