

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.1472 of 2017

N.Govindaraj

... Petitioner

Versus

1. State of Tamilnadu,
Rep. By its Secretary, Home Department,
Secretariate, Fort St. George,
Chennai.
 2. The Commissioner of Police,
Office of Commissioner of Police,
Vepery, Chennai.
 3. The Inspector of Police,
Pallikaranai Police Station,
Chennai
- 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 of Mrs. Sarojini, 41 years, who is the wife of the petitioner, before this Court and consequently direct the respondents to handover Mrs. Sarojini to the petitioner.

For petitioner : Mr.Sankarakutralingam
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 of Mrs. Sarojini, 41 years, who is the wife of the petitioner, before this Court and consequently direct the respondents to handover Mrs. Sarojini to the petitioner.

2. The petitioner has stated that he had married Mrs.Sarojini and out of the wed lock, two female children (1) Reshma, aged about 21 years and Keerthana, aged about 13 years were born to him. His wife Sarojini is working in Railways in Velacherry as Grade I Technician.

3. The petitioner further states that on 03.07.2017, his wife went to her office around 10.25 a.m. and she did not return home, even after late hours. The petitioner enquired with his wife's colleagues, who informed the petitioner that his wife had left the office on permission by 2.00 p.m., by stating that she is having an urgent work. The petitioner has searched his wife at his friends and relatives house and on the whole night, the petitioner along with his family members and friends tried their best to trace her, but they could not find her and hence, the petitioner preferred the complaint before the 3rd respondent on 05.07.2017. As a last resort, the petitioner has filed this petition praying for a direction to the respondent to produce the body or person of his wife Sarojini.

4. On the side of the respondent, status report was filed by the Inspector of Police, Pallikaranai police station. The report reveals that on receipt of a complaint from the petitioner, a case in Pallikarani Police Station in Crime No.1680 of 2017 was registered under Section "woman missing" and investigation was initiated. The investigation officer enquired the petitioner and his daughters Selvi Roshini and Selvi Keerthana about the details of the missing person, viz., wife of the petitioner, Sarojini and the said information was also given to DCRB. One police personnel was also deputed to check border police stations and verified with the 174 Cr.PC cases, as well as traffic road accidents. The missing person was also searched by the respondent in the Auto stand, bus stand, railway station, bazaar and busy market areas but no clue has been obtained. Request was also sent for collecting CDR of the missing woman and the enquiry was conducted with the staff at her work place. The information obtained from the Divisional Engineer and Senior Section Engineer were that the missing woman is a disciple of Shivanadiyargal, They have further stated that she used to read devotional books at her work time. The respondent also enquired the neighbours of the missing woman, 1) Tmt. Sathya, 2) Tmt. Dhanalakshmi. On 15.07.2017, the respondent police visited number of places and a requisition was sent to the Additional Superintendent of Police for furnishing CDR of the mobile phone used by the missing woman. The Investigation Office also visited temples at Thiruvannamiyur, Palavakkam and Neelangarai for search of the missing woman. The CDR collected from the mobile of the missing woman reveals that the missing woman made frequent calls from her mobile No.7418917522 to

No.8056636216. On investigation by the investigation Officer reveals that the owner of the mobile No.8056636216, belongs to one Maguteeswaran, aged about 31 years, S/o. Murugesan, who is having address at No.7/181, Jawahar Nagar, PR ITI Back side, New Tharapuram Road, Palani, said to be her colleague. During the course of further investigation, it came to light that a case in Palani Town Police Station in Crime No.352 of 2017 under Section "Man missing" was registered, based on the complaint given by the wife of Maguteeswaran, as he went to his native before eloping with the missing woman Sarojini. Tmt. Prabha, wife of Maguteeswaran has also filed Habeas Corpus Petition before the Madurai Bench of the Madras High Court, Madurai in HCP (MD) No.1813 of 2017 regarding missing of her husband and the same is pending. Hence, it was ascertained that the missing woman Sarojini could have eloped with her colleague Maguteeswaran.

5. On 30.09.2017, the petitioner-husband appeared before the Investigation Officer and stated that he went to Haridwar accompanied by his daughters as a known person informed him that he had seen the petitioner's wife Sarojini with another person in Haridwar. Further, he has stated that he has also seen his wife Sarojini with Maguteeswaran in the crowd, but when they advanced towards them, they disappeared in the large crowd. Subsequently, the wife, Sarojini also contacted him and told that she will not come back and asked him not to search her.

6. Based on the statement given by the petitioner, a special party comprising SI of Police Thiru Meeran Mani and SSI of Police Thiru Thyagarajan and the special party went to Haridwar but could not trace the missing woman. The status report reveals the fact that the missing woman went out by deserting her family deliberately and on her own will and there is no other reason for her missing. However, the respondent has stated that all possible steps will be taken to trace the missing person as expeditiously as possible.

7. Based on the complaint given by the petitioner, the respondent has registered a case in Crime No.1663 of 2017 in the Pallikaranai Police Station as "woman missing". On investigation by the respondent, they came to know that there was frequent calls from the mobile belong to the woman to another number, which belongs to one Maguteeswaran, who is her colleague. Further investigation also reveals that similarly another Habeas Corpus Petition was filed by the wife of the said Maguteeswaran., viz. Tmt. Prabha, which is also pending with regard to missing of her husband. It is also by known person that the missing person Tmt. Sarojini, wife of the petitioner was seen in Haridwar with Maguteeswaran and a call received from Sarojini to the petitioner that she will not come back and the petitioner need not search for her.

8. From the perusal of the complaint and the investigation report, it is observed that a case has been registered under "man missing" and the investigation reveals that the missing person eloped with one Maguteeswaran and the wife of the said Maguteeswaran also preferred HCP and similarly man missing case was also registered in the Palani Police Station.

9. The above said details collected by the investigation officer reveals that there is no illegal detention of the missing person by anybody and there is also no suspicion on any one for the illegal detention of the missing person Sarojini.

10. The investigation was proceeded, which reveals that the missing person left the matrimonial home on her own will and there is no illegal detention by any one.

11. 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.

12. The status report reveals that the respondent police has taken effective and possible steps to secure the missing person Sarojini 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 atleast 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.

13. 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.

14. 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.

15. 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.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

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To

1. The Secretary, Home Department,
Secretariate, Fort St. George,
Chennai.
2. The Commissioner of Police,
Office of Commissioner of Police,
Vepery, Chennai.
3. The Inspector of Police,
Pallikaranai Police Station,
Chennai
4. The Public Prosecutor,
Madras High Court,
Chennai.

+1 CC to Mr.Sankarakutralingam, Advocate sr 39870.

SR(CO)
SP(05/07/2018)

H.C.P. No.1472 of 2017

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