

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2018

CORAM:

THE HON'BLE MR.JUSTICE M.VENUGOPAL
AND
THE HON'BLE MRS.JUSTICE R.HEMALATHA

H.C.P.NO.426 OF 2018

S.Manikandan .. Petitioner

Vs.

1. The Superintendent of Police,
Erode District, Erode.
2. The Inspector of Police,
Ammapettai Police Station, Erode.
3. Sardhar Ismail .. Respondents

Prayer:

This is a petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus directing the respondents 1 to 3 to produce the body of the detainee namely, Sumaiya aged 19 years, daughter of Sardhar Ismail before this Court and to set her at liberty.

For Petitioner : Mr.V.Lakshminarayanan
for Mr.M.Guruprasad

For Respondent : Mr.R.Ravichandran
Nos.1 & 2 Government Advocate (Crl. Side)

For Respondent-3: Mr.T.P.Sekar

O R D E R
[Order of the Court was made by
R.HEMALATHA, J.]

The Petitioner, S.Manikandan has filed the present Petition for issuance of a Writ of Habeas Corpus directing the respondents 1 and 2 to produce the body of the detainee Sumaiya, aged 19 years, daughter of the third respondent herein.

2.Heard Mr.V.Lakshminarayanan, learned counsel appearing for the petitioner, Mr.R.Ravichandran, learned Government Advocate appearing on behalf of the respondents1 & 2 and Mr.T.P.Sekar, learned counsel appearing for the third respondent.

3.The case of the petitioner is that he had fallen in love with the detenue Sumaiya and she was also in love with him and decided to marry her and he had brought her to his house on 09.02.2018. However, the parents of the detenue was against their marriage. On 12.02.2018, the parents barged into the house of the petitioner and took away the detenue Sumaiya forcibly. Hence, this Writ of Habeas Corpus Petition for producing the said Sumaiya was filed by the petitioner.

4.Notice was issued to the respondents 1 and 2 and in response to the notice, the detenue Sumaiya was produced before this Court on 10.04.2018.

5.When we interacted with the detenue, she confessed of her love with the petitioner and their plan for wedding and also stated that due to stiff resistance from her parents, she had to leave her parental house and go to the petitioner's house and however, she was forcibly taken back to her parental house. She also stated during our interaction that the only reason for her father's resistance was the fact that the petitioner is a Hindu. She further contended that her father was against the petitioner as he refused to convert to Islam.

6.The learned counsel appearing for the third respondent argued that since the petitioner had not married the detenue, Sumaiya, he cannot file the present petition and that the petitioner has no locus standi to maintain this application.

7.On the request of the learned counsel appearing for the petitioner for counter arguments on the maintainability aspect, the case was adjourned to 16.04.2018. Simultaneously, the detenue Sumaiya's father was adviced to counsel her daughter as she was just 19 years old and the detenue was sent with her parents. However, on 16.04.2018, the detenue was not produced before this Court. Hence, this Court directed the second respondent to ensure the production of the detenue Sumaiya on 17.04.2018 without fail. The directions were complied with and the detenue Sumaiya was produced before this Court today (17.04.2018).

8.Further interaction with the detenue Sumaiya revealed her clarity of thoughts on the matter of love for the petitioner and her intention to marry him. She also confirmed once again that

her confinement was under duress and against her wishes. She also stated that she was taken to Bangalore to his Uncle's house against her wishes and from there she was brought to the Court.

9.Two aspects are to be decided in this case viz., 1)whether the petition is maintainable or not and 2)whether the detinue can be set at liberty as sought for by the petitioner considering her majority status.

10.Firstly, let us go into the maintainability aspect. A petition filed under Article 226 of the Constitution is maintainable, if the Court is satisfied that there is an improper restraint placed on the alleged detinue. In such an event, the question of locus need not be given undue importance. Secondly, in the instant case, the detinue categorically in an unequivocal terms stated that she was kept in confinement by her parents forcibly against her wishes. While discussing on this, the point for consideration, focuses on the contention of the learned counsel for the third respondent. His contention is that an adult major woman in the custody of the parents even against her wishes would not tantamount to justify the invocation of the jurisdiction under Article 226 of the Constitution. His contention is centered around the supremacy of the parental authority and relied on the decision of Lal parameswar V. Ullas N.N. reported in 2014 SCC OnLine Kerala 4170 : 2014 Cri LJ 192.

11.It is pertinent to point out that in the aforesaid decision relied upon by the learned counsel for the third respondent, there is no mention that the invocation of the power under Article 226 of the Constitution gets extinguished by the paternal authority, especially, when the improper restraint or confinement is alleged. Such proposition that the forcible detention by the parents would override the invocation of the jurisdiction of Article 226 of the Constitution even if illegal confinement is alleged would prove to be disastrous. The facts of each case has to be analysed independently and the decisional autonomy of the major children have to be given weightage, it deserves.

12.In the instant case, this Court gave sufficient opportunities to the parents to counsel their daughter, detinue Sumaiya. But the daughter has stood her ground firmly and shown maturity of decision making. We have to respect the decisional autonomy of the major daughter and interference in her decision would result in denial of right to life guaranteed under Article 21 of the Constitution.

13.The constitutional commitment of the Court to the cherished values of freedom, liberty and rule of law must

certainly prompt the Court to ignore the strict doctrine of locus standi in appropriate cases. Where the conscience of the Court is satisfied that there is violation of rule of law, the jurisdiction under Article 226 of the Constitution shall be invoked without hesitation to liberate a citizen illegally detained.

14. The interest of the alleged detainee in the petitioner and the interest of the petitioner in the alleged detainee have been shown satisfactorily and we are satisfied that though there was no marriage between them, the present Habeas Corpus Petition is very well maintainable. At this juncture, the learned counsel appearing for the petitioner pointed out a very recent judgment of the Hon'ble Supreme Court in W.P.(Civil) No.231 of 2010 [Shakti Vahini Vs. Union of India and others] dated 27.03.2018 wherein certain guidelines have been issued by the First Bench of the Hon'ble Supreme Court. He drew our attention to page 50 of the aforesaid judgment in which the following directions are given by the Hon'ble Supreme Court:-

... II. Remedial Measures:-

(a) Despite the preventive measures taken by the State Police, if it comes to the notice of the local police that the Khap Panchayat has taken place and it has passed any diktat to take action against a couple/family of an inter-caste or inter-religious marriage (or any other marriage which does not meet their acceptance), the jurisdictional police official shall cause to immediately lodge an F.I.R. under the appropriate provisions of the Indian Penal Code including Sections 141, 143, 503 read with 506 of IPC.

(b) Upon registration of F.I.R., intimation shall be simultaneously given to the Superintendent of Police/ Deputy Superintendent of Police who, in turn, shall ensure that effective investigation of the crime is done and taken to its logical end with promptitude.

(c) Additionally, immediate steps should be taken to provide security to the couple/family and, if necessary, to remove them to a safe house within the same district or elsewhere keeping in mind their safety and threat perception. The State Government may consider of establishing a safe house at each District Headquarter for that purpose. Such safe houses can cater to accommodate (i) young bachelor-bachelorette couples whose relationship is being opposed by their families /local community/Khaps and (ii)

young married couples (of an inter-caste or inter-religious or any other marriage being opposed by their families/local community/Khaps). Such safe houses may be placed under the supervision of the jurisdictional District Magistrate and Superintendent of Police.

(d) The District Magistrate/Superintendent of Police must deal with the complaint regarding threat administered to such couple/family with utmost sensitivity. It should be first ascertained whether the bachelor-bachelorette are capable adults. Thereafter, if necessary, they may be provided logistical support for solemnising their marriage and/or for being duly registered under police protection, if they so desire. After the marriage, if the couple so desire, they can be provided accommodation on payment of nominal charges in the safe house initially for a period of one month to be extended on monthly basis but not exceeding one year in aggregate, depending on their threat assessment on case to case basis.

(e) The initial inquiry regarding the complaint received from the couple (bachelor-bachelorette or a young married couple) or upon receiving information from an independent source that the relationship/marriage of such couple is opposed by their family members/local community/Khaps shall be entrusted by the District Magistrate/ Superintendent of Police to an officer of the rank of Additional Superintendent of Police. He shall conduct a preliminary inquiry and ascertain the authenticity, nature and gravity of threat perception. On being satisfied as to the authenticity of such threats, he shall immediately submit a report to the Superintendent of Police in not later than one week.

(f) The District Superintendent of Police, upon receipt of such report, shall direct the Deputy Superintendent of Police incharge of the concerned sub-division to cause to register an F.I.R. against the persons threatening the couple (s) and, if necessary, invoke Section 151 of Cr.P.C. Additionally, the Deputy Superintendent of Police shall personally supervise the progress of investigation and ensure that the same is completed and taken to its logical end with promptitude. In the course of investigation, the

concerned persons shall be booked without any exception including the members who have participated in the assembly. If the involvement of the members of Khap Panchayat comes to the fore, they shall also be charged for the offence of conspiracy or abetment, as the case may be.

III. Punitive Measures:-

(a) Any failure by either the police or district officer/officials to comply with the aforesaid directions shall be considered as an act of deliberate negligence and/or misconduct for which departmental action must be taken under the service rules. The departmental action shall be initiated and taken to its logical end, preferably not exceeding six months, by the authority of the first instance.

(b) In terms of the ruling of this Court in *Arumugam Servai (supra)*, the States are directed to take disciplinary action against the concerned officials if it is found that (i) such official(s) did not prevent the incident, despite having prior knowledge of it, or (ii) where the incident had already occurred, such official(s) did not promptly apprehend and institute criminal proceedings against the culprits.

(c) The State Governments shall create Special Cells in every District comprising of the Superintendent of Police, the District Social Welfare Officer and District Adi-Dravidar Welfare Officer to receive petitions/complaints of harassment of and threat to couples of inter-caste marriage.

(d) These Special Cells shall create a 24 hour helpline to receive and register such complaints and to provide necessary assistance/advice and protection to the couple.

(e) The criminal cases pertaining to honour killing or violence to the couple(s) shall be tried before the designated Court/Fast Track Court earmarked for that purpose. The trial must proceed on day to day basis to be concluded preferably within six months from the date of taking cognizance of the offence. We may hasten to add that this direction shall apply even to

pending cases. The concerned District Judge shall assign those cases, as far as possible, to one jurisdictional court so as to ensure expeditious disposal thereof.

54. The measures we have directed to be taken have to be carried out within six weeks hence by the respondent-States. Reports of compliance be filed within the said period before the Registry of this Court."

15. We do not agree with the contention of the learned counsel appearing on behalf of the third respondent that the present petition under Article 226 of the Constitution of India is not maintainable and that the parents have unbridled rights to usurp the decisional autonomy of their adult daughter and keep her in "custody" against her desire in exercise of their parental authority or duty. We also do not agree that the mere fact that the petitioner's marriage with the alleged detainee had not taken place is sufficient to deny relief under Article 226 of the Constitution. Apart from this, each case has to be decided on its own facts and other cases can hardly serve as binding precedents because the facts of two cases in this respect may not be identical.

16. In view of all these reasons, this Court is of the considered view that the present Habeas Corpus Petition filed under Article 226 of the Constitution of India is maintainable and the detainee Sumaiya, aged 19 years is set at liberty. Since she is a major, this Court is convinced that she can take an independent decision on her own and does not require any guidance or instructions.

17. Accordingly, the Habeas Corpus Petition is allowed and the detainee Sumaiya is set at liberty.

Sd/-

Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

DP

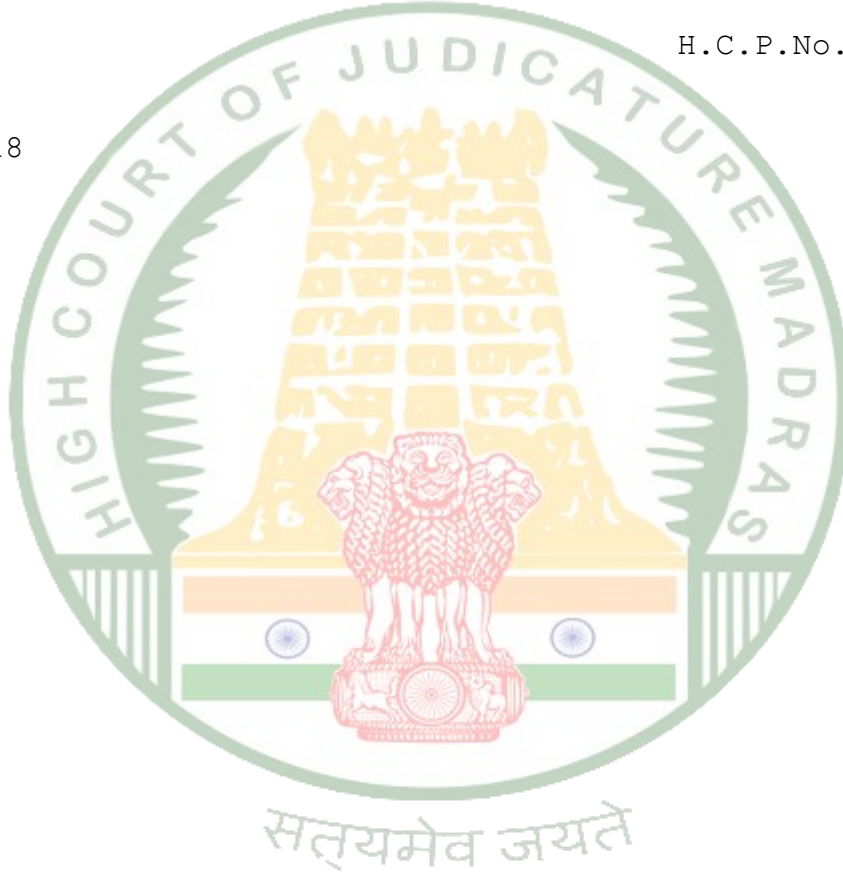
To

1. The Superintendent of Police,
Erode District, Erode.
2. The Inspector of Police,
Ammapettai Police Station, Erode.
3. The Public Prosecutor,
Madras High Court.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.28801

H.C.P.No.426 of 2018

CA (CO)
CS/17/05/18



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