

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.05.2018

Coram

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

H.C.P.No.648 of 2017

Veerathamizhan

... Petitioner

Vs.

1.State Rep. by
The Superintendent of Police,
Cuddalore,
Cuddalore District.

2.The Inspector of Police,
Mangalampet Police Station,
Cuddalore District.

3.Subramaniyan

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, directing the respondents herein to produce the petitioner's mother Vijaya, wife of Rajendiran, aged 50 years, who is illegally detained by the 3rd respondent, before this Court and set her at liberty.

For Petitioner : Mr.K.Gandhi Kumar

For RR1 & 2 : Mr.R.Ravichandran
Government Advocate

For R3 : Mr.R.Sathish Kumar

O R D E R

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

The present Habeas Corpus Petition has been filed for a direction directing the respondents herein to produce the petitioner's mother Vijaya, wife of Rajendiran, aged 50 years before this Court.

2.The learned counsel for the petitioner appearing on behalf of the petitioner states that the mother of the petitioner has been illegally detained by the third respondent, one

Mr.Subramaniyan, son of Ramasay. This Court admitted the matter and accordingly, the respondent police conducted the investigation and filed a Status report on 30th November, 2017. The Inspector of Police who filed the Status report examined about 24 witnesses. Apart from examination of the neighbors, relative of the detainee, the respondent police examined the villagers also. Beyond that, the best friends of the detainee also were examined by the police. More specifically, witness No.19, one Tmt.Dhanasangu has stated that she along with detainee went to the hospital and Doctor suspected that detainee has symptom of Cancer in the Uterus and advised to send the sample to Biopsy.

3.Further the witness proceeded to state that due to that reason, the detainee suffered both physically and mentally and she left the home. Further, the said witness spelt out that the detainee informed her that her son beaten the detainee before leaving the home. The petitioner herein, who is none other than the son of the detainee said to have beaten the detainee with iron rod and on leg. Such being the deposition of the best friend of the detainee, namely, Tmt.Dhanasangu, this Court is of the opinion that the petitioner has not established any illegal detention which is a requisite ground for the purpose of entertaining the present Habeas Corpus Petition.

4.When the best friend of the detainee had categorically deposed before the respondent police that the detainee had been beaten up by the petitioner with iron rod and on leg, we have no reason to find any genuineness in respect of the present Habeas Corpus Petition filed by the petitioner.

5.In this regard, the Hon'ble Apex Court of India, settled the legal principles in the case of Sulochana Bai Vs. State of M.P. And others and held as follows:

"4. The writ of habeas corpus as had been called by Blackstone "the great and efficacious writ in all manner of illegal confinement". The Apex Court in the case of Kanu Sanyal v. District Magistrate, traced the immemorial antiquity of the writ and referred to number of English decisions and opined that there can be no doubt that in enacting Article 32 (2) the Constitution makers meant to give to person illegally restrained of his liberty the same kind of remedy, fashioned and developed over the years, which his counterpart enjoyed in England and United States. Their Lordships further proceeded to state that while dealing with an application for the writ of habeas corpus under Article 32 the Supreme Court may not require the body of the person detained to be

brought before the Court. The production of the body of the person detained is not essential to the jurisdiction of the Supreme Court to deal with the application. Their Lordships expressed if the detention is found to be unlawful, an order to release him is to be passed forthwith.

5. In *Prem Shanker Shukla v. Delhi Administration*, the Apex Court has ruled thus:

"The raw history of human bondage and the roots of the habeas corpus writ enlighten the wise exercise of constitutional power in enlarging the person of men in unlawful detention. No longer is this liberating writ trammelled by the traditional limits of English vintage; for, our founding fathers exceeded the inspiration of the prerogative writs by phrasing the power in larger diction. That is why, in India, as in the similar jurisdiction in America, the broader horizons of habeas corpus spread out, beyond the orbit of release from illegal custody, into every trauma and torture on persons in legal custody, if the cruelty is contrary to law, degrades human dignity of defiles his personhood to a degree that violates Articles 21, 14 and 19 enlivened by the preamble."

6. In *Additional Secretary to the Government of India v. Alka Subhash Gadia* 1992 Suppl. (1) SCC 496, it has been held that the Courts must insist that the aggrieved person must allow the due operation and implementation of the concerned law and exhaust the remedy provided by it before approaching the High Court to invoke the discretionary, extraordinary and equitable jurisdiction which has to be very sparingly used. Their Lordships laid down certain guidelines where the Court should interfere prior to execution of order of detention.

7. In *Sayed Taher Bqwamiya v. Joint Secretary to the Government of India and Ors.*, the said principle was reiterated.

8. In *Mohd. Ikrarn Hussain v. State of U.P.*, it has been held as under:

"Exigence of the writ at the instance of a husband is very rare in English Law, and in India the writ of Habeas Corpus is probably never used by a husband to regain his wife and the alternative remedy under Section 100 of the Code of Criminal Procedure is always used. Then there is the remedy of a civil suit for restitution of conjugal rights. Husbands take recourse to the

latter when the detention does not amount to an offence and to the former if it does. In both these remedies all the issues of fact can be tried and the writ of habeas corpus is probably not demanded in similar cases if issues of fact that first to be established. This is because the writ of habeas corpus is festinum remedium and the power can only be exercise in a clear case."

9. In this context a Division Bench of the Kerala High Court in T. Ramachandran v. V.K. Kuttan and Ors. 1975 Cr.LJ 1531, it has been held that the issue of writ of habeas corpus would necessarily pre-supposes the factum of wrongful confinement.

10. In the case of Dr. Mrs. Veena Kapoor v. Varinder Kumar Kapoor , the Apex Court while dealing with the custody of a minor child in habeas corpus petition expressed the opinion as under:

"3. It is difficult for us in this habeas corpus petition to take evidence without which the question as to that is in the interest of the child cannot be satisfactorily be determined. We, therefore, direct that the learned District Judge, Chandigarh, will make a report to us before 23rd of this month on the question as to whether the custody of the child should be handed over to the petitioner-mother, taking into consideration the interest of the minor. The learned Judge will give liberty to the parties to adduce evidence on the question in issue. The learned District Judge may either take up the matter himself or assign it to an Additional District Judge, if there is any at Chandigarh."

11. In the case of State of Bihar v. Kameshwar Prasad Verma , it has been held that habeas corpus is a writ in the nature of order calling upon the person who was detained by another to produce the latter before the Court so that the Court can know on what ground he has been confined and set him free if there is no legal jurisdiction for imprisonment. In Anwar v. State of J and K , it has been held that it must appear to the Court that the detention is in violation of the procedure established by law."

6.The Apex Court of India categorically settled the legal principles in respect of the maintainability of the Habeas Corpus Petition by stating that it is the pre-condition to establish an illegal detention for the purpose of entertaining

the Habeas Corpus Petition. In the present petition on hand, the best friend of the detainee herself has deposed that the petitioner had beaten up the detainee with iron rod and on leg. When such is the statement given by the best friend of the detainee and further the illegal detention as alleged in the petition by the third respondent has not been established, this Court is of an opinion that the petitioner has not made out any case for entertaining the present Habeas Corpus Petition. The respondent police had interrogated the third respondent also and they could not able to find any such detention available by the third respondent. This being the factum of the case, there is no useful purpose would be served in keeping this petition pending any further.

7. Accordingly, this Habeas Corpus Petition stands dismissed.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

gsa/vsm
To

1. The Inspector of Police,
Mangalampet Police Station,
Cuddalore District.
2. The Public Prosecutor,
Madras High Court,
Chennai.
3. The Superintendent of Police,
Cuddalore,
Cuddalore District.

KAN(CO)
sm:16.5.2018

सत्यमेव जयते

WEB COPY

H.C.P.No.648 of 2017