

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.95 of 2018

K.Chinnadurai

....

Petitioner

Versus

1. State represented by the Sub Inspector of Police
V-4, Rajamangalam Police Station,
Chennai.

2. Commissioner of Police,
Office of the Commissioner of Police,
Veppery, Chennai.

... 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 body or person of the petitioner's father C.Karmegaraj aged about 56 years, son of Chinnaih @ Rathinavel and set him at liberty.

For petitioner : Mr. D. Panchatsaram

For respondents : Mr.R.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 missing person named C. Karmegaraj, aged about 56 years, who is the father of the petitioner herein before this Court and set him at liberty.

2. The petitioner has further stated that his father Karmegaraj, aged 58 years, his mother, his two younger brothers and his only younger sister are all residing in No.66, 3rd Lay Out, Teachers Colony, Lakshmipuram, Chennai - 99. He has also stated that his father was working as an accountant in a

private concern and now retired. After his retirement, he was doing the business of registering GST to small shops situated in Chennai. He used to go out to nearby places in respect of his job. On 22.12.2017, as per the desire of his father the petitioner dropped his father near the Rajaji Nagar Market auto stand by taking him in the two wheeler to visit Tirupathi Devasthanam for Swamy Darshan and ever since, his father had not turned up till now and he is also unable to contact him over his mobile number. Hence, the petitioner preferred the complaint before Rajamangalam Police Station on 27.12.2017, by furnishing the details of features of his father and a case is also registered in Crime No.1274 of 2017 under Section "Man missing" and the same is also pending.

3. The petitioner also further stated that his father was a cardiac arrest patient and the petitioner also searched in number of hospitals for his father. In spite of requisition made before the respondent authority, the petitioner could not get information nor any assistance from the respondent. Hence, with no other alternative, the petitioner has filed this petition seeking for a direction to the respondent.

4. On perusal of records, it is observed that the petitioner has preferred complaint regarding missing of his father from 22.12.2017. In the said complaint, the petitioner has furnished the details regarding the identity of his father and the details of his dress, he was wearing on the day of missing. Further in the said complaint, the petitioner has stated that his father is an heart patient and at any time there is danger to his father's life. So, the petitioner has preferred another complaint before the Commissioner of Police, Chennai on 08.01.2018.

5. The respondent police has filed the status report on 21.03.2018. In the said report, which was filed by the Inspector of Police, V4, Rajamangalam, Police Station reveals that a case under Section "Man missing" was registered on 27.12.2017 and the case was taken for investigation. The respondent also examined six witnesses and they are petitioner's, mother, brother, friend of the missing person and customer of the missing person. On examination of witnesses, the whereabouts of the missing person could not be arrived. One witness, who is a customer of the missing person contacted the missing person on one occasion. But the mobile was switched on but no person could be contacted. The tower location shows location that Lakshmi Narasimha theatre at Renigunda, Andhra Pradesh. The respondent police have prepared pamphlets with the photo of the man missing Karmegaraj and also wall posters in Tamil, English and Telugu version were sent to all police stations in Tamil Nadu through the City Crime Bureau, but no

clue was obtained. The fact of missing was also telecasted in the All India Radio and Doordarshan on the dates 29.12.2017, 30.12.2017 and 31.12.2017. The respondent police also made all effective steps to contact the missing person by collecting the call details of the cell phone of the missing person. But, he also could not get any positive information. Again on 02.02.2018 to 04.02.2018, the Special Sub Inspector of Police, Andhra Pradesh, one Thiru Swaminathan was deputed and he visited number of police stations and given the details of the missing person and the photo of the missing person also compared with unidentified dead bodies concerned with 174 CRP cases. Again, a Special team was constituted and the missing person was searched in Vadapalani, Thirumullaivoyal, Triplicane, Villivakkam, Koyambedu, Ambattur, Kolathur and Perumbur and on 25.02.2018 the Team searched in Amman temples, located at Poonamallee, Thirumazhisai, Periyapalayam and in those places, pamphlets have been distributed and also pasted in public gathering places and other places, such as Lodges, Homes, Bus stand, railway stations, but the whereabouts of the missing person was not obtained. The Special Sub Inspector of Police also visited the orphanage homes at Kanchipuram District and the team of Special Sub Inspector of Police. The team also visited number of temples and number of enquiries made at hospitals. Publications were also made in number of magazines and the photos of the unidentified dead bodies were also compared with the photo of the missing person and the search made by number of Special teams on several dates were not served any purpose. The petitioner also on the date of occurrence contacted his father over phone and obtained information that his father is proceeding to Tirupathi through train. On the next day, the mobile of his father was switched off.

6. The status report filed by the respondent shows that they were taken all sincere steps and still assures that they will produce the person when they trace him. It is observed from the report that the respondent police has taken all possible and effective steps to secure the missing person. The complaint preferred by the petitioner reveal the fact that his father, the missing person wanted to go to Tirupathi Devasthanam for Swami Darshan and one day, the petitioner obtained information that his father (missing person) is proceeding by train. But from the next day onwards, there was no information from him and he was also missing from that date. The complaint was preferred on 27.12.2017. The fact stated in the complaint do not reveal any allegation of illegal confinement of his father by any person. There is not even a suspicion on any person was made in the said complaint. Hence, based on the particulars furnished in the complaint, the case was registered under man missing and the respondent police also

investigated the case in the maximum possible ways. But the missing person could not be traced out. Hence, the petitioner has filed this petition to issue direction to the respondent to produce the body or person of his father.

7. 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.

8. 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 Karmegaraj 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 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.

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

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To

1. State represented by the Sub Inspector of Police
V-4, Rajamangalam Police Station,
Chennai.
2. Commissioner of Police,
Office of the Commissioner of Police,
Veppery, Chennai.
3. The Public Prosecutor,
Madras High Court,
Chennai.

+1cc to Mr.D.Panchatsaram, Advocate Sr.39480

H.C.P. No.95 of 2018

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