

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

H.C.P.No.2309 of 2016

Selvaraj

..Petitioner/Father
of the Tenant

vs.

1.The State, Rep.by the
The Superintendent of Police,
Nagapattinam District.

2.The Inspector of Police,
Mayiladuthurai Police Station,
Nagapattinam District.

.. Respondents

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 the petitioner's son namely Kiruba, aged about 23 years before this Hon'ble Court and set him at liberty.

For petitioner : Mr.V.Sakkarapani

For Respondents : Mr.R.Ravichandran, GA

ORDER

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

The present Habeas Corpus petition is filed to direct the respondents to produce the body of the petitioner's son namely, Kiruba, aged about 23 years before this Hon'ble Court and set him at liberty.

2.The contentions raised in the affidavit filed in support of the Habeas Corpus petition is that the petitioner is having two sons. His younger son namely, Kiruba completed his B.E., Mechanical Engineering course and was in search of job. The petitioner is running a petty shop at Thiruvilandur,

Mayiladuthurai Taluk. The son of the petitioner went to Mayiladuthurai in bicycle to buy vegetables and he did not come back to home even after long time. The petitioner and his family members searched him in many places and the efforts taken by the family members and the petitioner went in vain. Thus, the petitioner is constrained to lodge a complaint before the 2nd respondent/Police on 04.06.2015 and the case was registered under the Man Missing case in Crime No.367 of 2015.

3.The learned Government Advocate appearing on behalf of the 2nd respondent/Police, relying the status report submitted by the 1st respondent contended that the 2nd respondent/Police had taken all initiatives to trace out the missing person. However, the entire efforts went in vain and the respondents could not able to secure the missing son of the petitioner. It is contended that the Inspector of Police, on 12.07.2015 had prepared a phamplet containing the personal details of the missing person, Mr.Kiruba along with his photo to the District Crime Record Bureau, Nagapattinam and the same was sent to all Police stations in Nagapattinam District and the photos of Kiruba was also pasted in all the police stations, and in all prominent places in and around Mayiladuthurai. The copies of the same were also sent to the neighboring Districts at Tiruvarur and Thanjavur on 30.12.2015. Further, efforts were taken, so as to compare the photograph of Kiruba with unidentified dead bodies in the same age group in the Tamil Nadu Police Crime and Criminal Tracking network system and also verified the unidentified dead bodies with the Railway Police, Mayiladuthurai. The photographs of the said Mr.Kiruba was also displayed in the T.V.local Channel, of Mayiladuthurai. Thereafter, the 2nd respondent constituted a special team to trace out the missing person. The said special team went to various places as detailed below:

Date	Team	Places Investigated
30.12.2015	S.S.I.Rmadoss, Constable 882, Prabakaran.	Kumbakonam.
20.02.2016	S.S.I.Baskaran, & Constable 761 Kumararaja	Chidambram & Cuddalore.
25.04.2016	S.S.I.Janarthanam, & Constable 882 Prabakaran	Ariyalur, & Jeyankondam.
10.06.2016	SSI.Bose & HC.347 Subramanian.	Trichy, Manapparai & other Places nearyby

Date	Team	Places Investigated
15.07.2016	SSI.Asokan, & Constable 975 Tamilselvan.	Sethiyathoppu and Nearby in Cuddalore District.
20.08.2016	SSI.Ravichandran, Constable 709 Sankar	Kumbakonam and Thanjavur.
25.09.2016	SSI.Kamaraj and HC.1123 Rengarajan	Sirkali, and Karaikal
19.10.2016	SSI.Jayasankar and Gr.I. PC.1959 Jayaseelan	Thiruvarambur and Ponmalai.
25.11.2016	SSI.Baskaran & HC.1875 Arjunan.	Thirukkattupalli and Kumarachi.
05.01.2017	SSI.Janarthanam HC.761 Kumararaja	Porayar and other Places.
19.02.2017	SSI.Manokaran and Ramadoss.	Vallam & Chenkipatti.
30.03.2017	SSI.Tamilarasan Gr.I Constable 969 Jayaseelan	Kuthalam & Aduthurai
19.05.2017	SSI.Manokaran and HC.785 Uma Makeswaran.	Peralam & Tiruvarur

4.The statements of the petitioner and his wife were also recorded by the 2nd respondent/Police. This apart, the 2nd respondent had sent Special Sub-Inspector(SSI), Raju to Cuddalore, and Women PC 1257 Kayathiri to Tiruvarur and Thanjavur, Women PC.1192 Kiruthika to Nagapattinam DCRBs with missing notices and they were pasted in all the police stations and public places. On 01.11.2017, the 2nd respondent had sent a request letter to the Additional Director General of Police, State Crime Record Bureau, Chennai, requesting to verify the state level dead body photos with that of Kiruba and issue a necessary report to rule out the possibility if any. On that basis of the request letter, on 13.11.2017, Sub-Inspector Mr.Balamurugan and Head Constable, 1398 Murugan went to Chennai and at State Crime Records Bureau. On verification, they came to know that the dead body of the person involved in Vennathur Police Station in Crime.No.262/2016 registered for offence U/s.304(A) IPC was found similar to that of Kiruba by comparing with his photograph. The Inspector of Police, Vennathur was requested to send the skull and thigh bone(femour) of the deceased person concerned in Vennathur Police Station in Crime No.262/2016 to the Court of Judicial Magistrate, Rasipuram, for sending them for super imposition comparison and DNA analysis with the samples of Kiruba and his relatives. Accordingly, on

14.11.2017, the same was deposited in the Judicial Magistrate Court, Rasipuram. On 04.12.2017, a priority letter was prepared by the Deputy Superintendent of Police, Mayiladuthurai and sent to the Judicial Magistrate Court, Rasipuram to speed up the matter. On 08.12.2017, the Photograph of Mr.Kiruba along with the deceased person skull and thigh bone concerned in Vennathur Police Station in Crime No.262/2016 were submitted in the Forensic Science Laboratory Department, Chennai for super imposition comparison and DNA analysis in Anthro-189/2017 dated 08.12.2017.

5.On 01.11.2017, the 2nd respondent had examined Navinkumar, the brother of Mr.Kiruba and Nambirajan, the brother of Selvaraj and recorded their statements. M/s.Varshini, the daughter of Nambirajan was also examined and her statement was also recorded. Through her a copy of Facebook of kiruba used during the Month of January 2016 was also obtained. It was informed that there was some activity in January 2016 on the Facebook account of Mr.Kiruba.

6.Further, the 2nd respondent had then and there constituted special teams and sent them to various places for investigation and the details are furnished as under:

Date	Team	Places Investigated
08.11.2017	Constable 882 Prabakaran HC.1398 Murugan	Tiruvarur & Nagapattinam. Thanjavur.
09.11.2017	HC.1398 Murugan Constable 882 Prabakaran	Cuddalore. Ariyalur & Perambalur.
10.11.2017	Con.850 Balamurugan Cons.775 Umamakeswaran	Trichy City and District Puducherry.
11.11.2017	HC.850 Balamurugan Con.165 Vinoth	Pudukkottai Kumbakonam
13.11.2017	SI.Balamurugan HC.1398 Murugan	Chennai.
15.11.2017	Con.850 Balamurugan Con.882 Prabakaran	Namakkal & Salem City & District. Thirupoor City & District. Coimbatore City & District.

Date	Team	Places Investigated
17.11.2017	HC.1398 Murugan	Neelagiri District.
20.11.2017	Con.850 Balamurugan & Con.882 Prabakaran	Erode.
24.11.2017	Con.1375 Manokaran & 850 Balamurugan	Kanchipuram District.
30.11.2017	Con.850 Balamurugan	Madurai City and District.
01.12.2017	HC.1398 Murugan & Con.882 Prabakaran	Coimbatore City & District.
02.12.2017	Con.850 Balamurugan HC.1398 Murugan	Trichy Railway Police Thiruvallur.
03.12.2017	Con.1375 Manokaran	Chennai Railway Police
06.12.2017	Con.882 Prabakaran HC.1398 Murugan	Dharmapuri & Krishnagiri Thiruvallur & Vellore
07.12.2017	Con.850 Balamurugan & PC.1375 Manoharan	Sivagangai, Ramanathapuram, Thuthukudi, & Thirunelveli City & District.

7. It is further contended in the status report that on 08.11.2017, the Photo of Kiruba was made to be Telecasted in the Local T.V.Channel and also on Mobile Phones information was sent through Whatsapp groups. On 10.11.2017, witnesses Chitra, the sister of the petitioner and Govindaraj, the brother of the petitioner, were examined and their statements were recorded and the Photograph of Kiruba was given for advertisement in the Daily Thanthi News paper and it was published on 10.11.2017 itself. On 11.11.2017, the petitioner Mr.Selvaraj had received a call from Mobile number 9843679372 and when he picked up the call, there was no response from the other side. The similar incident happened with Navinkumar, the brother of Kiruba also. Thus, the investigation was taken up through CDR and in that it was ascertained that the call was made by one Anandan, of Metupalayam, Coimbatore, on seeing the advertisement given in the Daily Thanthi News paper on 10.11.2017. But, it was ascertained that the said person was a slightly mentally ill one and he had attempted the false calls.

8. On a perusal of the entire status report, we are of the considered opinion that the respondents/Police had taken sincere efforts to trace out the missing person. The way, in which the respondents/Police conducted the investigation shows the manner in which they have proceeded with and efforts taken by the respondents/Police are bonafide and there is no lacunae in respect of the investigation conducted. It is needless to state that the respondents/Police are bound to proceed with the criminal case registered under the Man/Women missing provisions.

9. This Court would like to raise the point of maintainability in respect of the present Habeas Corpus petition. It is a condition precedent that an "illegal detention" is a requisite ground for the purpose of entertaining the Habeas Corpus petition under Article 226 of the Constitution of India. The personal liberty and life enshrined under Article 21 of the Constitution of India, if infringed, then alone a petition for Habeas Corpus can be entertained. The routine cases of Man/Women missing or any other crime cannot be a ground for the purpose of invoking the extraordinary jurisdiction by filing the Habeas Corpus petitions. Thus, we are of an undoubted opinion that establishing an "illegal detention" is a condition precedent for entertaining a Habeas Corpus petition by the Constitutional Courts. Thus, we have to examine at the first instance, whether there is any suspicion, or at least reliable information that a person is illegally detained by the State or by any private individual. Illegal detention of a person by the State or by an individual is a pre condition for moving the Habeas Corpus petition.

10. Let us now examine the facts provided by the father of the detenu in the affidavit filed in support of the Habeas Corpus petition.

11. The petitioner states that he is running a petty shop in Thiruvilandur, Mayiladuthurai Taluk. The petitioner further states that his son Mr. Kiruba went to Mayiladuthurai in bicycle to buy vegetables and did not come back to home even after a long time. Further, the affidavit proceeds by stating that the petitioner as well as his family members searched him in many places and could not able to get any clue in respect of the missing person, Mr. Kiruba. Thereafter, the Police complaint is filed, the present Habeas Corpus petition has been moved before this Court.

12. Except the statement that the son of the petitioner was missing, there is no suspicion or "illegal detention" has been established. It is pertinent to note that there is no semblance of allegation of "illegal detention" has been established in the present Habeas Corpus petition. There is not even a suspicion or

any other enmity with any other person or some other issues causing concern for an "illegal detention" is portrayed in this petition. This being the factum stated in the affidavit filed in support of the Habeas Corpus petition, we are of the opinion that it is a case of Man missing and already the Police has registered the case in Crime No.367 of 2015.

13.The Courts are frequently witnessing that Man/Women Missing cases are mostly converted as Habeas Corpus Petitions under Article 226 of the Constitution of India. Mainly, two aspects are to be considered in such cases. Right of every citizen for free movement is also enshrined in Part III of the Constitution as a fundamental right. Personal liberty means that any person on attaining the age of majority is at liberty to move to a place of his choice. It is not necessary that a person has to inform each and every one of his desire or decision to his kith and kin or to the other persons. Way of life is also a part of personal liberty and a citizen of this Country shall choose a path or way of his own choice for leading his life as per his own mind set and wishes. Merely because a person was not found in his usual dwelling place, that does not mean that always an element of "illegal detention" is involved. For establishing an "illegal detention", it is necessary that substantial materials are to be furnished by the person, who approaches the Courts by filing Habeas Corpus Petitions. Thus, the personal liberty includes free movement of a citizen of his own choice and no other person has got any right to interfere with the right of a person to move freely anywhere at his own choice. A Man/Women voluntarily moving from their dwelling house to any other place of his/her own choice, then his/her family members or other person concerned with such a person can file a case for Man missing and on receipt of any such complaint, the Police having jurisdiction has to investigate the matter in the manner known to law. Under these circumstances, question of entertaining a Habeas Corpus Petition by the High Courts would not arise at all. Thus, it is a condition precedent that a person filing a Habeas Corpus Petition should establish that there is a prima facie case of "illegal detention" or atleast a strong and reliable suspicion in respect of such "illegal detention". In the absence of any of these illegal ingredients, no Habeas Corpus petition can be entertained under Article 226 of the Constitution of India.

14.Habeas Corpus "ad subjiciendum" means "that you have the body to submit or answer" which is called as Festinum Remedium - A Speedy remedy, which has been sought by the petitioner in the instant case."

15.It is necessary that violation of the fundamental rights enshrined under Part III of the Constitution of India must be

established for the purpose of filing the Habeas Corpus petition.

16. The High Court of Chhattisgarh, Bilaspur, in the case of Smt. Nirmala Patel Vs. The State of Chhattisgarh in Writ Petition (Habeas Corpus) No.13 of 2016, dated 28.02.2017, and the relevant paragraphs are held as follows:

"10. The meaning of the term habeas corpus is "you must have the body". Halsbury in his Laws of England, 4th Edition, observed as follows: -

"The writ of habeas corpus ad subjiciendum which is commonly known as the writ of habeas corpus is a prerogative process for securing the liberty of the subject by affording an effective means of immediate release from the unlawful or unjustifiable detention whether in prison or in private custody. It is a prerogative writ by which the queen has a right to inquire into the laws for which any of her subjects are deprived of their liberty."

11. In Corpus Juris Secundum, the nature of the writ of habeas corpus is summarized thus: -

"The writ of habeas corpus is a writ directed to the person detaining another, commanding him to produce the body of the prisoner at a designate time and place with the day and cause of his caption and detention to do, submit to, and receive whatsoever the court or judge awarding the writ shall consider in that behalf. 'Habeas corpus' literally means "have the body". By this writ, the court can direct to have the body of the person detained to be brought before it in order to ascertain whether the detention is legal or illegal. Such is the predominant position of the writ in the Anglo-Saxon Jurisprudence."

12. In the Constitutional and Administrative Law by Hood Phillips and Jackson it was stated as under: - (Relied upon by the Supreme Court in the matter of Surinderjit Singh Mand and another v. State of Punjab and another, reported in (2016) 8 SCC 722, to highlight the importance and significance of personal liberty, specially with reference to unlawful detention.)

"10. The legality of any form of detention may be challenged at common law by an application

for the writ of habeas corpus. Habeas corpus was a prerogative writ, that is, one issued by the King against his officers to compel them to exercise their functions properly. The practical importance of habeas corpus as providing a speedy judicial remedy for the determination of an applicant's claim for freedom has been asserted frequently by judges (sic) and writers. Nonetheless, the effectiveness of the remedy depends in many instances on the width of the statutory power under which a public authority may be acting and the willingness of the courts to examine the legality of decision made in reliance on wide-ranging statutory provision. It has been suggested that the need for the 'blunt remedy' of habeas corpus has diminished as judicial review has developed into an ever more flexible jurisdiction. Procedural reform of the writ may be appropriate, but it is important not to lose sight of substantive differences between habeas corpus and remedies under judicial review. The latter are discretionary and the court may refuse relief on practical grounds; habeas corpus is a writ of right, granted ex debito justitiae.

13. Lord Halsbury LC in *Cox v. Hates* reported in (1890) 15 AC 506, held that "the right to an instant determination as to lawfulness of an existing imprisonment" is the substantial right made available by this writ.

14. Likewise in *Barnardo v. Ford*, reported in (1862) AC 326, the writ of habeas corpus has been described as a writ of right which is to be granted ex debito justitiae. Though a writ of right, it is not a writ of course. The applicant must show a prima facie case of his unlawful detention. Once, however, he shows such a case and the return is not good and sufficient he is entitled to this writ as a matter of right.

15. In *R. v. Secy. of State of Home Affairs* reported in (1941) 3 All ER 104, 105, it has been held that a person is not entitled to be released on a petition of habeas corpus if there is no illegal restraint. "The question for a habeas corpus court is whether the

subject is lawfully detained. If he is, the writ cannot issue, if he is not, it must issue."

16. Likewise in Cox v. Hakes reported in (1980) 15 AC 506 (HL), it has been held that the writ of habeas corpus is an effective means of immediate release from unlawful detention, whether in prison or private custody. Physical confinement is not necessary to constitute detention. Control and custody are sufficient.

17. A Constitution Bench judgment of the Supreme Court in the matter of Kanu Sanyal v. District Magistrate, Darjeeling and others reported in (1973) 2 SCC 674, traced the history, nature and scope of the writ of habeas corpus. It has been held by Their Lordships that it is a writ of immemorial antiquity whose first threads are woven deeply "within the seamless web of history and untraceable among countless incidents that constituted a total historical pattern of Anglo-Saxon jurisprudence". Their Lordships further held that the primary object of this writ is the immediate determination of the right of the applicant's freedom and that was its substance and its end. Their Lordships further explaining the nature and scope of a writ of habeas corpus held as under: -

"The writ of habeas corpus is essentially a procedural writ. It deals with the machinery of justice, not the substantive law. The object of the writ is to secure release of a person who is illegally restrained of his liberty. The writ is, no doubt, a command addressed to a person who is alleged to have another person unlawfully in his custody requiring him to bring the body of such person before the Court, but the production of the body of the person detained is directed in order that the circumstances of his detention may be inquired into, or to put it differently, "in the order that appropriate judgment be rendered on judicial enquiry into the alleged unlawful restraint". But the writ is primarily designed to give a person restrained of his liberty a speedy and effective remedy for having the legality of his detention enquired into and determined and if the detention is found to be unlawful, having himself discharged and freed from such restraint. The most characteristic

element of the writ is its peremptoriness. The essential and leading theory of the whole procedure is the immediate determination of the right to the applicant's freedom and his release, if the detention is found to be unlawful. That is the primary purpose of the writ, that is its substance and end. The production of the body of the person alleged to be wrongfully detained is ancillary to this main purpose of the writ. It is merely a means for achieving the end which is to secure the liberty of the subject illegally detained."

18. In the matter of Union of India v. Yumnam Anand M. alias Bocha alias Kora alias Suraj and another reported in (2007) 10 SCC 190, while explaining the nature of writ of habeas corpus, Their Lordships of the Supreme Court held that though it is a writ of right, it is not a writ of course and the applicant must show a prima facie case of his unlawful detention. Paragraph 7 of the report states as under: -

"7. Article 21 of the Constitution having declared that no person shall be deprived of life and liberty except in accordance with the procedure established by law, a machinery was definitely needed to examine the question of "illegal detention" with utmost promptitude. The writ of habeas corpus is a device of this nature. Blackstone called it "the great and efficacious writ in all manner of illegal confinement". The writ has been described as a writ of right which is grantable ex debito justitiae. Though a writ of right, it is not a writ of course. The applicant must show a prima facie case of his unlawful detention. Once, however, he shows such a cause and the return is not good and sufficient, he is entitled to this writ as of right."

19. A writ of habeas corpus is not be issued as a matter of course. Clear grounds must be made out for issuance of such writ. (See Dushyant Somal v. Sushma Somal.), reported in (1981) 2 SCC 277.

20. In the matter of Usharani v. The Commissioner of Police, Bangalore and others, reported in ILR 2014 Kar 3312, the writ of habeas corpus has been defined very lucidly as under: -

"The claim (for habeas corpus) has been expressed and pressed in terms of concrete legal standards and procedures. Most notably, the right of personal liberty is connected in both the legal and popular sense with procedures upon the Writ of habeas corpus. The writ is simply a judicial command directed to a specific jailer directing him or her to produce the named prisoner together with the legal cause of detention in order that the legal warrant of detention might be examined. The said detention may be legal or illegal. The right which is sought to be enforced by such a writ is a fundamental right of a citizen conferred under Article 21 of the Constitution of India.

11. The ancient prerogative writ of habeas corpus takes its name from the two mandatory words "habeas" and "corpus". "Habeas Corpus" literally means "have his body". The general purpose of these writs as their name indicates was to obtain the production of the individual before a Court or a Judge. This is a prerogative process for securing the liberty of the subject by affording an effective relief of immediate release from unlawful or unjustifiable detention, whether in prison or in private custody. This is a writ of such a sovereign and transcendent authority that no privilege of power or place can stand against it. It is a very powerful safeguard of the subject against arbitrary acts not only of private individuals but also of the executive, the greatest safeguard for personal liberty, according to all constitutional jurists. The writ is a prerogative one obtainable by its own procedure. ... In our country, it is this prerogative writ which has been given a constitutional status under Articles 32 and 226 of the Constitution. Therefore, it is an extraordinary remedy available to a citizen of this country, which he can enforce under Article 226 or under Article 32 of the Constitution of India."

21. Thus, the writ of habeas corpus is a process by which a person who is confined without legal justification may secure a release from his confinement. The writ is, in form, an order issued by

the High Court calling upon the person by whom a person is alleged to be kept in confinement to bring such person before the court and to let the court know on what ground the person is confined. If there is no legal justification for the detention, the person is ordered to be released. However, the production of the body of the person alleged to be unlawfully detained is not essential before an application for a writ of habeas corpus can be finally heard and disposed of by the court. {See Kanu Sanyal (supra).}

22. Taking note of the aforesaid judgments of the Supreme Court and the principles laid down in the afore-stated cases for grant of writ of habeas corpus, it appears that the condition precedent for instituting a petition seeking writ of habeas corpus is the person for whose release, the writ of habeas corpus is sought must be in detention and he must be under detention by the authorities or by any private individual. It is his detention which gives the cause of action for maintaining the writ of habeas corpus. If the allegations in the writ of habeas corpus read as a whole do not disclose the detention, in other words, if there is no allegation of "illegal detention", the writ petition seeking writ of habeas corpus is liable to be rejected summarily. Such writ is available against any person who is suspected of detaining another unlawfully and the habeas corpus Court must issue it, if it is shown that the person on whose behalf it is asked for is unlawfully deprived of his liberty. The writ can be addressed to any person whatever an official or a private individual-who has another in his custody."

17. The High Court of Karnataka, Gulbarga Bench, in the case of Sudharani vs. The State of Karnataka, reported in ILR 2016 KAR 731, the Hon'ble Division Bench relying on S.K.Naik Vs. The Police Sub-Inspector (WPHC No.194/2012) dated 26.03.2014, held as follows:

"5. We find there is absolutely no occasion to issue a writ of habeas corpus, as the writ petitioners do not allege or aver in the petition that the police or any third party has held the missing person in illegal custody.

6. A writ of habeas corpus cannot be issued in respect of any and every missing person more so when no named person is alleged to be responsible for the "illegal detention" of the person for whose production before the Court a writ is to be issued."

"The following observations made by the Calcutta High Court in Swapandas(supra) may also be noticed:

".....On the basis of a habeas corpus petition, the power under art. 226 is not to be exercised for tracing a missing person engaging an investigating agency empowered to investigate a case under the Code of Criminal Procedure, 1973. The investigation, if in progress, is to be overseen by the criminal court. Here the petitioner is asking this court to direct the police to track down his missing son."

4. Habeas Corpus is a writ calling upon the person who has detained another to produce the latter before the Court, in order to let the Court know on what ground he has been detained, and to set him free if there is no legal justification for the detention. 'Habeas Corpus' literally means "have the body". Writ of habeas corpus is also known as a "writ of liberty". A writ of habeas corpus is issued for release of a person who has been detained unlawfully by the State or by any private individual. A writ of habeas corpus is not issued if the person concerned is not in unlawful detention.

18. The High Court of Calcutta, in the case of Swapan Das vs. The State of West Bengal & others, in W.P.No.17965(W) of 2013 dated 28.06.2013, made an observation, which reads as follows:

"A habeas corpus writ is to be issued only when the person concerning whose liberty the petition has been filed is illegally detained by a respondent in the petition. On the basis of a habeas corpus petition the power under art.226 is not to be exercised for tracing a missing person engaging an investigating agency empowered to investigate a case under the Code of Criminal Procedure, 1973. The investigation, if in progress, is to be overseen by the criminal court. Here the petitioner is asking this court to direct the police to track down his missing son."

For these reasons, we dismiss the WP. No costs. Certified xerox."

19. The High Court of Madhya Pradesh, in the case of Sulochana Bai vs. State of Madhya Pradesh and Others, reported in 2008(2) MPHT 233, made an observation, which reads as follows:

12. We have referred to the aforesaid decisions only

to highlight that the writ of habeas corpus can only be issued when there is assertion of wrongful confinement. In the present case what has been asserted in the writ petition is that her father-in-law has been missing for last four years and a missing report has been lodged at the Police Station. What action should have been taken by the Police that cannot be the matter of habeas corpus because there is no allegation whatsoever that there has been wrongful confinement by the police or any private person. In the result, the writ petition is not maintainable and is accordingly dismissed.

20. The constitutional Courts across the country predominantly held in catena of judgments that establishing a ground of "illegal detention" and a strong suspicion about any such "illegal detention" is a condition precedent for moving a Habeas Corpus petition and the Constitutional Courts shall be restrained in entertaining such Habeas Corpus petition, where there is no allegation of "illegal detention" or suspicion about any such "illegal detention". Man/Women missing cases cannot be brought under the provision of the Habeas Corpus petition. Man/Women 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 extraordinary jurisdiction of the Constitutional Courts cannot be invoked for the purpose of dealing with such Man/Women Missing cases.

21. The Courts have noticed in large number of cases that the Police personnel are spending lot of time by travelling across the Country under the guise of Man/Women missing cases. Certainly such waste of time by the uniformed personnel is a great concern for the State. This apart, such unnecessary travelling causes large scale expenditures to the State Ex-Chequer, which is to be construed as unnecessary and the tax payers money has to be spent judiciously and meaningfully. This apart, the efforts taken without any basis causes concern for all concerned and also to the investigating authorities and the State as a whole. Thus, the uniformed Police forces must be used potentially to trace out the cases, where there is a genuine allegation of "illegal detention". Thus, the Police personnel are also bound to apply their mind in such type of cases before commencing their investigation and the investigations are to be conducted meaningfully, in judicious manner and without wasting the taxpayers money.

22. As we have elaborately discussed the scope of the Habeas Corpus petitions in such cases of Man/Women missing cases, we

are of an undoubted opinion that the Constitutional Courts shall show some restraint in entertaining such Habeas Corpus petitions in relation to Man/Women missing cases.

23. Accordingly, 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 in the petition. This being the factum of the case, the petitioner has not established any cause for the purpose of entertaining the present Habeas Corpus petition and accordingly, the same stands dismissed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kak/rka

To

- 1.The Superintendent of Police,
Nagapattinam District.
- 2.The Inspector of Police,
Mayiladuthurai Police Station,
Nagapattinam District.
- 3.The Director General of Police,
Chennai.
- 4.The Director
Forensic Science Laboratory,
Chennai.
- 5.The Public Prosecutor
High Court, Madras.

SR(CO)
CS/20/07/18

H.C.P.No.2309 of 2016

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