



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.10.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

H.C.P(MD)No.1415 of 2018

P.Mohamed Sirajudeen

... Petitioner

Vs.

1. The State represented by
The Superintendent of Police,
Tirunelveli District,
Tirunelveli.

2. The Inspector of Police,
Thalaiyuthu Police Station,
Tirunelveli District.

3. K.Valathi Iyappan

... Respondents

Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Habeas Corpus to direct the respondents to produce the bodies or persons of the detenus Gomathi Sankari, D/o.I.Sivasubramanian (Female, aged 31 years), V.Akilandeswari, D/o.K.Valathi Iyyappan (Female Child, aged 12 years) and V.Sribalaji, S/o.K.Valathi Iyappan (Male child, aged 11 years) before this Court and consequently set them at liberty.

For Petitioner : Mr.S.Balaji

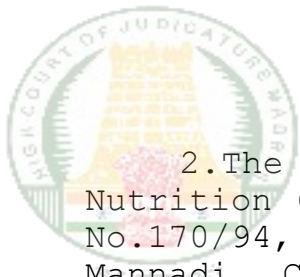
For Respondents : Mr.S.Chandrasekar
Additional Public Prosecutor for R1 & R2

For Intervenor : Mr.S.M.A.Jinnah

O R D E R

(Order of the Court was made by T.RAJA, J.)

This Habeas Corpus Petition, which is a classic example for abuse of process of Court under Article 226 of the Constitution of India, has been filed by the petitioner, who is no way connected with the detenus, for a direction to the respondents 1 and 2 to produce the detenus Gomathi Sankari, wife of the third respondent, viz., K.Valathi Iyyappan, V.Akilandeswari, D/o.K.Valathi Iyyappan and V.Sribalaji, S/o.K.Valathi Iyyappan before this Court and consequently set them at liberty.

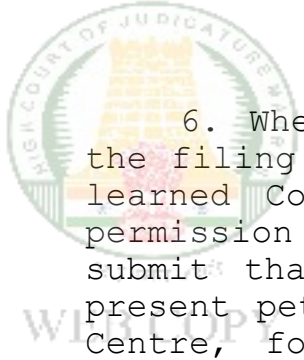


2. The petitioner claims to be the owner of a Wellness and Nutrition Centre run in the name and style of Nutrition Centre, at No.170/94, First Floor, Pavalakkara Street, Chellamuthu Lane, Mannadi, Chennai - 600 001, in which, it appears that the first detenu, a mother of two children, was also one of the employees for some time. The detenu Gomathi Sankari approached the petitioner seeking some assistance on the ground that the third respondent, who is her husband, is unable to take care of her and two children, the minor detenu herein. It is submitted that after some time, the detenu Gomathi Sankari went to Tirunelveli and did not come back. When the petitioner contacted her over phone, she informed him that her mother-in-law died and to attend the funeral, she came to Tirunelveli and thereafter, her husband did not allow her to go back to Chennai for work. Since the detenu is not reporting for duty, the petitioner is before this Court with this Habeas Corpus Petition.

3. Learned Counsel for the petitioner pleaded that the first detenu informed the petitioner that due to misunderstanding, her husband had now and then quarrelled with her even on trivial issues and thereby, their matrimonial life has been seriously affected. Even though she tried her best to change her husband's attitude, he did not mend his ways. Only in view of frequent quarrels, she had to join the petitioner's Nutrition Centre as Wellness Coach. Although she was working for the past two years staying at No.179/88, Thambuchetti Street, Mannadi, Chennai, for the past one month, she disappeared. While contacting her cell phone and asking for the reason for her absence, she informed the petitioner that her husband has harshly and severely attacked and threatened her that she should not go to the petitioner's Nutrition Centre.

4. The learned Counsel for the petitioner also submitted that when the petitioner contacted the first detenu through her Mobile No.85260 85895, she expressed her willingness to return to Chennai. However, her husband and his family members prevented her not to go to Chennai. Since the first detenu requested the petitioner to rescue her, he has come with the present Habeas Corpus Petition, he pleaded.

5. Since the petitioner is neither a relative of the first detenu who is a mother of two children aged about 12 years and 11 years respectively, this Court was curious to search for the locus standi to maintain this petition, more particularly, when the first detenu is safely with her husband and her family members, whether the petitioner claiming to be a well-wisher can maintain a Habeas Corpus Petition to direct the husband of the first detenu to produce her to the well-wisher who is a total stranger and has no locus standi. However, notice was issued to find out the answer how the provisions of the Article 226 of the Constitution of India is being unjustly, indiscriminately and fearlessly misused.



6. When the matter was again listed, on coming to know about the filing of the present Habeas Corpus Petition by the petitioner, learned Counsel for the brother-in-law of the petitioner sought permission of this Court to intervene in this matter. He would submit that the petitioner has no locus standi to maintain the present petition, as he is already married and running a Nutrition Centre, for the reason that one of his employees has got some matrimonial dispute with her husband and family members, taking advantage of the matrimonial issue, the petitioner is unfairly attempting to take away somebody's wife, pleading forcibly, he argued that if this type of petition is entertained, this will set a very bad precedent and henceforth treat the High Court as Liaisoning Officer, besides Server and Supplier, which is not the purpose and object for issuance of writ of Habeas Corpus.

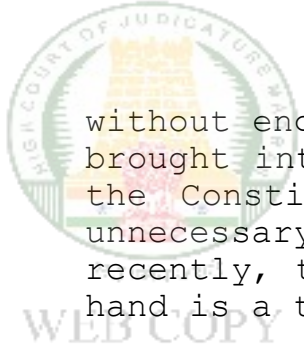
7. The learned Counsel for the intervenor - brother-in-law of the petitioner again forcibly informed us that if this petition is allowed, the legally wedded husband and wife without dissolution of marriage in the manner known to law would be separated and the petitioner's wife and his brother-in-law (himself) would be the most affected persons.

8. Adding further, he stated that when the petitioner is a married man, he cannot approach this Court for a writ of Habeas Corpus to force the first detenu's husband to part with his wife to come and stay with the petitioner in the name of employee in a Nutrition Centre at Chennai. Finally, to put an end to this type of frivolous petitions, he sought for the dismissal of this petition with exemplary costs against the petitioner.

9. We also find merits on the submissions made by the learned counsel for the intervenor.

10. When the petitioner, admittedly, stated in the present petition that the first detenu is the wife of the third respondent and got two children, for the simple reason that she is having some difference of opinion with her husband/third respondent, he cannot maintain the present Habeas Corpus Petition on the ground that the third respondent along with his parents detained the first detenu from attending her work in the petitioner's place. As it is quite common that there would be some difference of opinion between husband and wife, taking advantage of some difference of opinion, the petitioner who is an utter stranger cannot ask for a Writ of Habeas Corpus, when her own husband and her in-laws are taking care of the detenu and her children.

11. Originally, the British Government in the Government of India Act wantonly denied the writ of Habeas Corpus to Indians. Subsequently, in the Constituent Assembly, there was a serious discussion by the Architects of Indian Constitution while framing Articles 21, 22, 32 and 226 of the Constitution of India. Taking into account that the British Government, during the freedom struggle, arrested freedom fighters and put them in jail endlessly



without enquiry, it was thought that writ of Habeas Corpus should be brought into the Constitution of India under Articles 226 and 32 of the Constitution of India to protect the innocent citizens from unnecessary harassment by the police power of the State. But, recently, this is being highly misused and abused and this case on hand is a telling example.

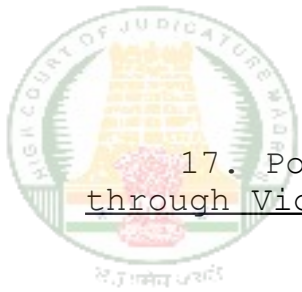
12. It is well settled legal position that the writ of Habeas Corpus should not be allowed where it would operate inequitably and unjustly causing mischievous consequences; or where the equities of the case do not warrant it. It should not be employed where its use does an injustice and deprives one of a legal right which would have been established by the proceedings sought to be reviewed had that proceeding been conducted in compliance with strict forms of law. The Court should also consider whether or not the issuance of a writ will lead to inextricable confusion.

13. At this juncture, the learned Additional Public Prosecutor, by producing a letter voluntarily written by the detenu Gomathi Sankari, would submit that the detenus are taken care of by the third respondent - legally wedded husband of the first detenu and father of the detenus 2 and 3. The letter further states that there has been no harassment to them at the hands of anybody and she came to her in-law's house to attend the funeral of her mother-in-law.

14. In view of the above, this petition, in our considered view, is not at all maintainable and totally misconceived. It is not known how the petitioner can show such a high-handedness before this Court seeking such a direction to produce somebody's wife arraying the legally wedded husband of the detenu as one of the respondents in the petition, without there being any legal right. If this type of petitions are allowed, even an ideal family will be torn into pieces by segregating the husband and wife. We appreciate the stand taken by the intervenor/petitioner's brother-in-law that the petitioner has no locus standi to file the present petition.

15. In view of the above letter and for causing disrepute to the family of the third respondent, we are constrained to impose exemplary cost of Rs.5,00,000/- (Rupees five lakhs only) on the petitioner, out of which, a sum of Rs.3,00,000/- (Rupees Three Lakhs only) to be paid to the Mediation and Conciliation Centre attached to Madurai Bench of Madras High Court and a sum of Rs.2,00,000/- (Rupees Two Lakhs only) shall be paid to the Gandhi Museum, Madurai, within a period of two weeks from the date of receipt of a copy of this order, failing which, the Tahsildar, Mannadi, Chennai, shall initiate proceedings under the Revenue Recovery Act and do the needful.

16. With the above observations and directions, this Habeas Corpus Petition is dismissed with cost as above.



17. Post this matter 'for reporting compliance' on 30.11.2018
through Video Conference.

WEB COPY

/True Copy/

Sd/-

Assistant Registrar(CO)

Sub Assistant Registrar(CS-I)

To

1. The Superintendent of Police,
Tirunelveli District,
Tirunelveli.
2. The Inspector of Police,
Thalaiyuthu Police Station,
Tirunelveli District.
3. The Tahsildar,
Mannadi, Chennai
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

1. The Curator, Gandhi Museum, Madurai
2. Mr. T. S. R. Venkataramana, Advocate,
No. 72, Law Chambers,
High Court Buildings, Madurai
3. The Section Officer,
Mediation and Conciliation Centre,
Madurai Bench of Madras High Court,
Madurai.

+2CCs to MR. S. BALAJI, ADVOCATE IN SR.NO.88218.

+1CC TO MR. S. M. A. JINNAH, ADVOCATE IN SR.NO.88350.

RR/RSB

DS SKN SAR-1 23 10 2018 5P 11C

H.C..P(MD)No.1415 of 2018

01.10.2018