

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26..08..2019

CORAM

The Honourable Mr.Justice M.M.SUNDRESH
and
The Honourable Mr.Justice M.NIRMAL KUMAR

Habeas Corpus Petition No.474 of 2019

L.N.Khaja Mohideen

... Petitioner

Vs.

1.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai 600 007.

2.The Deputy Commissioner of Police,
Avadi, Chennai 600 054.

3.Krishnakumar

4.L.N.Rahmathnissa

5.Faize Mohideen

6.L.N.Sirajunnisa

7.L.N.Mohamed Yusuf

8.L.N.Dowlathunnisa

9.L.N.Zareena

10.L.N.Fathima Banu

... Respondents

[Respondents 6 to 10 impleaded as per order
dated 01.08.2019 in CrI.M.P.No.10644 of 2019
in H.C.P.No.474 of 2019]

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, directing the 3rd respondent to produce the petitioner's mother L.S.ASHRAFNISSA, Female, aged about 87 years, who is in the illegal custody of the respondents 4 and 5 before this court and set her at liberty.

For Petitioner : Mr.C.Rajan

For Respondent(s) : Mr.C.Iyyappa Raj, APP for
RR1 to 3

Mr.R.John Sathyan
for RR4 and 5

Mr.N.V.Prakash
for RR 6 to 10

ORDER

[Order of the court was made by Justice M.M.SUNDRESH]

The petitioner is the daughter of the detinue. Inter alia alleging that her mother, the detinue, is under the illegal custody of the respondents 4 and 5, the petitioner has come up with this petition.

2. Unfortunately, in the case on hand, the age old diseased is being treated as property by her children. There is a property dispute pending and a suit has also been filed in O.S.No.5300 of 2012 on the file of the learned V Assistant Judge, City Civil court, Chennai.

3. Pursuant to the earlier order passed in H.C.P.No.2430 of 2016 dated 16.11.2016, the detinue was living with the petitioner. Thereafter, on the complaint given by one of the impleaded respondents, she was shifted back to her custody. Taking note of the the physical condition of the detinue, we had appointed an Advocate Commissioner to visit the detinue and file a report with respect to her health condition and her state of mind, particularly as to whether she has been residing with the person, who has been taking care of her at present, voluntarily without any force. The learned Advocate Commissioner, accordingly, filed a report with respect to the health condition of the detinue. The following paragraphs of the report are recorded hereunder:-

"As other sons and daughters could not get any relief from police, they had seen their mother's worst condition taken her to private hospital called Chennai Meenachi Multi Speciality Hosptial and admitted her for treatment. A group of specialists in the hospital have been looking after her, giving available special treatment from 25.12.2018 to 02.02.2019.

Mrs.L.N.Doulathnissa toldme that surgery only could get their mother somewhat relief. I am told that the others sons and daughters asked the doctors to do whatever may be the cost of surgery etc., even so the specialist doctors in certain terms told them the surgery could not be performed on the sole ground, she is at least 87 to 88 years old and taking medicines for her ailment, then the hospital has discharged her. The hospital has also given them discharge summary with instruction and advise to them for looking after their mother."

4. From the above, it appears that the detinue is at vegetative state. At least for more than a year she has been taken care of by the 6th respondent. As stated already, though

it is a continuous dispute for the property extended to the custody of the mother, we do not find any illegal detention involved in the case on hand. We find that even the detainee was having some strained relationship with the petitioner on the earlier occasions. Therefore, at this stage, it would not be appropriate to shift the detainee from the present place. In fact, the detainee was taken from the custody of the petitioner to the hospital and thereafter to the custody of the 6th respondent.

5. At this juncture, the learned counsel for the petitioner made one request, which we find very reasonable. The learned counsel submitted that the petitioner will have to be permitted to visit the detainee as and when he wants. The learned counsel appearing for the respondents 6 to 10 also does not have any serious objection. In such view of the matter, we permit the petitioner to go and visit the detainee after giving due intimation to the respondents 6 to 10. The parties are directed not to precipitate the present situation by getting into any quarrel among themselves.

In the result, this Habeas Corpus Petition stands closed with the above directions.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner of Police, Greater Chennai, Vepery,
Chennai 600 007.

2.The Deputy Commissioner of Police, Avadi, Chennai 600 054.

3.The Public Prosecutor, High Court, Chennai.

+2cc to Mr.C.Rajan, Advocate Sr.No.73198

+2cc to Mr.M.Govindaraju, Advocate SR.No.72413

AKM/27.09.19/3P-8C /

H.C.P.No.474 of 2019