

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2019

CORAM :

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN
and
THE HONOURABLE MR. JUSTICE M. NIRMAL KUMAR

H.C.P. No.651 of 2019

K.Neelakandan Petitioner

Vs.

1.The Inspector of Police,
T13, Kundrathur Police Station,
SH 113, Kundrathur, Sikkarayapuram,
Chennai - 600 069.

2.Justin Sagaya Xavier ... Respondents

Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus directing the 1st respondent to produce the body of the petitioner's wife Usha Neelakandan, aged 38, his daughter, minor Prathusha Neelakandan, aged 15, before this Court from the custody of the 2nd respondent and set them at liberty.

For Petitioner : Mr.A.Mohamed Ismail

For Respondents : Mr.C.Iyyapparaj
Additional Public Prosecutor
for R1

O R D E R

(Order of the Court was delivered by M. SATHYANARAYANAN, J.)

The petitioner is the ex-husband of the major detainee, namely, Usha Neelakandan, aged about 38 years and father of the minor detainee, namely Prathusha Neelakandan, aged about 15 years. According to the petitioner, he got married to the major detainee in the year 2000 and out of wedlock two children namely, Praveen, aged about 18 years and the minor detainee (daughter) were born and he was originally residing at No.128, Devagi Nagar, Mananchery, Kundrathur, Chennai - 600 069. The petitioner would further state that he is employed as a bus

driver in M/s.Parveen Travels and during the course of employment, he came into contact with the 2nd respondent, who is also a driver employed in the said travel agency and they developed acquittance with each other. It is further averred by the petitioner that in the year 2015, he purchased a Chevrolet Tavera Car after obtaining loan from Shriram Transports Finance Co. Ltd and since he was not able to profitably earn extra income, he wanted to surrender the same. However, the 2nd respondent approached him with a request to handover the vehicle to him, undertaking to pay the monthly installments and accordingly, he handed over the vehicle. However, the 2nd respondent, contrary to his promise, paid only one installment and thereafter, committed default and in the light of the default committed, finally the money was paid by the petitioner and not only stopping with that, the 2nd respondent crossed all his moral limits and interfered in the petitioner's family life in the year 2018 and abducted the petitioner's wife/major detainee, as well as his daughter/minor detainee and a complaint in that regard was also registered. On the basis of the complaint given, their custody was restored. However, the 2nd respondent, once again, after a short span of time, abducted the major detainee/petitioner's wife and kidnapped the minor detainee, on account of which once again the petitioner lodged a complaint on 19.02.2019 on the file of the 1st respondent, based on which, a CSR No.1463 of 2018 was registered.

2. The Habeas Corpus Petition was entertained on 29.03.2019 and when the matter was listed on 22.04.2019, the learned Additional Public Prosecutor prayed for time to file status report and accordingly, the matter was adjourned to 12.06.2019. However, the learned Additional Public Prosecutor made a mention today to take up the matter for the reason that, both detainees have been secured and the wife and two minor children of the 2nd respondent also appeared before this Court and hence, the matter has been taken up today for hearing.

3. The wife of the petitioner has admitted the fact that she has developed illicit intimacy with the 2nd respondent and however, blamed the petitioner for the relationship by stating that, the petitioner used to bring the 2nd respondent to home and used to have drinks and thereby, she developed acquittance with the 2nd respondent and when the petitioner and her relatives became aware of the same, he started behaving with her ridiculously and unable to bear with the torture, she went with the 2nd respondent. The wife of the petitioner further stated that at present, she is residing with the 2nd respondent along with her daughter/minor detainee, in Pedhappampatti, Somavarapatti, Thiruppur District and the 2nd respondent is maintaining/looking after both of them. The major detainee/wife of the petitioner, as well as the minor detainee/daughter of the

petitioner are not willing to go with the petitioner.

4. The 2nd respondent is also present before this Court and he has been enquired and though he has admitted his guilt, he has not expressed any remorse for his act.

5. The wife of the 2nd respondent and minor children are also present before this Court. The wife of the 2nd respondent has stated that, it was a love marriage between her and the 2nd respondent and out of wedlock, they got two children, one boy and one girl and both are minors and she has also stated that the 2nd respondent may be advised to join with the family.

6. This Court heard the submissions of Mr.A.Mohamed Ismail, learned counsel for the petitioner and Mr.C.Iyyapparaj, learned Additional Public Prosecutor, appearing for the 1st respondent, who would state that original license of the 2nd respondent is with M/s. SRS Travels, Bangalore.

7. It appears that since the 2nd respondent is employed as a driver of a commercial vehicle, namely, lorry, he is driving the vehicle on road, having only a photocopy of his license and appropriate action would be taken in that regard.

8. This Court has heard the rival submissions and also perused the materials placed before the Court.

9. It prima facie appears that the major detainee/wife of the petitioner had developed illicit intimacy with the 2nd respondent and so also the 2nd respondent with the wife of the petitioner and both of them do not appear to have expressed their remorse for the said act. However, this Court is not inclined to comment on the same for the reason that, both of them are majors and they have taken a conscious decision to live like that.

10. The petitioner is also present before this Court, who would state that despite of the said act of the major detainee/his wife, he is willing to take her back to the matrimonial home along with the minor detainee/daughter and however, since the minor detainee/daughter is not inclined to come to his home, he prays that he may be granted with visitation rights to see her daughter since he is the biological father of the minor detainee/daughter.

11. In the light of the facts and circumstances, especially taking into consideration the fact that the wife of the petitioner is a major and she voluntarily left the company of the petitioner on account of her illicit intimacy with the 2nd respondent and so also the similar act by the 2nd respondent by leaving his family at native place in Kanyakumari District, this

Court sets the major detainee/wife of the petitioner at liberty to take care of her own future. However, in respect of the minor detainee/daughter of the petitioner, indisputably, the petitioner is the biological father of the minor detainee, and he is entitled for visitation rights and in that regard, this Court, by exercising its parent patriae jurisdiction, grants liberty to the petitioner to initiate appropriate proceedings for getting the custody of the minor daughter, as well as for his visitation rights, before the competent civil forum, in accordance with law. It is also open to the wife of the 2nd respondent, as well as his minor children, to work out their further remedy against the 2nd respondent in accordance with law.

12. This Habeas Corpus Petition is disposed of accordingly.
No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mkn/sri

To

1.The Inspector of Police,
T13, Kundrathur Police Station,
SH 113, Kundrathur, Sikkarayapuram,
Chennai - 600 069.

2.The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.Hari Radhakrishnan, Advocate, Sr.No. 42159

सत्यमेव जयते

H.C.P. No.651 of 2019

MR(CO)
CSL/26.06.2019

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