

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

DATED : 15.02.2021

CORAM :

**THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN**

H.C.P.No.228 of 2021

J.S.Shirija

... Petitioner

versus

1.The Superintendent of Police,
Namakkal District.

2.The Inspector of Police,
Namagiripettai Police Station,
Namakkal District.

3.Maheswari

4.S.Nagamani

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, seeking to issue a Writ of Habeas Corpus, directing the respondents 1 and 2 herein to produce the body of the detenu, by name, P.Suresh, S/o.Pitchamani, aged about 40 years, who is the husband of the petitioner herein, before this Court and set him at liberty.

For Petitioner : Mr.G.V.Seethalakshmi

For Respondents : Mr.R.Prathap Kumar,
Additional Public Prosecutor
for R1 and R2

ORDER

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

This Habeas Corpus Petition has been filed by the petitioner seeking a direction to respondents 1 and 2, namely, the Superintendent of Police, Namakkal District and the Inspector of Police, Namagiripettai Police Station, Namakkal District to produce the detenu, husband of the petitioner, namely, P.Suresh, S/o.Pitchamani, aged about 40 years, before this Court and set him at liberty.

2.It is averred by the petitioner in the petition that her husband has been working as a Junior Engineer (Civil), Military Engineering Service, GE(I)(P) South, Prothrapul, Port Blair, Andaman and Nicobar Island and their marriage has been solemnised on 06.06.2009 at Marthandam Sri Lakshmi Narayana Kalyannamandapam with the consent of both the parents and they were blessed with two male children as twins. While so, on 24.07.2015, she received a letter from her husband's advocate and she sent a reply notice requesting her husband to come and live with her for the future of the children. In the meanwhile, when her husband used to come and stay with his home, she gone to the

same along with her children during vacation holidays. Despite her husband made a promise that he will come and get back her to Andaman, he had not taken any steps to get back her. Therefore, when the petitioner and her parents contacted her husband's parents and sister, namely respondents 3 and 4, they evaded them and have not replied properly. Therefore, she made a complaint before the respondent police. Since the police has not taken any steps to secure the detenu from respondents 3 and 4, the petitioner is before this Court with the present Habeas Corpus Petition.

3.Opposing the above prayer, learned Additional Public Prosecutor appearing for respondents 1 and 2 submitted that after participating in the enquiry held by the second respondent police, respondents 3 and 4, who are mother in law and sister in law of the petitioner, have given letters stating that since it is a matrimonial dispute, they are no way connected with the same and they are not responsible for the said matrimonial dispute and that there was no illegal detention.

4.A perusal of the letter dated 06.02.2021 given by the detenu P.Suresh clearly shows that there was a matrimonial dispute

between the petitioner and the detenu. Paragraphs 2 and 3 are extracted hereunder:

'Meanwhile, I got many unexplainable issues and applied for resignation from duty on 05 Feb 2020. Now I am staying in Port Blair, Andaman and Nicobar Island in above mentioned address. Me and J.S.Shirija was studied in Coimbatore and passed out in 2006, she continued her M.E. And completed in 2008 and I got love married with Mrs. J.S.Shirija on 06 Sep 2009 and the same time I got posting in Andaman and Nicobar Island MES Department as Junior Engineer and Mrs.J.S.Shirija was working in L & T Chennai. We got twins boy baby in 29 Apr 2011. Mrs.J.S.Shirija got posting in National Highways on 2011 and she got appointment as Assistant Engineer in National Highways, Kulithurai near by her father's house. For safety purpose of her and my sons she started staying in her father's house. After completion of her posting period also she is not willing to move from her father's house and after I noticed that her behaviors changes and I advised to her that father's house is not permanent. But she did n't receive that advise.

My father Mr C.Pitchamani and my mother Mrs.Maheswari also advised her to leave from her father's home and come to stay with them, but she didn't listen the word of them also. My father tried to get posting in my nearby my native and that also she didn't apply for posting nearby. While in posting I visited to her

father's home on 29 Apr and 06 Sept on every year for celebration of my sons birthday and wedding anniversary upto 2015 and I stopped visiting on yearly basis because she didn't give any importance of my visits. But she didn't respect that visit and while visit also she will create some problems to fight with me. After that I left the life with her own way and I doing my job in my own way. I made telephonic conversation with my sons on his birthday on 29 Apr 2020. My father expired on 01 Nov 2017, before his death he requested her so many time, that he want to see his grand sons once, but she and his family not even allowed to show them to my father.'

5.A perusal of the above letter shows that the petitioner wife is aware of the whereabouts of her husband, who is a Government Servant, working as Junior Engineer in Military Engineering Service in Port Blair, Andaman and Nicobar Islands. The petitioner/wife (Mrs.J.S.Shirija) is also working as Assistant Engineer in National Highways, Kulithurai, nearby her father's house and living along with her sons. Detenu/husband has sent a letter dated 06.02.2021 to the Sub Inspector of Police, Namagiripet Police Station, Namakkal District/second respondent herein, stating that they are living separately due to difference of opinion. Therefore, we are able to see that it is only a matrimonial dispute, hence, the petitioner/wife

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ought to have filed a petition for restitution of conjugal rights against her husband, instead, she has been wrongly advised to file Habeas Corpus Petition. The petitioner, knowing pretty well that her husband is working in Andaman and Nicobar Islands, ought not to have come to this Court with this Habeas Corpus petition. As there is no allegation of illegal detention and that there is no merit in the petition filed by the petitioner, the Habeas Corpus Petition is liable to be dismissed as not maintainable. Accordingly, the petition fails and the same is dismissed as not maintainable. The petitioner is at liberty to work out her remedy in the manner known to law.

**[T.R.,J] [G.C.S.,J]
15.02.2021**

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To

- 1.The Superintendent of Police,
Namakkal District.
- 2.The Inspector of Police,
Namagiripettai Police Station,
Namakkal District.
- 3.The Public Prosecutor,
High Court, Madras.

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