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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	20.09.2021
DELIVERED ON	08.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE. P.N.PRAKASH

AND

THE HONOURABLE MS.JUSTICE R.N.MANJULA

H.C.P.NO.1608 OF 2020

Rajalakshmi

Petitioner

vs.

1 State of Tamil Nadu
represented by its
Principal Secretary to Government
Public (Foreigners-I) Department
Secretariat
Chennai

2 The District Collector-cum-Camp Officer
Special Camp for Foreigners
Central Prison Campus
Tiruchirappalli

3 The Inspector of Police
Q Branch
Mylapore
Chennai

Respondents

Prayer:-

Petition filed under Article 226 of the Constitution of India seeking a writ of habeas corpus against the detention order passed by the first respondent in G.O. (1D) No.349 dated 26.07.2019 and for a direction to the respondents to produce the detenu Rasakrishnan @ Radhakrishnan @ Raasa @ Ramesh, S/o Tharmadurai, who is confined at the Special Camp, Kootapattu Refugee Camp, Tiruchirappalli, before this Court and set him at liberty and permit the detenu to stay as 'out refugee' on parole with his family.



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For petitioner :Mr. R.C. Paul Kanagaraj

For respondents:Mr. R. Shanmuga Sundaram
Advocate General
assisted by Mr. R. Muniyapparaj
Additional Public Prosecutor

Mr. R. Sankaranarayanan
Addl. Solicitor General of India and
Mr. Avinash Krishnan Ravi
Central Govt. Standing Counsel
assisted the Court

ORDER

P.N. PRAKASH, J.

One Rasakrishnan @ Radhakrishnan @ Raasa @ Ramesh,, a Sri Lankan national, is said to have come to India in 2003 under a Tourist Visa and due to the ethnic conflict in Sri Lanka, he did not return to Sri Lanka, but, chose to stay in India as an 'out refugee' and report before the Inspector of Police, C-1, Madippakkam Police Station. He is said to have got married to Rajalakshmi, an Indian citizen who is the petitioner herein, on 31.08.2003. The criminal antecedents of Radhakrishnan have been set out in the counter affidavit of the Deputy Secretaries to Government, Public (Foreigners) Department and Protocol, Public Department, at paragraph 3, which reads as under:

"3. I further submit that the petitioner's husband Thiru Rasa @ Rasakrishnan @ Ramesh @ Radhakrishnan, Dharmadurai was arrested by the Central Crime Branch, Chennai City on 28.06.2019, in Central Crime Branch Cr. No.207/2019 under sections 12(1A)(b) and 12(2) of the Passport Act, 1967 (Central Act 15 of 1967) r/w 420, 468, 471 of Indian Penal Code (Central Act XLV of 1860) for preparing fake documents for obtaining visa, stickers to be pasted in the visa, changed the photos of holders in the passport copies, to use the same in foreign countries to open bank account, obtain loan and thus helped his associates to cheat Government. Investigation made disclosed that Rasa @ Rasakrishnan @ Ramesh @ Radhakrishnan Dharmadurai is originally a Sri Lankan holding Sri Lankan Passport No.N1197794 in the name of Sri Rasa Krishnan, S/o Tharmathurai. He fraudulently obtained Indian Passport No.S 6994883. It is further submitted that Sri Lankan National Rasa @ Rasakrishnan @ Ramesh



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@ Radhakrishnan Dharmadurai had acquaintance of one Prince Mathuram Cornelius, a permanent citizen of United Kingdom Britain and running an educational institution in London in the name of Exodus Educational Services Pvt. Ltd. along with his associates Tvl. Rasa @ Rasakrishnan @ Ramesh @ Radhakrishnan Dharmadurai, Godwin and Prabhakar. They had prepared fake documents like company call letters, bank accounts for the fake companies, paid income tax for those fake companies and obtained visa for ineligible candidates and thus, indulged in illegal trafficking. Apart from that, he concealed his Sri Lankan citizenship, submitted fake documents and obtained Indian passport and travelled to foreign countries, and had plan to settle in London. He was concerned previously involved in the following cases:

i CCB Cr.No.454/2009 under Sections 419, 420, 467, 468, 471 and 511 IPC, CC No.10138 of 2014 in CCB Special Court.

ii J8 Neelankarai Police Station Cr.No.10/14 under Sections 294(b), 323 and 506(I) IPC.

iii S7 Madipakkam Police Station Cr.No.34/2014 under Sections 341, 324 and 506(II) IPC - CC No.785/2014 at Judicial Magistrate, Alandur.

It is also submitted that during the course of investigation, 16 items of incriminating records and articles and material objects (like passports in various names, Aadhar cards, various bank account statements, mobile phones, laptop and a copy of Canada Visa sticker etc. were seized from Thiru Rasa @ Rasakrishnan @ Ramesh @ Radhakrishnan Dharmadurai."

After he was released on bail, the State Government passed an order in G.O. (1D) No.349, Public (Foreigners.I) Department dated 26.07.2019 under Section 3(2)(e) of the Foreigners Act, 1946, lodging him in the Special Camp at Trichy, aggrieved by which, his wife Rajalakshmi has filed the present habeas corpus petition.

2 Heard Mr. R.C. Paul Kanagaraj, learned counsel for the petitioner, Mr.R.Shanmugasundaram, learned Advocate General assisted by Mr.R.Muniyapparaj, learned Additional Public Prosecutor and Mr.R.Sankaranarayanan, learned Additional Solicitor General assisted by Mr.Avinash Krishnan Ravi, learned Central Government Standing Counsel.



3 The main submission of Mr. R.C. Paul Kanagaraj was that the State Government, by order in G.O. No. SR 3/1137-1/2016 Public Department dated 20.09.2016, permitted five persons, viz., (1) Sivalingam @ Elango, (2) Jayaraj @ Senthilkumar, (3) Dheepan @ Pratheepan, (4) Prabhu @ Pratheepan and (5) Deva @ Sreeswararaja, to be delogged from the Special Camp at Trichy and therefore, Radhakrishnan also deserves to be so delogged. In support of this contention, he placed strong reliance on the unreported judgment of a Division Bench of this Court in S. Jayachandran vs. State and 2 others¹.

4 On the contrary, Mr. Sankaranarayanan, learned Additional Solicitor General, submitted that this very habeas corpus petition is not maintainable in view of the authoritative pronouncement of a Division Bench of this Court in Kalavathy vs. State² that a person lodged in the special camp is not in any illegal detention for the issuance of a writ of habeas corpus. He took this Court through the various provisions of the Foreigners Act in support of this contention.

5 From a perusal of Sections 3 and 4 of the Foreigners Act, it is limpid that there are two classes of foreigners whose movements can be restricted and they are classified as parolees and internees. A foreigner is said to be a 'parolee' if an order under Section 3(2)(e) of the Foreigners Act, has been passed against him and a foreigner is said to be an 'internee' if an order has been passed against him under Section 3(2)(g), *ibid.* The Central Government has delegated the powers to pass orders under Section 3(2)(a) to (f), *ibid.*, to the State Government under the notification of the Government of India, Ministry of Home Affairs, No.4/3/56 (1) F-1 dated 19.04.1958, by virtue of which, the State Government has been invested with the power to pass orders under Section 3(2)(e), *ibid.* As regards the internee, the Central Government has not delegated the power under Section 3(2)(g), *ibid.* to the State of Tamil Nadu.

6 At this juncture, it may be felicitous to extract the relevant passage from paragraph 15 of the judgment in Kalavathy (*supra*):

"15.If that be so, under S. 3(2)(e) of the Act, the State Government does have the power, to require foreign nationals, not only to reside in a particular place, as a special refugee camp, but also have power to impose restrictions, on their movements. Power, to pass orders under S.3(2)(e) of the Act, indisputably has been delegated by the Central

1 HCP No.1381 of 2020 decided on 19.08.2020

2 1995-2-L.W.(Cr.) 690



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Government to the State Government. We are unable to agree, that the foreigners involved in these writ petitions, have been arrested and detained or confined. Only certain limited restrictions have been made in their movements and place of residence. A special refugee camp cannot be termed as an internment camp. If that be so, the argument that the impugned orders must be deemed to have been made under S.3(2)(g) of the Act cannot survive. Similarly, the protection sought under Art.22(4) of the Constitution also, cannot exist, since the said Article deals with protection against arrest and detention in certain cases." (emphasis supplied)

7 In Yogeswari vs. The State and another³, a view contrary to the one taken in Kalavathy (supra) was taken by a Division Bench of this Court. Again, in Premavathy @ Rajathi vs. State and 2 others⁴, a Division Bench of this Court considered both Kalavathy (supra) and Yogeswari (supra), but, chose to follow Kalavathy (supra), without referring the matter to a larger Bench.

8 In order to reconcile this issue, a Full Bench of three Judges in Sree Latha vs. State and others⁵, went into all the aspects of the matter relating to an order passed against a foreigner under Section 3(2)(e) of the Foreigners Act and held authoritatively that the law laid down in Kalavathy (supra) was correct and not the one laid down in Yogeswari (supra). The Full Bench categorically held that directing a foreigner to stay within the special camp with certain inevitable restriction on his movement would not amount to an order of preventive detention.

9 In the light of the aforesaid discussion, an order passed by the State Government under Section 3(2)(e) of the Foreigners Act cannot be a subject matter of challenge in a habeas corpus petition as there is no order of detention and also since the protection under Article 22(4) of the Constitution of India is not available.

10 Very recently, in State vs. H. Nilofer Nisha⁶, the Supreme Court has held as under:

3 2003-1-L.W. (CrL.) 352

4 H.C.P. No.1038 of 2003 decided on 14.11.2003

5 (2007) 2 MLJ (CrL.) 1320

6 (2020) 14 SCC 161



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"13. It is a settled principle of law that a writ of habeas corpus is available as a remedy in all cases where a person is deprived of his/her personal liberty. It is processual writ to secure liberty of the citizen from unlawful or unjustified detention whether a person is detained by the State or is in private detention. As Hidayatullah, J. (as he then was) held: (SCC p. 1630, para 12)

"12. ... The writ of habeas corpus issues not only for release from detention by the State but also for release from private detention" [Mohd. Ikram Hussain v. State of U.P., AIR 1964 SC 1625 : (1964) 2 Cri LJ 590].

At the same time, the law is well established that a writ of habeas corpus will not lie and such a prayer should be rejected by the Court where detention or imprisonment of the person whose release is sought is in accordance with the decision rendered by a court of law or by an authority in accordance with law."

(emphasis supplied)

11 In this case, at the risk of repetition, we state that an order passed under Section 3(2)(e) of the Foreigners Act by the State Government restricting the movement of foreigners is not an order of detention, as held by the Division Bench of this Court in Kalavathy (supra) and confirmed by the Full Bench of this Court in Sree Latha (supra). A foreigner does not have the right guaranteed under Article 19 of the Constitution of India. On this short ground itself, this habeas corpus petition is liable to be dismissed.

12 Coming to the Government Order dated 20.09.2016 relied upon by Mr. Paul Kanagaraj, Mr. Muniyapparaj submitted that pursuant to the suggestions of the Division Bench of this Court in Premavathy @ Rajathi (supra), a Joint Review Committee meeting was held on 02.09.2016 and the Review Committee recommended the delodgment of the five persons referred to in the said Government Order; however, the case of Radhakrishnan was considered by the Review Committee on 18.01.2021 and was not recommended for delodgment. A copy of the proceedings of the Review Committee has been furnished to the learned counsel for the petitioner.

13 It is trite that a foreign national does not enjoy the fundamental rights guaranteed by Article 19 of the Constitution of India, which include right to freedom of movement and



therefore, the order passed under Section 3(2)(e) of the Foreigners Act, cannot be challenged on the ground of violation of Article 19(1)(d) of the Constitution of India.

14 However, the learned counsel for the petitioner submitted that the prayer may be considered on humanitarian grounds.

15 In this regard, Mr. Muniyapparaj, learned Additional Public Prosecutor, made the following submissions:

- There are 107 camps in Tamil Nadu to accommodate the families of Sri Lankan refugees who came to Tamil Nadu during the ethnic crisis. The State Government pays Rs.1,000/- per month to the head of the family, Rs.750/- per month to a member of the family who is above 12 years and Rs.450/- per month to the member of a family who is below 12 years.
- The State Government is also permitting Sri Lankan nationals to stay as 'out refugees' without seeking any financial aid from the Government, but, on condition that they should report before the local police regularly.
- If a Sri Lankan refugee or as a matter of fact, any foreigner, gets involved in an offence, he is directed to be lodged in the special camp at Trichy on the order of the Government passed under Section 3(2)(e) of the Foreigners Act after he is released on bail in the case in which he was involved. Even such a foreigner is paid Rs.175/- per day and is permitted to have gas connection and cook his own food. His relatives are permitted to call on him at the camp. He is taken to the Court under escort on the hearing dates of the case. The State Government provides him free medical treatment in the nearest Government Hospital.
- Though the Foreigners Act does not provide for any format of review of the case of foreigners kept in the special camp at Trichy, yet, on the suggestions of this Court in Premavathy (supra), a Review Committee goes into the case of each foreigner periodically and recommends for delodgment from the special camp.
- Accordingly, the case of Radhakrishnan was considered by the Joint Review Committee on 18.01.2021 and it was decided not to recommend his case for delodgment.



16 As stated above, there is no statutory requirement for the constitution of a Review Committee to go into the case of foreigners kept in the special camp at Trichy. But, this exercise is undertaken periodically in deference to the suggestions given by this Court in Premavathy (supra) and therefore, one cannot claim as a matter of a legal right that he be delogged from the special camp.

17 However, we grant liberty to Radhakrishnan to make a detailed representation as and when the Review Committee meeting is convened, for considering his delodgement on valid grounds. We hasten to add that we are not granting any legal right of representation, inasmuch as, such a right can be conferred only by law and not by Courts. In State and others vs. G.Karunairaj⁷, a Division Bench of this Court, has clearly held that the opportunity of personal hearing would come into play only in the event of expulsion of a foreigner from this country and not while passing orders under Section 3(2)(e) of the Foreigners Act.

18 As far as the Division Bench judgment of this Court in S. Jayachandran (supra) relied on by the learned counsel for the petitioner, wherein, the order passed under Section 3(2)(e) of the Foreigners Act was set aside, is concerned, we are unable to persuade ourselves to follow the said order, since it does not even refer to the law laid down by the Full Bench in Sree Latha (supra) and by the Division Benches in Kalavathy (supra), Premavathy (supra) and Karunairaj (supra).

19 Before parting, it may be pertinent to state here that India was not a party to the 1951 Convention nor the 1967 Protocol, both relating to the status of refugees. However, even in the 1967 Protocol, Article 2 very clearly states as under:

"Article 2

GENERAL OBLIGATIONS

"Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order."

20 The bottom line is, a Sri Lankan refugee can either choose to reside in any one of the 107 refugee camps or stay as an 'out refugee' and report in the local police station. However, he loses these privileges if he gets involved in an offence in India and thereafter, his place of stay could



possibly be only in the special camp at Trichy until the State Government decides to dislodge him. Judicial review of the order of the State Government is maintainable only on very limited grounds as held in Karunairaj (supra) as under:

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"33. As per the above said decision, the satisfaction of the authority on such proceedings, has to be subjective satisfaction and would be open to a narrow judicial review."

21 In view of the aforesaid discussion, we hold that a petition challenging an order passed by the State Government under Section 3(2)(e) of the Foreigners Act cannot be registered as a habeas corpus petition and at the most, be registered as a writ petition to be heard by a single Bench, as could be inferred from the Division Bench judgment of this Court in Karunairaj (supra).

22 Ex consequenti, we direct the Registry to place the matter before the Hon'ble Chief Justice for appropriate directions to number a petition challenging an order passed by the State Government under Section 3(2)(e) of the Foreigners Act or any consequential order, as a writ petition to be heard by a Single Bench, and not as a habeas corpus petition.

23 In the result, this habeas corpus petition is dismissed with the above observation and direction, and liberty, as granted in paragraph 17 (supra).

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

cad

To

- 1 The Principal Secretary to Government
Public (Foreigners-I) Department
Secretariat
Chennai-9



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- 2 The Joint Secretary to Government
Public law & order
Secretariat
Chennai-9
- 3 The District Collector-cum-Camp Officer
Special Camp for Foreigners
Central Prison Campus
Tiruchirappalli
- 4 The Inspector of Police
Q Branch
Mylapore
Chennai
- 5 The Public Prosecutor
Madras High Court
Chennai 600 104
- 6 The Registrar Judicial,
High Court, Chennai 104.

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The Section Officer,
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Chennai-104.

H.C.P. No.1608 of 2020

PVS (CO)

PM/26/10/2021

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