



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	20.09.2021
DELIVERED ON	08.10.2021

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CORAM:

THE HON'BLE MR.JUSTICE. P.N. PRAKASH

and

THE HON'BLE MS.JUSTICE R.N. MANJULA

H.C.P. No.2399 of 2020

Dhanam

Petitioner

vs.

- 1 State of Tamil Nadu
represented by its
S.C. Joint Secretary to Government
Public (SC) Department
Secretariat
Chennai 600 009
- 2 The District Collector
Tiruchirappalli
- 3 The Deputy Collector (In charge)
Special Camp
Kottappattu
Tiruchirappalli - 620 023
- 4 The Superintendent of Police
"Q" Branch CID
Chennai 600 004
- 5 The Assistant Commissioner of Police
Central Crime Branch
Chit, Kandhuvatti and Fake Passport Prevention Wing
Vepery
Chennai 600 007

Respondents

Petition filed under Article 226 of the Constitution of India seeking a writ of habeas corpus calling for the records relating to the order passed in G.O.No.SR.III/2228-2/2018 dated 05.02.2019 on the file of the first respondent, quash the same and direct the respondents to produce the body of the detenu/petitioner's husband P. Krishnamoorthy @ Moorthy, S/o Paramanandam, aged 70 years, now detained at Special Refugee



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Camp for Sri Lankan Tamils, Kottappattu, Tiruchirappalli, before this Court and permit him to reside along with the petitioner and his family members.

For petitioner

Mr. V. Elangovan
for Mr. S. Doraiswamy

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

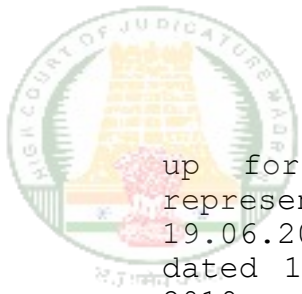
ORDER

P.N. PRAKASH, J.

One Krishnamoorthy came to India as a refugee from Sri Lanka during the ethnic conflict in 1989. He was permitted to stay in India as an 'out refugee' and he was directed to report before the Inspector of Police, Aminjikarai Police Station. He is said to have got married to Dhanam, the petitioner herein.

2 While that being so, he was implicated in CCB Cr. Nos.1004 of 2003, 505 of 2005, 287 of 2014, 89 of 2016, 268 of 2018 and 269 of 2018 along with others for manufacturing forged Indian and Sri Lankan passports. In all these cases, he was arrested by the police from time to time and was, perhaps, released on statutory bail on the failure of the police to file charge sheets, as envisaged under Section 167 Cr.P.C. It appears that he was also detained under Tamil Nadu Act 14 of 1982.

3 Owing to his involvement in various criminal activities referred to above, the State Government, in exercise of the powers conferred by Section 3(2)(e) of the Foreigners Act, 1946, read with the notification of the Government of India, Ministry of Home Affairs, No.4/3/56 (1) F-1 dated 19.04.1958, by G.O.No.SR.III/2228-2/2018 Public (SC) Department dated 05.02.2019, lodged him in the Special Camp, Trichy. This order was not put to challenge initially by Krishnamoorthy, but, on the contrary, a representation dated 03.04.2019 was submitted to the Government for revoking the Government Order dated 05.02.2019 and a writ petition being W.P. No.17154 of 2019 was filed for a direction to the Government to consider the representation dated 03.04.2019. When W.P. No.17154 of 2019 came



up for hearing, it was reported to the Court that the representation dated 03.04.2019 was considered and rejected on 19.06.2019 by the authorities. Challenging the rejection order dated 19.06.2019, a fresh writ petition being W.P. No.23866 of 2019 was filed by the petitioner seeking release of her husband Krishnamoorthy. A learned single Judge of this Court dismissed W.P. No.23866 of 2019 on 16.09.2019. While that being so, the petitioner has challenged the first order dated 05.02.2019 in this habeas corpus petition.

4 Heard Mr. V. Elangovan, 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.

5 At the outset, the learned counsel for the petitioner submitted that he prays for the release of the detenu Krishnamoorthy from the special camp on the ground that he is suffering from several ailments and that his continued detention in the camp may lead to his untimely demise.

6 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. State¹ 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.

7 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.

1 1995-2-L.W.(Cr.) 690



8 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 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)

9 In Yogeswari vs. The State and another², 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 others³, 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.

10 In order to reconcile this issue, a Full Bench of three Judges in Sree Latha vs. State and others⁴ 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.

11 In the light of the aforesaid discussion, an order passed by the State Government under Section 3(2)(e) of the

² 2003-1-L.W. (CrI.) 352

³ H.C.P. No.1038 of 2003 decided on 14.11.2003

⁴ (2007) 2 MLJ (CrI.) (1320)



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.

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12 Very recently, in State vs. H. Nilofer Nisha⁵, the Supreme Court has held as under:

"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)

13 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. In fact, the petitioner herself knows that a writ of habeas corpus is not maintainable and that is why, she filed two writ petitions, viz., W.P. No.17154 of 2019 and W.P. No.23866 of 2019 which were heard and disposed of by two learned single Judges of this Court. On this short ground itself, this habeas corpus petition is liable to be dismissed.

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

5 (2020) 14 SCC 161



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 Krishnamoorthy was considered by the Joint Review Committee on 29.05.2021 and by proceedings dated 03.06.2021, has decided not to recommend his case for delodgment. A copy of the proceedings of the Review Committee has been furnished to the learned counsel for the petitioner.

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 delodged from the special camp.



17 However, we grant liberty to Krishnamoorthy to make a detailed representation to the Review Committee seeking delodgment and on such representation being given, the Review committee may assess his health condition objectively and recommend his delodgement on humanitarian grounds, since his health condition is said to be not satisfactory. 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.Karunairaj*⁶, 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. Further, a Division Bench of this Court, in *S. Jayachandran vs. State and 2 others*⁷, wherein, the order passed under Section 3(2)(e) of the Foreigners Act was set aside, was pressed into service on behalf of the petitioner. 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).

18 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."

19 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 delodge him. Judicial review of the order of the State Government is maintainable only on very limited grounds as held in *Karunairaj* (supra) as under:

"33. As per the above said decision, the satisfaction of the authority on such proceedings, has

6 2014 (1) CTC 113

7 H.C.P. No.1381 of 2020 decided on 19.08.2020



to be subjective satisfaction and would be open to a narrow judicial review."

20 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).

21 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.

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 S.C. Joint Secretary to Government
Public (SC) Department
Secretariat
Chennai 600 009
- 2 The District Collector
Tiruchirappalli
- 3 The Deputy Collector (In charge)
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Central Crime Branch
Chit, Kandhuvatti and Fake Passport Prevention Wing
Vepery, Chennai 600 007

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6 The Public Prosecutor
Madras High Court
Chennai 600 104

7. The Joint Secretary to Government,
Public (law & Order),
Fort Saint George,
Chennai 9

8. Special Refugee Camp for Sri Lankan Tamils,
Kottappattu, Tiruchirappalli.

H.C.P. No.2399 of 2020

PL (CO)

GN(01/11/2021)