

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

H.C.P.(MD)No.417 of 2023

S.Rajakumar ... Petitioner / Husband of the Detenue

Vs.

1.The Superintendent of Police,
Thoothukudi District, Thoothukudi District.

2.The Inspector of Police,
Muthaiyapuram Police Station,
Thoothukudi District.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, directing the respondents to produce the body or person of the petitioner's wife, namely, Selva Bharathi, Female aged about 26 years, W/o.S.Rajakumar before this Court and set her at liberty.

For Petitioner : Mr.B.Arun

For Respondents : Mr.A.Thiruvadi Kumar,

Additional Public Prosecutor

ORDER

(Order of the Court was made by ***R.SURESH KUMAR, J.***)

The petitioner, seeking production of his wife, namely, Selva Bharathi, aged about 26 years, has filed this Habeas Corpus Petition.

2.The learned counsel appearing for the petitioner would submit that the detinue is the wife of the petitioner and her whereabouts is not known for sometime and in the meanwhile, she filed H.M.O.P.No.94 of 2022 before the Family Court, Thoothukudi for divorce that is also pending. According to the petitioner, both appeared and settled the dispute amicably and also they have decided to live together, however, thereafter, she did not appear before the Court concerned on every hearing. Therefore, after giving a complaint to the Police, he has moved the present Habeas Corpus Petition. Hence, he seeks indulgence of this Court.

3.The learned Additional Public Prosecutor appearing for the respondents, on instructions, would submit that enquiry has been conducted at the family of the detinue, where the brother of the detinue has given a

statement and he has also stated about the marriage solemnized between the petitioner and the detenue. After one month family life, there was some strained relationship between them, therefore, she left for a foreign country to take a job, as she was qualified to hold a job, because she is a B.E. Instrumentation graduate.

4.In the meanwhile, she filed H.M.O.P.No.94 of 2022, seeking divorce against the petitioner, which has been posted for hearing on 19.04.2023. On that date, certainly the detenue would appear before the Court concerned.

5.When that being so, according to the learned Additional Public Prosecutor for the respondents, absolutely, there is no illegal custody on the part of the detenue and hence, the present Habeas Corpus Petition is totally misconceived.

6.We have heard the learned counsel appearing for both sides and perused the materials available on record.

7. On perusal of these factual matrix, we have no hesitation to hold that this Habeas Corpus Petition filed by the petitioner is totally misconceived, as he has to wait till the next hearing date ie., 19.04.2023 before the Court concerned, where the divorce petition is pending.

8. Thereafter, it is for the petitioner to pursue the matter and to explore the possibility of re-union otherwise the matter would be decided by the Court concerned as to whether the divorce is to be given between them or not on merits and in accordance with law. Therefore, at this juncture, it cannot be treated as illegal custody. Hence, this Habeas Corpus Petition would not be maintained, accordingly, it is dismissed.

(R.S.K., J.) & (K.K.R.K, J.)
29.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

MYR

To

1.The Superintendent of Police,
Thoothukudi District, Thoothukudi District.

2.The Inspector of Police,
Muthaiyapuram Police Station,
Thoothukudi District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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R.SURESH KUMAR, J.

AND

K.K.RAMAKRISHNAN, J.

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