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HCP.No.146 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.146 of 2024

Dr.Mohammed Fazaludeen Alimullah

...Petitioner

Vs.

1.The State represented by
The Commissioner of Police,
No.132, Commissioner Office Building,
EVK Sampath Road,
Vepery, Chennai – 600 007.

2.The Inspector of Police,
E-2, Royapettah Police Station,
Chennai – 600 014.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to direct the respondents 1 and 2 herein to produce the body or person of the petitioner's wife, Mrs.Fathima Alimullah, W/o.Mohammed Fazaludeen Alimullah, aged about 47 years before this Court and set her at liberty.



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For Petitioner : Mr.J.Kather Hussain
For Respondents : Mr.E.Raj Thilak,
Additional Public Prosecutor
assisted by Mr.C. Aravind

ORDER

(Order of the Court was made by *M.S.RAMESH, J.*)

Complaining that the petitioner's wife had gone missing from the house from 15.11.2023 onwards, his complaint made on 01.12.2023 came to be registered by the 2nd respondent Police in Crime No.239/2023 under the caption “woman missing”. Since his wife could not be traced within a reasonable time by the Police, he has chosen to file the present Habeas Corpus Petition.

2. In the affidavit filed in support of the present petition, the petitioner claims that while his wife had left the house, she had taken some of her dresses, Rs.5 lakh worth of jewels, Aadhar Card, PAN Card and the marriage documents. He has also stated that his wife's mobile phone is switched off. In the same affidavit, he has also affirmed that his in-laws



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have joined hands with the local politicians to take his wife in their illegal custody, in order to reap the benefits of deposits lying in her name.

3. The learned counsel for the petitioner submitted that the 2nd respondent Police had sent a photograph and a video clip to the petitioner on 03.12.2023 and had convinced the petitioner that his wife had left the house on her own volition and after obtaining a statement for her, they had sent her back. According to him, his wife has been influenced by some influential persons and a former MLA and therefore, she is now in illegal custody.

4. On the contra, the learned Additional Public Prosecutor submitted that the petitioner's wife had left the matrimonial house of the petitioner on her own free will, owing to a matrimonial dispute between them. After leaving the petitioner, she had gone to the 2nd respondent Police and had given a statement and thereafter, she had left the country and is now at Kuala Lumpur, Malaysia. In support of such statements, the learned Additional Public Prosecutor produced a statutory declaration made by the



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petitioner's wife, along with the statement she had given to the 2nd respondent Police.

5. A perusal of the statutory declaration made by the petitioner's wife, which has been duly attested by a registered Commissioner of Oaths at Malaysia, would reveal that his wife had a complaint about the mental, physical and emotional stress suffered by her, which she had attributed on the petitioner himself. She had also stated that owing to the matrimonial dispute with her husband, she had separated from him on her own free will and is now living in Malaysia under the protection of her parents. Her complaint given to the Malaysian Police has also been received and a duly attested copy dated 06.02.2024 has also been produced before this Court.

6. The statement made by the petitioner's wife to the 2nd respondent Police, which is now in the form of a report, reads as follows:-

“I am FATIMAH BINTI MOHAMMED FEIZAL, I was married to an Indian national, MOHAMMAD FAZLUDDIN ALEEMULLAH in 2002 in Malaysia. He tricked me and took me to Chennai in 2004, under the



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guise of a family visit.

However, I was made to stay back illegally by my husband. He did not allow me with any family members, he kept me always locked up in the house and he restricted my use of a personal telephone. I was made virtually a prisoner. I endured all this mental, physical and emotional stress solely for the sake of my son Mohammadul Hassan who was born in Chennai in 2004. I had no avenue to complain to the authorities as I was never let out of my house. I was at the end of my rope and decided. I could no longer stay in this situation. It was with a heavy heart I made the decision to leave my beloved son behind and came back to Malaysia.

Leaving my husband was a decision I made freely, willingly and happily. I am now in the comfort, protection and safety of my family, who whole heartedly support my decision in leaving my marital home. I am at great peace now. I have no wish to return to my husband Mohammad Fazluddin Aleemullah and I have no wish whatsoever to continue living as his wife. After 20 years of mental and physical abuse, I deserve to live in peace. I deserve to be left alone. My family have been kind and understanding of my situation and



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has offered support in me leaving my husband. I am making this as a report incase my husband decides to disturb me in my country.”

7. The aforesaid statement substantially affirms that the petitioner's wife had left the house on her own free will, owing to the matrimonial dispute between herself and the petitioner and that she is now safely living with her parents under their care and protection.

8. The consequential issue that arises is as to whether Article 226 of the Constitution of India can be invoked for issuance of a Writ in the nature of Habeas Corpus, when the aspect of “illegal detention” is conspicuously absent.

9. A Writ in the nature of Habeas Corpus is a prerogative Writ by virtue of which the cause and validity of detention of a person are investigated by a summary procedure. There are certain basic principles for assuming jurisdiction while dealing with a Writ of Habeas Corpus.



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10. When an authority holding custody of the detainee, fails to satisfy the Court with regard to the deprivation of his personal liberty, then a Writ of Habeas Corpus will be issued to set the alleged detainee at liberty. However, when the authority satisfies the Court that the detention was through established procedure of law and such detention being legal, then in such cases, a Writ of Habeas Corpus will not be issued. These situations usually arise in cases of preventive detention.

11. In cases of illegal detention of someone, at the behest of another person and the detainee is deprived of his/her liberty, a Writ of Habeas Corpus could be issued to set forth the detainee at liberty. In such non-statutory cases, this Court may direct the person who has detained another person, to produce the latter before the Court, so as to enable the Court to know on what ground he/she has been detained. On being satisfied that a person, who is a major by age, has been detained against his/her choice or willingness and has been deprived of his/her personal liberty, the Court may then subject him/her at liberty.



12. In the case of ***Soni Gerry Vs. Gerry Douglas*** reported in **(2018) 2**

SCC 197, the Hon'ble Supreme Court, while dealing with a case where the daughter of the petitioner therein, who was a major by age, had expressed her desire to reside in Kuwait, where she was pursuing her education, it was observed thus:-

“9..... She has, without any hesitation, clearly stated that she intends to go back to Kuwait to pursue her career. In such a situation, we are of the considered opinion that as a major, she is entitled to exercise her choice and freedom and the Court cannot get into the aspect whether she has been forced by the father or not. There may be ample reasons on her behalf to go back to her father in Kuwait, but we are not concerned with her reasons. What she has stated before the Court, that alone matters and that is the heart of the reasoning for this Court, which keeps all controversies at bay.

10. It needs no special emphasis to state that attaining the age of majority in an individual's life has its own significance. She/He is entitled to make her/his choice. The courts cannot, as long as the choice remains, assume the role of parens patriae. The



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daughter is entitled to enjoy her freedom as the law permits and the court should not assume the role of a super guardian being moved by any kind of sentiment of the mother or the egotism of the father. We say so without any reservation.”

13. In the case of ***Mohd. Ikram Hussain Vs. State of U.P.*** reported in ***AIR 1964 SC 1625***, it was observed that a Writ of Habeas Corpus is a Writ of right and not a Writ of course and may be granted only on reasonable grounds or probable cause being shown. In ***Kanu Sanyal Vs. District Magistrate, Darjeeling*** reported in ***(1973) 2 SCC 674***, the Hon'ble Supreme Court held that the object of a Writ of Habeas Corpus is to secure release of a person, who is illegally restrained of his liberty.

14. The exercise of the extraordinary jurisdiction for issuance of a Writ of Habeas Corpus would, therefore, be seen to be dependent on the jurisdictional fact that the applicant establishes a *prima facie* case that the detention is unlawful. It is only where the aforementioned jurisdictional fact is established that the applicant becomes entitled to a Writ, as of right, as



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held in the case of ***Rajeswari Chandrasekar Ganesh Vs. State of Tamil Nadu and Others*** reported in (2022) SCC OnLine SC 885. Thus, the petition seeking for such a relief should *prima facie* disclose that a person is under illegal detention by someone and only on satisfaction of the same, will the Court proceed to issue a Writ for production of the person from such illegal detention.

15. In the instant case, the petitioner himself has indicated in his affidavit that his wife had left his house after taking some of her belongings and has also admitted that the 2nd respondent Police had informed him about his wife having reported before them and given a statement that she had left his house on her own free will. If that be so, we are unable to appreciate the conduct on the part of the petitioner in having invoked Article 226 of the Constitution of India, which Habeas Corpus Petition is apparently not maintainable.

16. The petitioner has abused the due process of law, more particularly, when an alternate remedy under Section 482 of Code of



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Criminal Procedure is also available to him. Thus, we are of the view that cost could be imposed on the petitioner for having abused the due process of law.

17. In the result, the Habeas Corpus Petition stands dismissed with a cost of Rs.10,000/-, which amount shall be paid by the petitioner to the Tamil Nadu State Legal Services Authority, Chennai, within a period of four (4) weeks from the date of receipt of a copy of this order.

[M.S.R.,J.] [S.M.,J.]
07.02.2024

Index: Yes/No
Neutral Citation: Yes/No
Speaking order/Non-speaking order
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SUNDER MOHAN, J.

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