
(2007) 09 MAD CK 0036

In the Madras High Court

Case No : Habeas Corpus Petition No's. 324, 327 and 1291 of 2006

E. Kathirvelu, A. Salya and K. Nageswara Rao

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 04-09-2007

Acts Referred:

Citation : (2007) 09 MAD CK 0036

Hon'ble Judges : R. Regupathi, J;P.D. Dinakaran, J

Bench : Division Bench

Advocate : D. Geetha, in HCP. 324 and 327/06 and S. Mohana Vadivelan, in HCP. 1291/06, for the Appellant; N.R. Elango, APP, P. Wilson Asst. Solicitor General for Central Govt., P. Subba Reddy, for R-4 in HCPs 324 and 327/06, Geetha Ramaseshan, for R-5 in HCPs. 324 and 327/06 and A. Thiagarajan, for G. Mohanakrishnan, for R-6 in HCPs. 324 and 327/06, for the Respondent

Judgement

P.D. Dinakaran, J.—Human Trafficking is the modern-day slave trade, which poses a global threat. The Trafficking is increasingly becoming

an organized crime and the same raises serious public health concerns. It spreads across the continents, which is a matter of serious concern. The

threat of human trafficking was discussed in threadbare by the Apex Court in various decisions, viz., in Lakshmi Kant Pandey Vs. Union of India

(UOI), , Laxmi Kant Pandey Vs. Union of India (UOI) and Another, , Laxmi Kant Pandey Vs. Union of India (UOI), , Lakshmi Kant Pandey v.

Union of India and Anr., (2001) 9 SCC 379 , in Karnataka State Council for Child Welfare v. Society of Sisters of Charity ST. Gerosa Convent

AIR 1984 SC 658, in Sumanlal Chhotelal Kamdar, etc. Vs. Miss Asha Trilokbhai Saha etc., , in Indian Council Social Welfare and Others Vs.

State of A.P. and Others, , in Smt. Anokha Vs. The State of Rajasthan and Others, and in St. Theresa's Tender Loving Care Home and Others

Vs. State of Andhra Pradesh, as well as by a Division Bench judgment of the Andhra Pradesh High Court dated 2.5.2003 in the case of A.P.John

Clemants & another (C.M.A. Nos. 2009 & 2076 of 2002) and by a Division Bench of this Court in S. Banu v. Raghupathy, Principal

Thiruvalluvar Gurukulam School and Ors. in the recent decision dated 19.6.2007 in H.C.P. No. 1139 of 2006).

2. That apart, pursuant to the directions given by the Apex Court in the Laxmi Kant Pande's case, referred supra, the Ministry of Social Welfare

Department, Government of India, also constituted an agency called Central Adoption Resource Agency (CARA), the third respondent herein, on

28th June, 1990, to oversee the domestic and inter-country adoptions. The said agency, CARA also framed certain guidelines for inter-country

adoptions. Repeated guidelines are being issued from time to time by the Apex Court as well as by various other High Courts to the Department of

Social Welfare as also to the Legal Services Authority, CARA and other special groups, both at Central and State, requiring them to ensure the

guidelines prescribed scrupulously. But, still the grievance of human trafficking continues.

3. The above are the three cases that are only illustrative. H.C.P. No. 324 of 2006 is by the father of the detenu by name Satish Kumar.

According to him, on the night of 9.3.99, he along with his wife and the detenu child, aged 1 = years old, were sleeping outside the house and

when his wife woke up at about 3.00 a.m. on 9/10.3.99, she found her son Satish Kumar, who was sleeping beside her, was missing. According

to the petitioner, even though on the very next day, a complaint was lodged at the second respondent police station and a case was registered in

Crime No. 391 of 1999 and investigation was taken up and subsequently, the case was transferred to the file of CBCID, by an order of the

Director General of Police on 20.9.2006, till date the respondents could not make any improvement in the investigation, obviously for the reason

that the child had already been given in adoption to the parents at Netherlands.

4. H.C.P. No. 327 of 2006 is also by the father of the detenu, by name, Jabeen, aged four years, alleging that his daughter was missing from

26.11.1998. The petitioner complains that on 26.11.1998, the detenu Jabeen and the petitioner's son by name Sadam Hussain, were playing

near the door steps of the house and at that time, two ladies came in an auto and took the girl child and when the same was objected by the minor

son Sadam Hussain, they carried him also in the auto, but somehow Sadam Hussain was able to jump out of the auto and escaped. Even though

the petitioner reported the same to the police on the same day, on the basis of which, a case was registered in Crime No. 1542 of 1998 and

investigation was conducted and later on, the case was transferred to the file of CBCID by the order of Director General of Police on 20.9.2006,

still the girl baby could not be brought before this Court by the respondents, for the reason that she was given in adoption to an Australian family.

5. Again in H.C.P. No. 1291 of 2006, a boy aged 1 = years old, by name Subash, was missing from 19.2.99 and his father, the petitioner in this

H.C.P., lodged a complaint before the first respondent police, who registered the same in Crime No. 85 of 1999, which was subsequently

transferred by the order of Commissioner of Police to the Central Crime Branch. But, till date the said detenu Subash could not be traced and it is

reported that the investigation in the case revealed that the boy was also given in adoption to the parents in U.S.A.

6. The common grievance of the petitioners in these Habeas Corpus Petitions is that the agencies, who have been engaged to complete the

adoption process, have not followed the guidelines prescribed by the CARA and in some cases, even though, the adoptions were made through

the Court orders, they were based on impersonation and fraudulent documents. However, we do not want to express any opinion on this aspect at

this stage as it would affect the investigation in the above crimes.

7. Mr.N.R.Elango, learned Additional Public Prosecutor, very fairly submits that even though the officials of CBCID and the Central Crime Branch

are capable of proceeding with the investigation further, for better and expeditious investigation, these matters may be transferred to the file of

Central Bureau of Investigation (CBI), as the investigation has to be conducted outside the India also, after getting due permission from the

Ministry of External Affairs and after following the necessary procedures, viz., letter of request, etc., as contemplated under the Code of Criminal

Procedure.

8. Mr.P.Wilson, learned Assistant Solicitor General, appearing for the CARA as

well as for the C.B.I. and Ministry of External Affairs, also fairly

comes forward that the C.B.I. is prepared to undertake the investigation in view of the serious nature of the crimes in question. The learned

Assistant Solicitor General also guarantees this Court that both the Ministry of External Affairs and the C.A.R.A will extend their full support to the

C.B.I. in the matter.

9. Under such circumstances, without expressing any opinion on the merits of the cases, we direct the transfer of investigation of all these cases to

the C.B.I., Southern Zone, with a further direction to the Director of C.B.I., Southern Zone, to depute Mr.Ashok Kumar, I.P.S., a senior officer in

the Southern Zone of C.B.I., to undertake the investigation of the cases pending in Crime No. 391 of 1999 on the file of P1 Pulianthope police

station, the second respondent in H.C.P. No. 324 of 2006, Crime No. 1542 of 1998 on the file of H1, Washermanpet Police Station, second

respondent in H.C.P. No. 327 of 2006 and in Crime No. 85 of 1999 on the file P1 Pulianthope Police Station, first respondent in H.C.P. No.

1291 of 2006, as well as other similar nature of cases, which shall be transferred by the State Government through appropriate orders by the

Director General of Police/Commissioner of Police, to transfer the same to the file of C.B.I., which shall be entrusted to Mr.Ashok Kumar, I.P.S.,

to enable him to proceed with the investigation in the case of alike nature.

10. The above Habeas Corpus Petitions are disposed of accordingly with the following directions and observations:

(i)The investigation shall also include as to whether there was any fraud committed on the Court concerned by way of impersonation or by creating

false and fabricated documents and if so, to take action in accordance with law against all those persons involved;

(ii)The C.B.I., Southern Zone, is at liberty to constitute a Special Cell under the supervision of Mr.Ashok Kumar, I.P.S., to expedite the

investigation directed as above;

(iii)The Union of India, the Ministry of External Affairs as well as the Home Ministry of the State and the State Police, including C.B.C.I.D., shall

extend their full co-operation to the investigation by the C.B.I.;

(iv)Based on the final report of the investigation, the C.B.I. shall proceed with the matter in accordance with law;

(v)A copy of the said final report of the C.B.I. officer after the completion of investigation shall be placed before this Court for reporting

compliance, after serving a copy in advance to the Ministry of External Affairs, Home Ministry of State, Department of Social Welfare as well as

the CARA for their further guidance in the matter, who shall take appropriate decision for preventive, remedial and compensatory reliefs in the

matter;

Registry is directed to place the same before the Board concerned for reporting compliance of the above directions and for further orders, if any

required, after three (3) months.