

(2004) 06 MAD CK 0015

In the Madras High Court

Case No : Habeas Corpus Petition No. 673 of 2004

M. Krishnamurthi

APPELLANT

Vs

T. Samarakodi, The State of Tamil Nadu

RESPONDENT

Date of Decision : 22-06-2004

Acts Referred:

Citation : (2004) 06 MAD CK 0015

Hon'ble Judges : P.D. Dinakaran, J;N. Kannadasan, J

Bench : Division Bench

Advocate : B. Thanikachalam, for the Appellant; K. Sankar Krishnan, for Respondent-1 and Abudukumar Rajaratnam, Additional Public Prosecutor for Respondent-2, for the Respondent

Judgement

P.D. Dinakaran, J.—The petitioner, claiming himself as the husband of one Thangamani, and complaining that she has been illegally detained

by her father, the first respondent herein, seeks a writ of Habeas Corpus directing the respondents to produce the detinue before this Court and

set her at liberty.

2. According to the petitioner, he married the detinue Thangamani on 5.5.2004 and lived with her till 14.6.2004.

3. After notice, the first respondent produced the detinue Thangamani before this Court. The said Thangamani is a post graduate in M.A. Tamil

Literature and aged about 24 years. She is capable of understanding the pros and cons of her choice and decision with respect to the friendship

developed with the petitioner. She openly denies the marriage said to have taken place on 5.5.2004 and the registration of the same by one J. John

Amulraj, the Registrar who solemnized the marriage under the Christian Marriage Act and issued a certificate to that effect. She questions the

validity of the said marriage, as the petitioner never converted himself to Christianity and he continues to be a Hindu till date and therefore, the

marriage could not have been solemnized between them by the Registrar of Marriage under the Christian Marriage Act.

4. The petitioner, who also appeared before us, states that the detenue married him on her own volition, in the presence of elders and the Registrar

and the same was registered before the Registrar of Marriage under the Christian Marriage Act and he also fairly concedes that even though he

used to go to Church and pray, he had not converted himself to Christianity and in all respects he continues to be a Hindu.

5. It is trite law that a writ of habeas corpus at the instance of a man to obtain possession of a woman alleged to be his wife does not issue as a

matter of course. Though a writ of right, it is not a writ of course especially when a man seeks the assistance of the Court to regain the custody of a

woman. Before a Court accedes to this request it must satisfy itself at least prima facie that the person claiming the writ is in fact the husband and

further whether valid marriage between him and woman could at all have taken place, vide Mohd. Ikram Hussain Vs. State of U.P. and Others, .

Therefore, the very locus standi of the petitioner to seek the relief as prayed for, in his capacity as the husband of the detenue, is at stake.

6. Be that be, since the detenue is not willing to go with the petitioner and on her own volition she stays with her father, the petitioner is not

interested to press the above writ petition. Hence, finding no merits in the writ petition, the same is dismissed.

7. However, as the petitioner apprehends that the first respondent and his relatives would cause danger to his life and body, the father of the

detenue, viz. the first respondent as well as the detenue undertake that they would not either cause any danger to life of the petitioner as

apprehended by him and the above statement of the first respondent and the detenue is put on record.

8. Before parting with the order, since it was brought to our notice that the petitioner relies upon a marriage certificate issued by one J. John

Amulraj, the validity of which, in our opinion, is ambiguous, we direct the police to enquire into the authenticity of the certificate referred to above,

and also refer the matter to the licensing authority who issued licence to J. John Amulraj for issuing certificate under the Christian Marriage Act. On

such notice, the licensing authority shall hold an enquiry and pass appropriate orders, of course, after giving fair and reasonable opportunity to J.

John Amulraj.