

**(2017) 02 MAD CK 0307**  
**In the Madras High Court**  
**Case No : 245 of 2017**

M.R.Elavarasan

APPELLANT

Vs

The Commissioner of Police

RESPONDENT

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**Date of Decision :** 16-02-2017

**Acts Referred:**

<a href=52>Advocates Act, 1961</a>, <a href=52-30>Section 30</a>, <a href=52-7>Section 7</a> - Right of advocates to practise - a[1] Functions of Bar Council of India

**Citation :** (2017) 02 MAD CK 0307

**Hon'ble Judges :** M.Jaichandren, T.Mathivanan

**Bench :** DIVISION BENCH

**Advocate :** M.Jaichandren, T.Mathivanan

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## **Judgement**

1. Heard Mr.K.Balu, the learned counsel appearing on behalf of the petitioner, as well as Mr.R.Rajarathinam, the learned Public Prosecutor, assisted by Mr.V.M.R.Rajentren, the learned Additional Public Prosecutor, appearing on behalf of the respondents.

2. This Habeas Corpus Petition has been filed praying that this Court may be pleased to issue a direction to the fourth respondent, to produce the detenu, namely, Mr.R.T.Ramachandran, aged about 42 years, Member of the Legislative Assembly (hereinafter referred to as M.L.A), Kunnam Constituency, before this Court and to set him at liberty.

3. We have perused the averments made in the affidavit filed in support of the petition, along with the relevant materials placed before us. Having given our due consideration to the submissions made on behalf of both sides and on considering the facts and circumstances of the case and the nature of the issues involved, the following order is being passed.

4. The petitioner Mr.M.R.Elavarasan, is a practicing lawyer of this Court (High Court, Madras) and he claims to be one of the voters of Kunnam Constituency,

Perambalur District. The detenu, Mr.R.T.Ramachandran, according to the petitioner, was elected as the Member of the Legislative Assembly in A.I.A.D.M.K political party in the year 2016 from Kunnam Constituency. As it is manifested from the averments of the affidavit filed in support of the petition that on 08.02.2017, at about 09.00 am, the detenu Mr.R.T.Ramachandran came to Chennai to attend A.I.A.D.M.K party meeting at their head office, at Royapettah, Chennai, but, he did not return back to Kunnam Constituency. In this connection, the petitioner had made strenuous search, however, he was not able to find out his whereabouts.

5. He was put to understand that the elected representatives of the A.I.A.D.M.K party have been illegally detained in a private resort, at ECR road and they are not even allowed to move and communicate with the public. He has also stated that the Members of the Legislative Assembly of A.I.A.D.M.K party are transported like cattles and they have been detained in a Star Hotel at ECR Road.

6. He would further state that one Mr.Shanmuganathan, Ex-Minister from Srivaigundam Constituency, had escaped from the illegal custody and given a statement to the media that he had come out of the illegal custody of the respondents with great difficulty and that all the 130 Members of the Legislative Assembly were detained against their will and their family members are not even allowed to see them and that they are under life threat.

7. In this regard, the petitioner was constrained to lodge a complaint with the fourth respondent viz., the Inspector of Police, Koovathur Police Station on 08.02.2017. Since there was no effective steps on the part of the fourth respondent, he has approached this Court with this petition.

8. When this Habeas Corpus Petition came up for hearing on 10.02.2017, this Court had recorded the submission made by the learned Public Prosecutor to the effect that the Members of the Legislative Assembly, who were alleged to be in illegal detention, were free and were staying on their own volition in the M.L.A hostel, at Chennai.

9. Mr.K.Balu, learned counsel appearing for the petitioner, on that day, had submitted that as nearly as 20 M.L.As were refusing to take food and water owing to their illegal confinement.

10. Considering the above submission, this Court had found that it would be appropriate to provide an opportunity to the State to inform its response. Accordingly, this matter stood posted on 13.02.2017. On that day, the Superintendent of Police, Kancheepuram District had filed a counter affidavit through the learned Public Prosecutor. In her counter statement, while refuting the allegations made in the petition, she has stated that on 10.02.2017, on receipt of the information, a team of officials consisting of the Additional Superintendent of Police, Prohibition Enforcement Wing, Kancheepuram and the Deputy Superintendent of Police, Mamallapuram Sub-Division and 4 Inspectors of Police and 4 Sub-Inspector of Police, was formed and instructed to visit the

Golden Bay Resort, Koovathur and the Village Retreat Resort, Poonthandalam, to enquire about the alleged illegal detention of the M.L.As therein. On such enquiry, it was ascertained that the M.L.As are staying at the Golden Bay Resort, Koovathur and the Village Retreat Resort, Poonthandalam. She has further stated that on 11.02.2017, the team of the said police officials along with the Tahsildar, Cheyyur Taluk (Jurisdictional Executive Magistrate) went to the Golden Bay Resort, Koovathur and enquired the M.L.As (100 in numbers) who were present there. After completion of enquiry at Golden Bay Resort, Koovathur, the police team along with the Tahsildar, Thirukazhukundram (Jurisdictional Executive Magistrate) went to the Village Retreat Resort, Poonthandalam and enquired 19 M.L.As, who were available there. The team had also enquired the staff of both the resorts and on such enquiry, they had stated that the M.L.As had been well taken care of with the required facilities and on further enquiry, it was found out that they were not illegally detained by any one and they were freely moving there without any restraint.

11. Insofar as the detenu Mr.R.T.Ramachandran is concerned, the second respondent, the Superintendent of Police, Kancheepuram District, has stated that he was found staying in Golden Bay Resort at Koovathur and on enquiry he had stated that he was staying in the resort on his own volition with comfort and he had also further stated that he was in contact with his relatives and people of his constituency. The Superintendent of Police, Kancheepuram has also stated that the statement given by the detenu Mr.R.T.Ramachandran was reduced into writing and kept in a separate sealed cover. At the time of hearing of this Habeas Corpus Petition, the learned Public Prosecutor has produced the statement said to have been recorded from the detenu Mr.R.T.Ramachandran, Kunnam Constituency. The vernacular version of the statement said to have been given by the detenu is extracted hereunder: "VERNACULR MATTER OMITTED" Cheyyur R.T.Ramachandran"

12. On a cursory perusal of the statement said to have been given by the detenu, we find that no adequate grounds are available to maintain this petition within the scope of a Writ of Habeas Corpus. The detenu himself has stated that he is not in illegal custody of anybody and he has been staying at Golden Bay Resort, on his own volition, without any threat or coercion. He has also stated that he is still in contact with the people of his constituency as well as his relatives and that he is having every facility, including proper medication, in the said resort. From the statement said to have been given by the detenu, we do not find any reason to say that he is illegally detained in the Golden Bay resort, at Koovathur.

13. The petitioner Mr.R.Elavarasan is not related in any way to the detenu. As per the settled principle in various cases, not only the prisoner or the detained, but any other person who is aware of the merits of the case, and is acquainted with the facts and circumstances and has recognized interest in moving of such application in front of the court can invoke the Article 226 of the Constitution of

India to prefer this kind of petition.

14. Obviously, the petitioner herein is a practicing lawyer and he is in no way related to the detenu. However, he claims himself to be one of the voters of Kunnam Constituency. According to the petitioner, the detenu was found missing on and from 08.02.2017 and in this connection he had made a vigorous search to find out the whereabouts of the detenu and the same was ended in vein. On meticulous analysis of the averments of the affidavit filed by the petitioner, we find that no credence could be attached to the allegations made by the petitioner.

15. In the common judicial parlance, a practicing advocate can appear on behalf of his client, but he cannot act as his own client and cannot also enter himself into the shoes of his client. Insofar as this case is concerned, all the averments of the petition seems to have been made by the petitioner himself, who is admittedly a practicing lawyer. No supporting affidavit is filed by the alleged detenu. In this connection, we would like to make reference to Sections 7 and 30 of the Advocate Act 1961 and Rules 6, 9 and 18 of Part VI of the Bar Council of India Rules.

16. Section 7 of the Advocate Act, 1961, deals with the Functions of the Bar Council of India. Clause (b) says that the Bar Council of India shall lay down standards of professional conduct and etiquette for advocates. Clause (d) envisages to safeguard the rights, privileges and interests of advocates. Clause (g) says that the Bar Council of India shall exercise general supervision and control over the State Bar Councils. Section 30 of the Advocates Act, 1961, contemplates the rights of advocates of practice.

17. Insofar as Section 30 is concerned, the Apex Court, in Pravin C.Shah Vs. K.A.Mohd.Ali reported in (2001) 8 SCC 650, has held that "the right to practice is the genus of which the right to appear and conduct cases in the court may be a specie. But the right to appear and conduct cases in the court is a matter on which the court must have the major supervisory power. Hence, the court cannot be divested of the control or supervision of the court merely because it may involve the right of an advocate."

18. Rules 6, 9 and 18 of Part VI of the Bar Council of India are extracted as under: "6.An Advocate shall not enter appearance, act, plead or practise in any way before a Court, Tribunal or Authority mentioned in Section 30 of the Act, if the sole or any member thereof is related to the Advocate as father, grandfather, son, grandson, uncle, brother, nephew, first cousin, husband, wife, mother, daughter, sister, aunt, niece, father-in-law, mother-in-law, son-in-law, brother-in-law, daughter-in-law or sister-in-law."

"7.An Advocate should not act or plead in any manner in which he is himself pecuniary interested."

" 18.An Advocate shall not, at any time, be a party to fomenting of litigation."

19. With reference to Sections 7 and 30 of the Advocates Act, 1961 (25 of 1961)

and Rules 6, 9 and 18 of Part VI of the Bar Council of India Rules, in *S.Sengodi v. State of Tamil Nadu* represented by its Chief Secretary to Government and four others reported in 2009 (3) CTC 6, a practicing advocate filed Habeas Corpus Petition questioning detention of her client. The detenu had filed a supporting affidavit. Detenu's blood relatives or friends did not file such a petition and no reason had been adduced by the Advocate for such people not filing the Habeas Corpus Petition. The respondents questioned the locus standi of the Advocate being the petitioner. This Court had dismissed the writ petition finding no merits on facts and also on the question of maintainability. This Court, after applying the provisions of the Advocates Act, Bar Council of India Rules along with the principles relating to the decorum of Court, had held that an Advocate cannot step into the shoes of the detenu. This Court had also expressed anguish over the practice of Advocates subscribing their name to the hoardings of political leaders. In paragraph 10 of the above cited decision, a Division Bench of this Court had held that Rule 9 mandates that an Advocate should not act or plead, in any manner, in which he himself is peculiarly interested". Rule 18 mandates that "an advocate shall not, at any time, be a party to fomenting litigation. Paragraph 11 is also very much important, which is extracted as under: "11. Therefore, according to the above provisions of law, an Advocate is barred from entering into appearance, act, plead or practise if the sole of any member thereof is related to him and wherein he is peculiarly interested. When, to maintain the decorum of the noble profession of advocacy, such a bar is created on an Advocate, by operation of law, to appear, plead and act on behalf of the blood relatives of the Advocate, we are unable to accept the contention of the petitioner that she can file this petition for the release of her client, thus acting herself as the client. In the absence of any provision of law, permitting the Advocates to enter into the shoes of their clients as a "party interested" and further in the absence of any pleading made on the part of the petitioner as to what necessitated her to enter into the shoes of her client, when, admittedly, the detenu is having blood relatives, like wife, to champion his cause, we are not in a position to accept the plea of the petitioner that she can very well maintain this petition. Further more, Section 30 of the Advocates Act, 1961 permits the Advocates only to practise the noble profession of law and not to substitute themselves for their clients. When the Bar Council of India Rules, prescribing the standards of professional conduct and etiquette do not permit such an action on the part of a legal practitioner and in the absence of any reason leave alone a justifiable reason for the petitioner to file this petition on behalf of her client, it is to be held in no uncertain terms that this petition, filed by the petitioner, a practicing advocate, for the release of her client, is not maintainable. "

20. On coming to the instant case on hand, Mr.K.Balu, learned counsel appearing on behalf of the petitioner has adverted to that though the petitioner herein is a practicing lawyer of this Court, since he is one of the voters of the Kunnam Constituency, he is having every right to file a petition of this nature for the production of the detenu as his detention is illegal. Mr.Balu has also

demonstrated with certain news clippings with reference to the illegal detention of M.L.As in the above said resorts and he has also produced a letter dated 09.02.2017 allegedly given by one S.P.Shanmuganathan, Member of Legislative Assembly, Srivaikundam Constituency before the Governor of Tamil Nadu. He has also maintained that virtually the Superintendent of Police, Kanchipuram District had not visited the Golden Bay resort, Koovathur along with the Tahsildar and Additional Deputy Superintendent of Police, Cheyyur. He has also contended that no such statement, which is produced by the Public Prosecutor, was given by the detenu and even if it is received and produced, it might be obtained under threat or coercion. He has also suggested that, to find out the real position and to ascertain the fact as to whether more than 130 members of the Legislative Assembly have been illegally detained against their will in the above said resorts, a retired High Court Judge may be appointed as a commissioner to go and verify the fact and to give a detailed report in this connection. He has also suggested that an amicus curiae may also be appointed so as to assist the Court to arrive at a fair decision.

21. In this connection, Mr.R.Rajarathinam, the learned Public Prosecutor has submitted that if the Court is going to appoint a Commissioner to inspect the above said resorts, then he has to get further instructions from the authority concerned.

22. With reference to the suggestion made by Mr.K.Balu, we are not in agreement.

23. We have considered the counter affidavit filed by the Superintendent of Police, Kancheepuram District and the submissions made on behalf of the State, by the learned Public Prosecutor. We have also carefully considered the submissions made on both sides and having taken into consideration of the relevant facts, we find that since the question of maintainability is hanging over this petition, we do not find any merit.

24. Before parting with the order, in the interest of justice, we would like to place on record the following: The writ of habeas corpus is known as "the great and efficacious writ in all manner of illegal confinement", being a remedy available to the meanest against the mightiest. It is a summons with the force of a court order; it is addressed to the custodian (a prison official for example) and demands that a prisoner (or) a detenu be taken before the court, and that the custodian present proof of authority, allowing the court to determine whether the custodian has lawful authority to detain the prisoner (or) the detenu. If the custodian is acting beyond his or her authority, then the prisoner (or) the detenu must be released.

25. While advancing his arguments, Mr.K.Balu, learned counsel for the petitioner, in support of his contention has placed reliance upon the decision of a Division Bench of this Court pronounced in P.Pugalenthi Vs. State of Tamil Nadu and two others decided on 17.07.2009. We have also carefully gone through the above

cited decision and given our due consideration to the ratio decidendi and the principles laid down therein. In this connection we are of the view that the above cited decision is distinguishable with the decision of the Division Bench of this Court in *S.Sengkodi v. State of Tamil Nadu* represented by its Chief Secretary to Government and four others, cited *supra*, and according to our view the decision in *P.Pugalthi*'s case is not made applicable.

26. In *Sengkodi*'s case cited *supra*, in Paragraph No.12, the Division Bench of this Court in an unambiguous terms has held that "even by assuming, without accepting, that a practicing Advocate can be permitted to enter into the shoes of his client, we have to keep in mind the consequences that will follow the suit if such acts are permitted to be performed by a practising Advocate. If such a situation is permitted, then, there may not be any client-Advocate relation but only a client and defacto client relationship between the party and his counsel, resulting in adversely affecting the dignity and decorum of the noble profession and further running contrary to the Standards of Professional conduct and etiquette, prescribed under the Bar Council of India Rules, wherein Rule 9 contemplated that "an Advocate should not act or plead in any manner in which he is himself peculiarly interested" and Rule 18 mandated that "an advocate shall not, at any time, be a party to fomenting litigation". Keeping in view of the fact, we are of the considered view that this petition is devoid of any merit and is therefore, deserved to be dismissed. Accordingly, this Habeas Corpus Petition is dismissed. Consequently, the connected miscellaneous petition is closed.