

(2011) 11 KAR CK 0306
In the Karnataka High Court
Case No : Writ Petition HC No. 47 of 2011

Riyaz Ahmed Sab

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 17-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 366 A, 368 A

Citation : (2011) 11 KAR CK 0306

Hon'ble Judges : D.V. Shylendra Kumar, J;C.R. Kumaraswamy, J

Bench : Division Bench

Advocate : Naveed Ahmed, for the Appellant; H.S. Chandramouli, SPP for R1 and R2, for the Respondent

Final Decision : Dismissed

Judgement

Shylendra Kumar, J.—This writ petition under Article 226 of the Constitution of India is by the father who had suspected or doubted that his minor daughter by name Shahina Taj aged about thirteen years is in the illegal custody of the third respondent, both being residents of Srinivasapur. Mulbagal Taluk, Kolar District and the third respondent being a person who carries on the profession of hair cutting.

2. While there are several versions about the manner in which the petitioner's daughter has gone missing, a missing complaint has been registered at Srinivasapur Police Station on 9.1.2011 lodged by the petitioner and thereafter yet another complaint has been registered u/s 368A IPC on 12.1.2011.

3. The State represented by its Under Secretary figures as first respondent, Police Inspector Srinivasapur Police Station figures as second respondent, younger brother of third respondent by name, Ravi Chandra figures as fourth respondent and father of the third respondent figures as fifth respondent to the petition.

4. On issue of notice, respondents 1 and 2 - State and Police Inspector are

represented by Sri. H.S. Chandramouli, learned SPP. Respondents 3, 4 and 5 are neither before the court nor are represented.

5. The matter is lingering on before this court ever since 11.3.2011 without any positive development as is reflected in the order sheet, but in the interregnum, seven status reports have been filed dated 16.6.2011, 30.6.2011, 21.7.2011, 17.8.2011, 5.9.2011, 21.10.2011 and 16.11.2011.

6. The sum and substance of these status reports is that the respondents - State and Police Inspector, Srinivasapur Police Station have been very rigorously carrying on queries at all places; that they have extensively covered the State of Andhra Pradesh as mother tongue of the third respondent is Telugu and relatives and community people are also from neighbouring places in Andhra Pradesh, but without much success.

7. Sri. V. Govindaiah, Deputy Superintendent of Police, Mulbagal Sub-Division who is the Investigating Officer in this case, is present before the court and states that the Police have investigated from several angles including a possible link up to any human trafficking mafias and have drawn a blank even after a thorough search in red light areas in Mumbai seeking co-operation of the special squad of the Mumbai Police having familiarity and expertise in this aspect etc.

8. The latest status report dated 16.11.2011 in the form of affidavit of Sri. Govindaiah indicates the efforts made by deputing persons to Andhra Pradesh on 20.10.2011 and such efforts in deputing Police personnel to different places on all subsequent dates right up to 14.11.2011 have all been narrated, but the net result does not appear to be indicating any possibility of either locating the missing person or even the third respondent who it appears has gone missing.

9. The Police also have a version that there was some interaction and inter relationship between the missing person and the third respondent and it is possible that the missing person might have eloped with the third respondent and may be willingly as investigation has revealed that she had not heeded to the advice of local elders and others not to have friendship with the third respondent.

10. Sri. Naveed Ahmed, learned counsel for the petitioner submits that he has no doubt to suspect that, the Police have kept person in any custody or illegal detention; that the petitioner is quite satisfied about the investigation being taken up by the Police and their efforts in tracing the petitioner's missing daughter etc.

11. Mr. Naveed Ahmed, learned counsel for the petitioner also submits that the petitioner himself had accompanied the Police many times to places where some possible clues may be available, but being drawn a blank.

12. A writ of habeas corpus can be issued when any person is in illegal or forceful custody of any other person including the State authorities. The only suspicion even as per the petition averment is about the third respondent and with the

third respondent also being not traceable so far, the possibilities of issue of a writ of habeas corpus in this writ petition are almost "nil". In fact, the State and the Police are really not necessary parties to this petition as even suspicion of the petitioner is only against the third respondent.

13. We have noticed that of late in respect of every missing person and more so in the case of minors, there is a tendency to come up to the High Court by filing a writ of habeas corpus and impleading the State, all its officials starting from the Chief Secretary right up to the Police Inspector whether there is any involvement or necessity to implead them or not. We have also noticed that in such matters, the Police evince much more interest in the investigation though they perhaps ordinarily would have done and quite naturally as the matter is before the High Court and even their reputation being at stake, may put in better efforts. But, with all that, many a times, it is nothing but a wild goose chase as frantic, depressed, helpless parents no doubt approach this court with some ray and hope, but unless it is definite a person is in the illegal custody of another person, a writ of habeas corpus does not issue from this court.

14. A writ of habeas corpus is normally issued to the person who is keeping another person in illegal custody and not to all and sundry. A criminal case is not normally investigated in writ jurisdiction and assuming that a criminal case is registered for offence punishable u/s 366A of IPC, that is not the matter necessarily to be monitored by the High Court in writ jurisdiction.

15. History of this case indicates that this writ petition had been concluded as per order dated 28.3.2011 with this court being satisfied with the investigation that was being done by the police, but with liberty to the petitioner to renew his request at the later point of time, had given an opportunity to the petitioner to revive the same. As learned counsel for the petitioner had filed an application for revival, taking advantage of the liberty while investigation has progressed and further status reports have been filed. Insofar as the writ petition is concerned, not much progress can be seen for issue of a rule.

18. In the circumstances, as noticed above, it becomes obvious that writ jurisdiction of this court, particularly, for issue of a writ of habeas corpus is being more and more misused and even abused sometimes which only brings down the efficacy of the writ jurisdiction of this court and the very efficacy of the constitutional remedy, a very-valuable special remedy provided to the citizen and such a valuable remedy gets diluted with such petitions being presented before the High Court where in even the petitioner will be aware of all possible love angle between the missing person and some other third person and also proceeding his attempts on the criminal side by filing a complaint etc., which is also registered.

17. We do not find any need or necessity to keep this petition pending any further on the file of this court.

18. This writ petition is therefore dismissed without any further liberty to revive

this petition again and again and it is open to the petitioner to pursue his other remedies in accordance with law.