

(2016) 03 MAD CK 0110

In the Madras High Court

Case No : Writ Petition No. 7653 of 2016 and W.M.P. No. 6877 of 2016

S. Dhanalakshmi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 160
Penal Code, 1860 (IPC) — Section 120(B), Section 147, Section 148, Section 201,
Section 212, Section 302, Section 323, Section 324

Citation : (2016) 03 MAD CK 0110

Hon'ble Judges : R. Subbiah, J.

Bench : Single Bench

Advocate : R. Shanmuga Sundaram, Senior Advocate for Sunil Kumar, for the Appellant; P. Ayyasamy, Central Government Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R. Subbiah, J.—1. The petitioner seeks for a Mandamus forbearing the respondents from preventing her from proceeding to London to continue her studies and consequently direct the respondents to withdraw the Look Out Circular pending on the file of the second respondent.

2. The case of the petitioner is that she completed her schooling in Velammal Residential School at Ponneri, Thiruvallur District and secured 420/500 in the Higher Secondary Examinations. Thereafter, she left India to London during the year 2012 to pursue one year Bio-medical course in Health Science. After completing the course, during 2013, she got admission in University of Essex in United Kingdom for pursuing three years B.B.A. Course and as per the schedule, she is completing the said course this year. According to the petitioner, she never stayed with her parents from her childhood and completed their studies by staying in hostel. While so, on 24.02.2016, the petitioner came down to Chennai to mainly to gather certain information about the legal studies in National Law

School at Bangalore inter alia to meet her sister and grand mother. Thereafter, on 26.02.2016 when the petitioner was proceeding to Bangalore in Car, near Ranipet Town in Vellore District, the vehicle was intercepted by the fourth respondent purportedly on the ground that her father Mr. Sridhar is the main accused in a case registered in Crime No. 117 of 2016 on the file of the fourth respondent and therefore, they have detained the petitioner for an enquiry by serving a notice under Section 160 of Cr.P.C. The petitioner was taken to the fourth respondent - Police station where she was enquired in detail inter alia compelled her to disclose the whereabouts of her father. The petitioner disclosed truly as to the material information known to her. According to the petitioner, she is residing out of India and even during her stay in India, she pursued her schooling by staying in hostel.

3. It is mainly contended by the petitioner that after completing the enquiry, even though the petitioner could not go over to Bangalore, she came back to Chennai to board the Srilankan Airlines Flight (UL-126) by 3.00 am on 27.02.2016 to go to London. When the petitioner reached the Chennai airport on 27.02.2016 at 1.30 am, she was stopped by the immigration officials and refused to permit her to board the flight on the ground that a lookout Circular has been issued prohibiting her to travel out of India. According to the petitioner, she was unlawfully detained by the respondents without any compelling reasons and thereby she could not leave India to London to pursue her further studies. In such circumstances, the petitioner has filed this writ petition before this Court.

4. The learned senior counsel appearing for the petitioner would contend that by reason of the unlawful detention of the petitioner, she could not complete her final year degree course at London. By reason of such detention, the petitioner's fundamental right guaranteed under Article 19 and 21 have been curtailed and infringed. The detention of the petitioner on the only ground that her father involved in a criminal case is legally not sustainable. In any event, if the petitioner is not permitted to over to London to continue her further studies, she will be deprived of her right to continue the education. Even according to the respondents, the petitioner has not committed any offence, however, she was detained only on the ground that her father was arrayed as an accused. The learned senior counsel for the petitioner therefore prayed this Court to issue appropriate direction to the respondents to permit the petitioner to go back to London to enable her to continue her studies.

5. The learned senior counsel for the petitioner relied on the decision of this Court in (Arockia Jeyabalan vs. The Regional Passport Officer, Mount Road, Chennai and others) , 2014 4 Law Weekly 841 to contend that the object of the Look out Circular is to ensure the presence of a person for interrogation, trial or inquiry and when the purpose of such circular is served by interrogating the person, thereafter, such circular is non-est in the eye of law.

6. The learned Additional Advocate General appearing for the respondents, relying on the counter affidavit of the third respondent, would contend that the

petitioner's father is a notorious gangster, who involved himself in 9 murder cases, 15 attempt to murder cases and 13 other cases involving offences under the provisions of Explosives Act, Arms Act and the Tamil Nadu Properties (Prevention of Destruction and Loss) Act. The petitioner's father is absconding and by reason of the same, in most of the cases, the investigating officer could not make any progress. According to the learned Additional Advocate General, after committing heinous offences, the petitioner's father left India in the year 2013 and staying at Dubai, with the result, the police could not reach him. Even while staying at Dubai, the petitioner's father is operating and indulging in illegal activities through his aides in the commission of offences such as murder, extortion, kidnapping for ransom etc. The petitioner's father also amassed huge wealth through clandestine and unlawful activities and is in possession of several landed properties in Kancheepuram and other areas. The investigating officer also obtained several non-bailable warrants against the father of the petitioner's but they could not be executed. The learned Additional Advocate General would further contend that a red corner notice has also been issued by the Interpol, Central Bureau of Investigation, New Delhi on the request of the third respondent even during the year 2013. Even though the passport of the petitioner's father was impounded, he continues to remain abroad illegally by using bogus passports. The investigation officer has also complied with the due formalities and issued a "Detain and inform the originator" notice through the immigration authorities.

7. According to the learned Additional Advocate General, recently, at the instigation of the father of the petitioner, his henchmen have committed the offence of murder of one Abdul Rahman at Punjai Arasanthangal Village. In connection with this murder, the case in Crime No. 15 of 2016 was registered for the offences punishable under Sections 147, 148 and 302 of IPC. Subsequently, yet another murder took place in which one Karthi @ Wide Karthi was murdered by the gang of the petitioner's father and on the instruction of the petitioner's father, the dead body of Karthi was burnt and disposed of. In this regard, a case in Crime No. 117 of 2016 is pending on the file of the fourth respondent. This case was originally registered as a man missing case and subsequently it was altered into Sections 147, 148, 364, 323, 324, 302 and 201 read with 120(B) of IPC.

8. The learned Additional Advocate General appearing for the respondents would further contend that during the course of investigation, it came to light that the father of the petitioner has acquired several landed properties in the name of the petitioner and his family members. As per the details collected during investigation, immovable properties worth about 14.06 crores have been acquired by the father of the petitioner and they were either registered in the name of the petitioner or his family members. The learned Additional Advocate General has also taken me to the counter affidavit wherein the details of 12 items of properties were shown. The investigation also unfolded that the family members have extended active support and cooperation for the petitioner's

father to commit unlawful acts. The learned Additional Government General would further contend that the respondents have no intention to curtail the education of the petitioner, but only to ascertain details, she was detained after following the procedures contemplated under law. However, the petitioner assured to appear before the fourth respondent police on 27.02.2016, but contrary to such assurance, she attempted to leave the Country. As regards the innocence pleaded by the petitioner, the learned Additional Advocate General would contend that the property in Survey No. 558/7 and 102/A in Kamarajar Street, Kancheepuram having a value of Rs. 2,13,51,500/- stands in the name of the petitioner vide registered sale deed dated 02.01.2016. It is further stated that from 2011 to 2016, the petitioner, without any known source of income, had travelled to and from India on several occasions which is evident from the seals affixed by the immigration authorities in her passport. In fact, on 26.02.2016, the petitioner was intercepted on the basis of a reliable information received by the investigating agency and immediately, a summon under Section 160 of Cr.P.C. was served on the petitioner by a women constable. On 26.02.2016, the petitioner appeared for an enquiry along with her advocate Tr. Purusothaman and the enquiry was transparent. Therefore, in order to conduct further enquiry summons were served on the petitioner and assured to cooperate with the enquiry on 27.02.2016. However, as the petitioner attempted to leave India on the early hours at 2.00 am on 27.02.2016, the immigration authorities were informed by the third respondent and she was detained for questioning. Further, the tickets purchased by the petitioner was to travel from Chennai to Colombo on 04.03.2016 and from Colombo back to Chennai on 04.03.2016. This clearly indicates that the petitioner intended to stay in Dubai along with her father between 27.02.2016 and 04.03.2016. The petitioner did not proceed to London for continuing her further studies, as alleged, but only intended to go to Dubai to stay with her father. The learned Additional Advocate General would further contend that unless the petitioner is subjected to thorough enquiry, the investigating officer could not ascertain several details within the knowledge of the petitioner. The learned Additional Advocate General therefore justifies the manner in which the petitioner was detained and enquiry and he prayed for dismissal of the writ petition.

9. In reply, the learned senior counsel for the petitioner, relying on a rejoinder of the petitioner, would contend that the writ petition was filed on 01.03.2016 and the respondents have taken time to filing the counter. Thereafter, the fourth respondent filed a report dated 09.03.2016 before the learned Judicial Magistrate No. I, Kancheepuram on 10.03.2016 seeking appropriate orders to take cognisance of offence as against the petitioner as well for having committed the offence under Sections 201 and 212 of IPC. In the report, it was alleged as if the petitioner purchased several immovable properties on the strength of the ill gotten money made by his father. As per the investigating agency, the petitioner had suppressed several material information with her knowledge, but the fact remains that the petitioner has clearly disclosed whatever information she had

with the investigation officer during enquiry. The learned senior counsel for the petitioner would deny the entire allegations raised in the counter affidavit and contend that the petitioner, right from her childhood, was kept away from her father by her mother and she completed her schooling by staying in the hostel. As regards the case in Crime No. 117 of 2016, it was registered on 17.01.2016 and at that time, the petitioner was in United Kingdom pursuing her studies. The petitioner has been detained only to ensure that her father would surface out of his hideout, which is legally impermissible. The petitioner is innocent and she has got nothing to do with the offences allegedly committed by her father. The learned senior counsel for the petitioner therefore prayed for allowing the writ petition.

10. I heard the learned senior counsel for the petitioner as well as the learned Additional Advocate General appearing for the respondents. From the above factual narration, it is clear that on the date when the petitioner was intercepted on 26.02.2016, while proceeding to Bangalore in a car, there was no case registered or pending against her. The petitioner was detained only for the purpose of conducting an enquiry inter alia to ascertain the whereabouts of her father. According to the petitioner, she has no knowledge about the whereabouts of her father and since her childhood, she is pursuing her education by staying in a hotel. It is also specifically contended that the petitioner has disclosed everything truly without suppressing any material particulars during the enquiry conducted in the fourth respondent police station. In other words, the petitioner participated in the enquiry conducted by the respondents and fully cooperated with the fourth respondent in the conduct of such enquiry.

11. It is seen from the records that the petitioner has been detained only on the ground that her father is involved in many criminal cases and his whereabouts are not known. However, in order to secure the presence of the father of the petitioner, detaining the petitioner from proceeding to abroad to pursue her higher studies is not justified. In my considered opinion, the petitioner has been detained only to ensure that her father comes out of his hideout, if she is detained from proceeding abroad. Such a course adopted by the respondents is not in accordance with law. If the petitioner has committed any offence, she can be prosecuted. Even if the petitioner is facing any criminal proceedings, subject to certain terms and conditions, she can be permitted to go over abroad. Even such a course has not been adopted in this case. As rightly pointed out by the learned senior counsel for the petitioner, the respondents, after taking time for filing counter in this writ petition, have submitted a report to the learned Judicial Magistrate No. I, Kancheepuram on 10.03.2016 praying to implicate the petitioner also as an accused in Crime No. 117 of 2016. It is seen from the records that the learned Judicial Magistrate No. I, Kancheepuram refused to accept such a plea inasmuch as there is no materials made available to connect the petitioner also as an accused. At any rate, the filing of the report dated 09.03.2016 on 10.03.2016 before the learned Judicial Magistrate No. I, Kancheepuram to implead the petitioner also as an accused in Crime No. 117 of

2016 is certainly an after-thought invented by the respondents 3 and 4 to some how or the other prohibit the petitioner from proceeding out of India to pursue her higher studies. As regards the plea of the petitioner, the petitioner enclosed the details with regard to her pursuing B.B.A. Course with University of Essex, United Kingdom wherein it is clearly stated that the petitioner is pursuing her last year of the B.B.A. Course during the academic year 2013-2016.

12. In the decision relied on by the learned senior counsel for the petitioner in (Arockia Jeyabalan vs. The Regional Passport Officer, Mount Road, Chennai and others) , 2014 4 Law Weekly 841 this Court had an occasion to consider that validity of the lookout circular. In that case, based on the look out notice issued by the respondents therein, the petitioner therein was arrested and remanded to judicial custody. Thereafter, the petitioner therein was released on bail. Therefore, it was held that the object of the Look out Circular is to ensure the presence of a person for interrogation, trial or inquiry and when the purpose of such circular is served by interrogating the person, thereafter, such circular is non-est in the eye of law. Even in this case, the petitioner was subjected to enquiry at length by the fourth respondent and therefore, keeping the look out notice in force is impermissible.

In the light of the above, the writ petition is allowed. No costs. The respondents are directed not to prevent the petitioner from proceeding to London to continue her studies and the Look Out Circular issued by the second respondent need not be enforced against the petitioner. However, the petitioner is directed to furnish the details such as address where she stays abroad, contact address for communication, mobile number, email id, period of stay, her probable date of return etc., to the third and fourth respondents before leaving India. Consequently, connected WMP No. 6877 of 2016 is closed.