
(1995) 07 MAD CK 0028
In the Madras High Court
Case No : H.C.P. No. 884 of 1995

S. Gunaseelan

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 11-07-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 2 CTC 543

Hon'ble Judges : Thanikkachalam, J;T. Jayarama Chouta, J

Bench : Division Bench

Advocate : P. Rathinam, for the Appellant; I. Subramanian, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

T. Jayarama Chouta, J.—This Habeas Corpus Petition has been filed by an accused in C.C.No. 1 of 1995 on the file of the Designated

Court No. III, Madras, who has been released on bail on 23.6.1995.

2. When the matter came up for admission before us, we felt doubt about the maintainability of the habeas corpus petition, hence, we directed the

office to post the matter hear regarding maintainability and heard Shri P. Rathinam, Learned Advocate on behalf of the petitioner and Shri I.

Subramaniam, Learned Additional Public Prosecutor on behalf of the respondents on 3.7.95.

3. The reliefs claimed in this petition for habeas corpus are to issue a writ, order direction in the nature of a writ of habeas corpus.

(i) directing the respondents 1 to 4 to comply with the law declared by the Supreme Court in Prem Shankar Shukla Vs. Delhi Administration, in

letter and spirit;

(ii) directing the first respondent to pay a fair and just compensation to the petitioner herein for the illegal handcuffing on 25.4.1995 by the escorting police personnel;

(iii) directing all the respondents herein to co-ordinate each other to enforce the law in letter and spirit as declared by the Supreme Court in State of Madhya Pradesh Vs. Ramashanker Raghuvanshi and Another, ; and

(iv) passing any such further or other orders as this Hon''ble Court may deem fit and proper in the circumstances of the case and thus render justice.

4. Shri P.Rathinam, Learned Advocate placing reliance on the following decisions submitted that a habeas corpus petition is maintainable and tried to convince us. He placed reliance on a decision of the Supreme Court in Sunil Batra Vs. Delhi Administration and Others etc., and argued that where the rights of a prisoner, either under the constitution or under other law, are violated the writ power of the Court can and should run to his rescue. He pointed out that the Court has a continuing responsibility to ensure that the constitutional purpose of the deprivation is not defeated by the authorities. He further proceeded whether inside prison or outside, a person shall not be deprived of his guaranteed freedom save by methods right, just and fair''.

5. But, we should not forget the fact that the above writ petition for habeas corpus originated from a letter to a Supreme Court Judge by Sunil Batra, a prisoner in Tihar Jail, Delhi, complaining that a jail warden had pierced a baton into the anus of another prisoner serving life term in the same jail as a means to extract money from the victim through his visiting relations. In response, the Court initiated proceedings in the nature of habeas corpus. After giving guide lines in respect of the constitution and administrative aspects of the prison, justice ordered for institution of a C.B.I, enquiry against the erring police official and further ordered that a copy of the judgment should be sent for suitable action to the Ministry of Home Affairs and to all State Governments since prison justice has pervasive relevance. Hence, we are of the opinion that the above decision will have no application to the maintainability of the present petition.

6. The next decision on which the learned Advocate placed reliance is Ajmeer Singh and Anr. v. State of Punjab and Ors. (1994) 3 Crimes 1083.

But, in that case, the prisoners have prayed for a writ of habeas corpus for their release and secondly that they be awarded effective costs and

damages for they were unjustifiably handcuffed. In the present petition, there is no such prayer for release, hence, the said decision will not help the

petitioner to hold that habeas corpus petition is maintainable.

7. The third decision which has been brought to our notice to hold that the present petition for habeas corpus is maintainable is *R. Parvathi v. State*

of Tamil Nadu rep. by the Secretary to Government Home Department and Ors. ILR (1994) Mad 813. In the said case, the petitioner filed a writ

petition for the issuance of a habeas corpus writ petition for the production of the body of her husband for a compensation as a consequences of

the alleged detention, injuries and disappearance of the petitioner's husband at the hands of the respondent and others. Hence, this decision will

have no bearing on the maintainability of the habeas corpus petition.

8. The last decision on which stress was placed by the learned Advocate is a decision of a Division Bench of this Court in *Dr. M.*

Karunanidhi v. The State of Tamil Nadu rep. by its Secretary, Home (Prison) Department (1994) 1 L.W.(Cri) 162. That is a case where writ

petitions were filed for a declaration that G.O.Ms.No. 972 Home (Prison-B) dated 8-6-1992 is unconstitutional and hence, they were not

petitioners dealing with Habeas Corpus.

9. Mr.I.Subramaniam, Learned Additional Public Prosecutor appearing for the respondents repelled all the above contentions and submitted that

the reliefs claimed by the petitioner cannot be granted by invoking the jurisdiction of a habeas corpus. But, he may have a remedy which he has to

approach in an appropriate forum and the habeas corpus petition is not the proper remedy at all.

10. After considering the rival submissions and perusing the petition, the affidavit in support of the petition and the reliefs claimed in the said

petition, we are of the opinion that the decision cited by the learned Advocate for the petitioner will have no relevance and bearing to hold that

such a petition for habeas corpus is maintainable.

11. In Halsbury's Laws of England it is stated:

The Writ of Habeas Corpus ad subjicendum, which is commonly known as the writ of habeas corpus, is a prerogative process for securing the

liberty of the subject by affording an effective means of immediate release from unlawful or unjustifiable detention whether in prison or in private

custody. It is a prerogative writ by which the Queen has a right to inquire into the causes for which any of her subjects are deprived of their liberty.

By it the High Court and the judges of that Court, at the instance of a subject aggrieved, command the production of that subject, and inquire into

the cause of his imprisonment. If there is no legal justification for the detention, the party is ordered to be released. Release on habeas corpus is

not, however, an acquittal, nor may the writ be used as a means of appeal

12. The Latin term habeas corpus means "'you must the body'". By this writ, the court directs the person or authority who has arrested or detained

another person to bring the body of the prisoner before the Court so as to enable the Court to decide the validity or otherwise of such arrest or

detention.

13. Blackstone rightly states ;

It is a Writ antecedent to statute, and throwing its root deep into the genus of our common law. It is perhaps the most important writ known to the

constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement. It is of immemorial a

tiquity, an instance of its use occurring in the thirty-third year of Edwards.I*.

14. Hence the object of the writ of habeas corpus is a prerogative writ by which causes and validity of detention of a person are investigated by

summary procedure and if the authority having his custody does not satisfy the court that the deprivation of his personal liberty is according to the

procedure established by law, the person is entitled to liberty.

15. The writ of habeas corpus is a prerogative writ, an extraordinary remedy, which is issued upon cause shown in cases where the ordinary legal

remedies are inapplicable or inadequate. It is a writ of right and is granted ex-debito justitiae. It is, however, not a writ of course and may be

granted only upon reasonable ground or probable cause for its issue being shown. Not being a writ of course, it may be refused where there is an

alternative remedy available by which the validity of the detention may be examined.

16. The writ of habeas corpus is available as a remedy in all cases of wrongful deprivation of personal liberty. The legal justification of a subject,

that is detention or imprisonment which is incapable of legal justification, is the basis of jurisdiction in habeas corpus. It is process for securing the liberty of the subjects by affording an effective means of immediate release from unlawful or unjustifiable detention, whether in prison or in private custody.

17. A feable attempt was made by the learned Advocate for the petitioner that habeas corpus petition is a speedy, efficacious and effective remedy

and the financial aspect is very low and hence, the present petition should be entertained as habeas corpus petition. We feel that it may not be a

ground to entertain the petition when it is not otherwise maintainable. It is not as if the petitioner is without a remedy. He can invoke Article 226 of

the Constitution of India for the same reliefs in writ petition which will be placed before a single Judge and afterwards he will have an opportunity

to go before the Division Bench, in case the order goes against him. Hence, we reject this contention also.

18. Hence, the present petition filed for Habeas Corpus will not come within the purview of the above principles. The relief claimed in the petition

cannot be the subject matter fro Habeas Corpus.

19. Under the circumstances we hold that the petition filed by the petitioner for habeas corpus is not maintainable even though the office has

checked, numbered and posted for admission. Accordingly, this habeas corpus petition is rejected as not maintainable.