

(1989) 06 MAD CK 0010

In the Madras High Court

Case No : Writ Petition No. 7462 of 1989

S. Shanmugham

APPELLANT

Vs

M. Natarajan and Another

RESPONDENT

Date of Decision : 20-06-1989

Acts Referred:

Citation : (1990) CriLJ 1071

Hon'ble Judges : T.S. Arunachalam, J;K.P. Sivasubramaniam, J

Bench : Division Bench

Advocate : S. Krishnaswamy, for the Appellant;

Judgement

Sivasubramaniam, J.—This Writ Petition has been filed by one S. Shanmugham alias Shyam for issue of a writ of habeas corpus to direct the

respondents to produce the body of Tmt. Jayalalitha, leader of the opposition in Tamil Nadu State Legislative Assembly now held in illegal

confinement of the first respondent or his men before this Court and set her at liberty and allow her to act on her free will and freedom.

2. The petitioner is the printer and publisher and editor of "Tharasu", which is claimed to be a leading political and social weekly and this writ

petition has been filed as a public interest litigation on the basis of certain information gathered by press reporters.

3. The brief facts narrated in the affidavit filed in support of this writ petition are as follows :

Tmt. Jayalalitha is the leader of the opposition in the Tamil Nadu State Legislative Assembly and the General Secretary of A.I.A.D.M.K. party.

She is kept in illegal confinement by one Third. Natarajan, the first respondent herein against her will. His men and women are keeping her in illegal

confinement in her house at Veda Nilayam, No. 36, Poes Garden, Madras or elsewhere. Thiru Natarajan makes it appear that she is seriously ill and taking treatment at the Jindal Institute of Naturopathy and Yogic Sciences in Tumkur Road, Bangalore. But according to the investigation of the press reporters, she is not there. Thiru, Natarajan who is an Officer of the State Government is now under suspension. He held the post of Deputy Director of Information in the Government of Tamil Nadu and as such he should remain faithful to the Government without engaging in trade. In violation of the rules and norms, he engaged himself as the Advisor of Tmt. Jayalalitha and stayed in her house day and night ignoring his official propriety. His wife Sasikala is a friend of Tmt. Jayalalitha and they have enigmatic relationship which nobody could guess. The entire house of Tmt. Jayalalitha is under the control of Thiru. Natarajan and he does not allow anybody to see her. According to the petitioner, no politician can live without seeing partymen, press people and the public. If a politician is isolated from the public and the press, he will die. She is stated to be ill and she is kept in illegal confinement and isolated from the partymen and press men. The petitioner claims that she is a prisoner in the hands of Thiru Natarajan. It is further stated that he has developed animosity against her after his arrest, as the popularity in the A.I.A.D.M.K. party is on the vane. All the party men feel that he keeps her in illegal confinement with a view to get her signatures on statements, which may be used later for his advantage in the cases filed against him and to boost his image. As the leader of the opposition, Smt. Jayalalitha owes a right to speak on public and political issues in the State of Tamil Nadu and the people of the State have a right to know her views on the said issues. The press owes a duty to meet her and to ascertain her views on several public and political issues. But every time the press reporters approach her they are disposed of by Thiru Natarajan arrogating himself that he is the boss of Smt. Jayalalitha. The press reporters and the petitioner's weekly are unable to get any information on her from 1st May, 1989. Though it was stated that she was admitted in the said hospital at Bangalore, the petitioners reporters found that she was not there. The leaders of the party are also not in a position to know about her whereabouts. The Police is taking an uncared attitude, in this connection in view of the earlier resignation letter of her own. The petitioner apprehends that she is confined in her own house by

Thiru Natarajan and she is facing danger to her life. Hence the present writ petition.

4. The petitioner has made several allegations against Thiru Natarajan on various matters and it is unnecessary to refer to the same as they are

wholly unnecessary for the purpose of the present writ petition. Prof. S. Krishnaswamy, learned counsel appearing for the petitioner reiterated the

various averments made in the affidavit and submitted that the petitioner being an editor of the leading weekly, he is entitled to maintain this writ

petition as a public interest litigation. According to him, every press person is entitled to meet Thirumathi Jayalalitha and ascertain her views on

various public issues, as she happens to be the leader of the opposition in the Tamil Nadu State Legislative Assembly. If such an opportunity is not

afforded to the press people, the very freedom of press would be in jeopardy. It was further contended that Thiru Natarajan being a Government

servant has no right to be in the house of Smt. Jayalalitha and prevent the people from seeing her.

5. We have carefully considered the various submissions made on behalf of the petitioner in this case and we are unable to entertain this petition

and grant the relief asked for the following reasons :

I. At the first instance the petitioner has to satisfy this Court that he is entitled to maintain this writ petition as a public interest litigation. Such public

interest litigations are entertained as a means to vindicate the grievances of the public in respect of certain extraordinary executive harassment and

denial of fundamental right to weaker sections of the community. Even though the rule of locus standi has been liberalised largely due to the

dynamic activism of the Courts in India, it has to be remembered that it is intended to be used only under extraordinary circumstances. In a leading

judgment of the Supreme Court in S.P. Gupta Vs. President of India and Others, which gave a judicial recognition to such a public interest

litigation, the Supreme Court cautioned the Courts while entertaining such petitions in the following words :

But we must hasten to make it clear that the individual who moves the court for judicial redress in cases of this kind must be acting bona fide with

a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique

consideration the Court should not allow itself to be activated at I the instance of such person and must reject his application at the threshold,

whether it be in the form of a letter addressed to the Court or even in the form of a regular writ petition filed in Court. We may also point out that

as a matter of prudence and not as a rule of law, the Court may confine this strategic exercise of jurisdiction to cases where legal wrong or legal

injury is caused to a determinate class or group of persons or the constitutional or legal right of such determinate class or group of persons is

violated and as far as possible, not entertain cases of individual wrong or injury at the instance of a third party, where there is an effective legal aid

organization which can take care of such cases.

We are conscious of the fact that in cases of illegal custody and wrongful confinement anybody who has got some interest with the affected

persons can move this Court for issue of a writ of habeas corpus. Courts have entertained petitions filed by third parties provided they move the

Court with bona fide intentions and without any ulterior motive. In such cases, the petitioner has to establish a prima facie case to the effect that the

person affected is under illegal custody or wrongful confinement. On this aspect also we find that the petitioner has miserably failed to establish

such a prima facie case.

ii. The petitioner has come forward with this petition solely on the basis of surmise as the averments made in the affidavit are not based upon any

personal knowledge. Only on the basis of certain hearsay information, the petitioner has jumped to the conclusion that Smt. Jayalalitha is in

wrongful confinement at the instance of Thiru Natarajan. We fail to understand as to how Smt. Jayalalitha who is the leader of the opposition in the

Assembly and who has got considerable number of followers could be confined by a single individual without the knowledge of any one of them.

Apart from the party workers there are many prominent leaders in her party and their statements made in the press show that there is no room for

suspecting any such wrongful confinement as alleged by the petitioner. It is too much to assume that the partymen and the other leaders have been

silent spectators of the illegal acts alleged to have been committed by the said Eatarajan. We find that nobody in the party has complained so far

that she is being kept in custody against her wishes. It is not in doubt that she is

having some ailments and that she is undergoing treatment. Learned counsel for the petitioner submitted that even though there was an announcement that she was going to Bangalore for treatment, she was not found there in the hospital and that therefore there is I reasonable ground for suspicion. Here again we are unable to appreciate the said contention. A person may choose to remain secluded is from certain people for so many reasons. If a person has got a fundamental right to get information needed by him from some other person, equally the person from whom such information is sought for is also entitled to an equal freedom to remain away from him. We are not able to find any provision of law under which such a person can be compelled to give a statement to the press. Merely because, the press reporters are not allowed to interview her, it cannot be said that she is under wrongful confinement. In a democratic country like ours, individual freedom must co-exist with the freedom of others. In this case, the petitioner has not exhibited any genuine interest in tracing the whereabouts of Smt. Jayalalitha since admittedly he has not approached the Police for any assistance. Without taking any elementary steps through any law enforcing agency to ascertain the correct information about her, the petitioner has rushed to this Court.

iii. A writ of habeas corpus is an extraordinary one and it cannot be granted for the mere asking. Directing a person to be produced in Court is certainly a serious matter which could have certain consequences affecting the interest of the person concerned and the persons against whom allegations have been made. Therefore unless the Court is satisfied that there is a prima facie ground for coming to the conclusion that she is kept under illegal custody, it is not possible for this Court to issue a writ as prayed for. It is always open to the petitioner to seek the aid of the Police or other agencies, if he is so advised in this regard.

iv. Subsequent to the hearing of the writ petition, we have seen press reports that she is taking treatment in Goa and that she is likely to return to Madras. We do not know what reliance can be given to such reports arid, therefore, in view of such conflicting reports we feel that it is not safe to act on the bald allegations made by the petitioner in the writ petition. May be the petitioner is trying to get the information in public interest, but the remedy is elsewhere and not by way of a writ petition for issue of a writ of

habeas corpus.

6. In the result, we find no grounds to entertain this writ petition and grant the relief prayed for. Accordingly, this writ petition is dismissed.

7. After pronouncement of the judgment, the learned counsel for the petitioner moved this Court for filing an appeal before the Supreme Court against the judgment pronounced today.

8. This writ petition has been disposed of solely on the ground that the petitioner has not made out a prima facie case and that means that the

disposal is solely on facts. We find that no question of law of public importance is involved in this case and therefore we feel that it is not a fit case

for filing an appeal before the Supreme Court. Hence leave to appeal before the Supreme Court is refused.

9. Petition dismissed.