
(1995) 10 MAD CK 0050
In the Madras High Court
Case No : H.C.P. No. 705 of 1995

V. Veerapandian

APPELLANT

Vs

Kalaiselvi and Another

RESPONDENT

Date of Decision : 31-10-1995

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (1995) 2 CTC 510 : (1996) 1 LW(Cri) 189

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

Bench : Division Bench

Advocate : R. Sankarasubbu, for the Appellant; R. Rajarathinam, for B. Kumar and R. Loganathan for 1st Respondent and P. Govindarajan, Government Advocate for Public Prosecutor for 2nd Respondent, for the Respondent

Final Decision : Dismissed

Judgement

T. Jayarama Chouta, J.—Petitioner, Veerapandian, father of the detenu Vinodha, has filed this petition to issue a writ of habeas corpus directing the first Respondent - Smt. Kalaiselvi to produce the detenu Vinodha, a girl aged about seven years before this Court and set her at liberty and pass further or other orders as this Court deem fit and proper.

2. In support of the said petition, the petitioner has sworn to an affidavit, in which he has stated that he is an Assistant Inspector in Internal Audit Department at Vellore and the first respondent is his wife having married her according to Hindu rites and customs on 10.5.1987, that of the said wedlock three children were born, the first child by name Vinodha is aged seven years and the other two children are twins and aged about eight months. He has filed this petition seeking custody of his daughter Vinodha. He has further stated that he is a post graduate in Arts and graduate in Bachelor of Education and was a very affectionate husband, but unfortunately his wife, at the instance of her parents started ill treating him since 1994 and when he was in Vellore, there was sudden appearance of gangrin in both of his legs and since the said disease

aggravated both his legs were amputated below knee, he was taken to Madras and admitted as inpatient at Malar Hospital. During his stay at the said hospital, his wife did not attend on him and she and her parents expected his natural death. His wife took away all his properties and house hold utensils and left for her native place without his consent and knowledge, abandoning her obligation as a Hindu wife, by leaving him in lurch and but for the timely help of his parents, his life would have been ended.

3. The affidavit further reads that by her conduct of abandoning the petitioner in the hospital during the critical hours of his life, first respondent conducted herself as unbecoming of a Hindu wife, by taking away all his properties from his house and refusing to show his children to him, she had inflicted mental cruelty on him. He claimed that he is the natural guardian being the father of his daughter - V. Vinodha and two other children and hence he is entitled for the custody of his daughter Vinodha. Even though he is entitled for the custody of other two children, due to their tender age, he is not seeking custody at present, reserving his right to seek custody after some time. He has submitted that the detention of his daughter Vinodha in the hands of first respondent is illegal and violative of Article 21 of the Constitution of India. On these grounds, he has sought for the above relief.

4. After receipt of notice from this Court, the first respondent - Smt. Kalaiselvi, filed a counter affidavit denying all the allegations made against her except those that are specifically admitted by her. According to her, the marriage was performed as Suyamariyathai marriage and she admitted the birth of three children of the said wedlock. She has denied the fact of ill treatment of her husband under the influence of her parents. When the petitioner developed sudden nervous trouble in both the legs and hands in January 1993 at Tiruppattur, he has been taken away by his father and other family members by driving her out of the house along with the child Vinodha at Thavutupalayam. Even though she attempted to bring her husband back for treatment, every time her parents-in-law refused to send him, but finally she was successful in getting treatment to him in June,, 1993 by consulting a Neurologist at Madras and he became alright and started attending office at Vellore. When she delivered other two twin children, again the petitioner developed gangrene in both the legs and he was taken by her brother to Government General Hospital, Madras and there he was recovering. Then the parents of the petitioner came to Madras and forcibly took him away ignoring all the medical advice and without her knowledge, both of his legs were amputated below the knee. She has further sworn that her father-in-law always ill-treated her and made her life miserable. She denied of taking all the properties from the house and has asserted that there is no dispute between herself and her husband and she is ready and willing to live with her husband without the influence of her father-in-law and mother-in-law, since they are the persons who have instigated all the problems and unnecessary harassment to her and her family members. Since she is always willing to live with her husband without his parents influence, there is no

question of leaving the custody of child Vinodha to her husband. She submitted that as a true Hindu wife, she is willing to do all the needful of his husband, which she had done in the past and in the future also. On these grounds, she has prayed this Court to dismiss the habeas corpus petition and direct her husband's parents not to interfere with their peaceful living in future.

5. We heard the learned Advocate Mr. R. Sankarasubbu, on behalf of the petitioner; and Mr. R. Rajarathinam, on behalf of the first respondent, Mr. P. Govindarajan, learned Government Advocate appeared for the second respondent. The only contention of the learned Advocate for the petitioner was that the child Vinodha being aged seven years, the petitioner, who is the father of the said child is entitled for the custody of the child. It is pertinent to mention here that nowhere in the affidavit it has been mentioned except in the abstract while referring to Article 21 of the Constitution that the said child Vinodha has been illegally detained or wrongfully confined by the first respondent. A reading of the affidavit of the petitioner clearly gives an impression that the child was throughout in the custody of the mother-first respondent. It was not the case of the petitioner's advocate during his argument that the child has been illegally taken and wrongfully confined by the first respondent, the mother of the child. The only grievance was that since the child is above five years, under the provisions of the Hindu Minority and Guardianship Act, 1956, the father is the natural guardian and hence the custody should be handed to him. We are not impressed by this submission and also we cannot accede to this request. If he is entitled for the custody of the minor child, he has to go before the proper forum ventilating his grievance. In a Habeas Corpus petition, we have to consider whether the detenu is in illegal detention or wrongful confinement. Since the child Vinodha is not in illegal detention or wrongful confinement, the petition for habeas corpus has to fail.

6. For the reasons stated above, we see no reason to issue a writ of habeas corpus and accordingly this habeas corpus petition shall stand dismissed.