
(2004) 11 MAD CK 0099
In the Madras High Court
Case No : H.C.P.S.R. No. 58071 of 2004

Wilfred Prakash

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 25-11-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) CriLJ 2045 : (2005) 3 CTC 540 : (2005) 2 LW(Cri) 881

Hon'ble Judges : S. Ashok Kumar, J;M. Karpagavinayagam, J

Bench : Division Bench

Advocate : V. Manikandan, for the Appellant; Doraisamy, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, J.—Wilfred Prakash, the petitioner herein, who claims to be a Christian, a practising advocate, has tapped the doors of this Court through Habeas Corpus Petition, posing himself as a practitioner of the philosophy propounded by the great pontiff Sankara who established the renowned mutt at Kanchi in 9th century and as an ardent disciple of His Holiness Sankaracharya Shri Jayendra Swamy, seeking for a direction to the respondents herein for the production of the said Swamigal before this Court and to set him at liberty from the illegal judicial custody caused to be effected by the respondent-police since 11.11.2004.

2. According to the petitioner, the incarceration of Shri Jayendra Swamy since 11.11.2004 is violative to the fundamental rights guaranteed to every citizen of this country and in his capacity as the "next friend" (in law) to the Swamigal, he has locus to file the petition seeking for a Writ of Habeas Corpus for production and release of the Swamy.

3. It is stated that the arrest was effected near Hyderabad by the respondent-police on 11.11.2004 and he was taken and produced before the Judicial

Magistrate No. 1, Kancheepuram, who in turn passed the order of judicial custody.

4. This Habeas Corpus Petition has been filed on 16.11.2004. On the same date, the Registry returned the papers with a query "How the petition is maintainable for the relief sought for, since the question of illegal custody will not arise in this case".

5. On the same day, it was re-presented by the counsel for the petitioner with an endorsement that the person has been detained in Jail in violation of Article 22(1) and therefore, the Habeas Corpus Petition is maintainable in the light of the decision of the Supreme Court in Madhu Limaye case A.I.R.1969 S.C.1014.

6. Again the papers were returned by the Registry questioning the maintainability, since alternative remedy seeking for bail and challenging the remand order is available in the other forums.

7. The counsel for the petitioner re-presented the papers again on 17.11.2004 with the endorsement that the other remedies would not put a bar from filing a Habeas Corpus Petition as bail is not a matter of right, whereas writ is a matter of right.

8. Once again, the papers were returned on 20.11.2004 by the Registry with the endorsement that as per the orders of the Judicial Magistrate No. 1, Kancheepuram, the detention is legal and hence, the petition under Article 226 of the Constitution of India cannot be invoked.

9. On the same day, the papers were re-presented with the endorsement that it is for the High Court to decide whether the orders of the Judicial Magistrate No. 1, Kancheepuram is legal or not and as such, the maintainability of the Habeas Corpus Petition could be decided by the Hon"ble High Court only and therefore, the matter may be posted in open Court, to enable the Court to hear about the maintainability and the grievance.

10. Accordingly, the Registry placed the papers before this Bench for hearing the arguments on maintainability.

11. When the matter was taken up on 23.11.2004, Mr.V.Manikandan, the learned counsel for the petitioner, citing the authorities reported in A.I.R.1969 S.C.1014 (IN RE, MADHU LIMAYE), 1988 L.W.(Cri.) 503 (SELVANATHAN ALIAS RAGHAVAN v. STATE BY INSPECTOR OF POLICE) and 2004 (1) L.W.(Cri.) 418 (R.GURUSAMY v. STATE REP. BY THE DEPUTY SUPERINTENDENT OF POLICE CB CID, COIMBATORE and Anr.), would submit that the Writ of Habeas Corpus is maintainable, since the mandatory provisions under the Code of Criminal Procedure as well as Articles 21 and 22 of the Constitution of India have been violated.

12. After hearing the counsel for the petitioner, this Court put a query as to on what capacity this Habeas Corpus Petition has been filed seeking for the release of Jayendra Swamigal. He pointed out as contained in paragraph 3 of the

affidavit that the petitioner has locus to file this petition on the ground that he is his devotee and in his capacity as the "next friend" (in-law) and it is a well established precedent that anybody is entitled to seek a Writ of Habeas Corpus when there is no legal justification for the detention.

13. We are unable to countenance this contention which has been made on the strength of the decisions reported in 1969 S.C.1014, 1988 L.W.(Cri.) 503 and 2004 (1) L.W.(Cri.) 418 (all cited supra). All these decisions, of course, would state that even though other remedies seeking for bail in the regular forums are available, the Writ of Habeas Corpus can be moved for the release of the detenu when he is in Jail in violation of the Articles 21 and 22 of the Constitution of India by the detenu or his relatives on his behalf.

14. But in the present case, the detenu has not approached this Court seeking for the relief of his release on the violation of the mandatory provisions. On the other hand, the petitioner being a Christian posing himself as a practitioner of the philosophy propounded by Adhi Sankara, has filed this petition in his capacity as the "next friend" (in law) to the Swamigal.

15. Though we would appreciate the petitioner, an advocate, the believer of the philosophy propounded by Adhi Sankara, we are at a loss to understand as to how he can claim as the "next friend" (in law) to the detenu, viz., Shri Jayendra Swamigal. When we asked the counsel for the petitioner, whether the petitioner was authorised and endorsed by the Swamigal as his friend or any instruction has been received by the petitioner from the Swamigal to seek for the relief, the counsel for the petitioner would fairly submit that no such authorisation was obtained from the Swamigal even to call himself as the "next friend" (in law) to the Swamigal.

16. Thus, it is clear that the petitioner alone calls himself as the "next friend" to Swamigal and there is no material to show that the Swamigal endorsed him as his "next friend". When such being the case, on whose instruction and on what basis, the petitioner, a practising lawyer, has approached this Court to report about the violation of the mandatory provisions under the Articles 21 and 22 of the Constitution of India. This shows that he wasted his time instead of concentrating on his practice as lawyer before Court and also time of this Court which has spent considerable time in hearing the arguments of the counsel for the petitioner.

17. In paragraph 3 of the affidavit, he has also mentioned that this petition has been filed in the capacity as the devotee of the Swamigal. We are not supposed to reject his claim as he has got a right to say that he is a devotee of any Swamigal from any religion. But, filing of the Habeas Corpus Petition for release of the Swamigal by the petitioner claiming himself as devotee of the Swamigal who has been detained in jail, would indicate that this petition has been filed as public interest litigation in the interest of the Swamigal who has got a large number of followers.

18. However, the principle laid down by the Supreme Court in BALCO Employees Union (Regd.) Vs. Union of India and Others, , would not permit the petitioner to move such a writ petition by way of public interest litigation. As per the decision of the Supreme Court, public interest litigation is intended to vindicate public interest where fundamental and other rights of the people who were ignorant or in socially or economically disadvantageous position and were unable to seek legal redress were required to be espoused.

19. In this case, the detenu himself has approached the High Court seeking for bail and challenging the order of police custody. There is no dispute in the fact that the bail application was dismissed on 20.11.2004 and the application against the police custody filed by the detenu has been rejected by the High Court on 22.11.2004. This Court cannot sit over the judgment of the learned single Judges who dealt with the bail application and the revision against the police custody.

20. The papers relating to the return by the Registry and the re-presentation would indicate that from 16.11.2004 upto 22.11.2004, there was a constant battle between the Registry and the counsel for the petitioner with reference to the queries made by the Registry regarding maintainability.

21. It is quite unfortunate that even though the bail application was dismissed by the single Judge of this Court on 20.11.2004 filed by the detenu himself, rejecting the various contentions regarding violation of the mandatory provisions, the counsel for the petitioner had chosen to insist the Office to post the matter before this Bench for arguing on maintainability. This conduct would show that the petitioner is not really interested in getting the relief, on the other hand, he is interested in getting the matter posted before the Court and arguing the matter, probably for publicity.

22. In this context, the observation of the Supreme Court in S.P. Gupta Vs. President of India and Others, is quite relevant, which is as follows:

"We must be careful to see that the member of the public, who approaches the court in cases of this kind, is acting bona fide and not for personal gain or private profit or politician motivation or other oblique consideration."

23. In Janata Dal Vs. H.S. Chowdhary and Others, , the Apex Court would observe thus:

"The busibodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either for themselves or as proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffling their faces by wearing the mask of public interest litigation, and get into the courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the courts."

24. The above observation would squarely apply to the instant case as well, as this Court is of the view that this petition is nothing but vexatious and frivolous

petition in order to get publicity. Therefore, this Court would strongly condemn the act of the petitioner who is said to be a practising lawyer.

25. Usually, when such vexatious petitions are being filed, for having filed vexatious petition and wasted the court's time, this Court used to impose heavy costs. There is no difficulty in holding that this is one of such cases where heavy costs to be imposed.

26. However, it is submitted by the counsel for the petitioner that the petitioner is a recently enrolled advocate and as such, he would not be able to pay any costs, but for his act of filing this petition, he would tender his unconditional apology. On the direction of this Court, the petitioner has also filed an affidavit tendering his unconditional apology.

27. In view of the above, we accept the apology and refrain from imposing any costs on the petitioner. In future, the petitioner shall ensure that he concentrates on legal practice and indulges in legal activities. The petition is rejected as not maintainable.