



H.C.P(MD)No.560 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.05.2023

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CORAM:

**THE HONOURABLE MR.JUSTICE M.DHANDAPANI
AND
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

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Ilavarasan

... Petitioner

Vs.

1.The Superintendent of Police,
Office of the Superintendent of Police,
Ramanathapuram.

2.The Inspector of Police,
Thirupalaikudi Police Station,
Ramanathapuram District.

3.Maheswaran

4.Vijayan

... Respondents

PRAYER: Habeas Corpus Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Habeas Corpus, to direct the respondents to produce the body or person of detenu by name Mathithra, aged 21 years wife of Ilavarasan before this Court and set her at liberty.



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For Petitioner :Mr.R.Alagumani

For Respondents :Mr.S.Ravi
Additional Public Prosecutor for R1 & R2

ORDER

(Order of the Court was made by M.DHANDAPANI,J)

The petitioner seeking production of his wife namely Mathithra, aged about 21 years has filed this Habeas Corpus Petition.

2. Mr.S.Ravi, learned Additional Public Prosecutor takes notice for the respondents 1 & 2.

3. The case of the petitioner is that he fell in love with the detenu and since the detenu was a minor at that time, they decided to get married after sometime. In the meanwhile, the parents of the detenu performed a child marriage without her volition with the fourth respondent herein forcibly. Thereafter, the detenu voluntarily came out from the parental home and went to the petitioner's house. On 24.04.2023, the detenu and the petitioner got married. On 03.05.2023, the third respondent came to the house of the petitioner and forcibly taken away her. Hence, this petition is filed.



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4. Mr.R.Alagumani, learned counsel for the petitioner, would submit that earlier child marriage was performed by the parents of the detenu, which was opposed by the detenu and there is no compatibility in the said marriage. Thereafter, on her own volition, the detenu decided to join with the petitioner. Accordingly, a special marriage was conducted in the presence of Advocates and office bearers of the Trade Union, under Section 7-A of the Hindu Marriage Act, 1955 and it is perfectly a valid marriage. Hence, this Court may issue a direction the Law Enforcing Agency to secure the detenu from the fourth respondent and hand over her custody with the petitioner.

5. The Additional Public Prosecutor appearing for the official respondents submitted that the petitioner kidnapped the detenu twice. The cases in Crime No.46 of 2023 and C.S.R.No.88 of 2023 were registered against the petitioner for the alleged kidnaps. Suppressing the same, the petitioner filed the present Habeas Corpus Petition in order to harass the parents of the detenu as well as the detenu. He further submitted that during enquiry, the detenu wants to go along with the husband. Accordingly, he prays for dismissal of this petition.



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WEB COPY 6. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the official respondents.

7. The petitioner claims that the marriage between the petitioner and the detenu was performed in the presence of Kanagasabai M.A.B.L., and Balamurugan, who is the Deputy Secretary of State Legal Wing, District Trade Union, Tiruppur, who claim to be advocates and based on which, marriage was performed on 24.04.2023. A self respect marriage certificate was also issued by the above said advocates.

8. We are wondered as to how the Advocates are authorised to perform special marriages in their office or Trade Union. When a similar matter came up for consideration in ***S.Balakrishnan Pandiyan vs. The Superintendent of Police, Kanchipuram District and others***, reported in ***2014 (6) CTC 129***, this Court has categorically held as follows:

“39. Our declaration of law that, marriages performed in secrecy in the Office of Advocates and Bar Association Rooms cannot amount



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to solemnisation within the meaning of Sections 7 and 7-A of the Hindu Marriage Act, cannot be used as a sword by the males for cutting the nuptial knot in matrimonial proceedings, but can be used only by the fair sex to get liberated from sham marriages of this nature. We also hold that the Certificate of Solemnisation issued by Advocates will not be per se proof of Solemnisation of Marriage in a matrimonial dispute.

40. Coming to the propriety of Advocates going to the Registration Office and presenting the Memorandum of Registration of Marriages, Mr.R.C.Paul Kanagaraj submitted that, there is no bar for the Advocates to present the papers for Registration and he drew parallels by citing the practice of Advocates presenting documents like sale deed etc. for registration before the Registration Officials. We are unable to agree with this submission of the learned counsel for the following reasons:

[a] Under the Tamil Nadu Document Writers Licence Rules, 1982, all non-testamentary documents should have to be prepared only by a Document Writer licensed in this behalf and it shall be duly attested by him with his full name and licence number. The Rules define 'Document Writer' as a person engaged in the profession of preparing documents. Preparation of document requires legal acumen and therefore, this falls within the province of the professional duties of an Advocate. The Registrar is required to go through the recitals in the document and also check the valuation etc. At that time, when there is a doubt in law, he will have to clarify it from the person who had drafted the document. Therefore, the presence of Advocate for Registration of documents becomes essential.

[b] An Advocate before registering a marriage, issues a Solemnisation Certificate in his capacity as Priest, as defined by Section 2(e) of the Act. Neither the Act nor the Rules insist upon the presence of the Priest during Registration. The scope of Registration is to check the



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identity of the parties and the witnesses and the enquiry is only factual. There is no question of law or legal question involved in such an enquiry for the Advocate to be present and give clarification to the Registrar of Marriages. The Registrar of Marriages is performing a public duty and the Act itself provides that he should give reasons for refusing to register a marriage and the order passed by him is an appealable one. We find there is no scope for the presence of the Lawyer-cum-Priest for effecting registration of a marriage. When the Registrar entertains any doubt with regard to the performance of the marriage, he may call upon the parties to produce further information to satisfy himself and only at that juncture, the necessity of the Priest to appear before the Registrar may arise and not otherwise. Therefore, we do not approve of Advocates appearing before the Registrar and presenting the Memorandum of Registration, for that would definitely lower the dignity of the Bar in the eyes of the public. The Preamble of the Bar Council Rules extracted above clearly states that, what may be lawful and moral for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity may still be improper for an advocate.”

9. A perusal of the above decision makes it clear that the marriage performed by the Advocates in their office is not a valid marriage, unless the marriage is registered under the Tamil Nadu Registration of Marriages Act, 2009 and the physical appearance of the parties to the marriage before the Registrar is essential. However, the petitioner claims that their marriage was performed in the presence of the office bearers. It



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is not a valid one. Further, the earlier marriage performed by the parents of the detinue was not questioned either by the detinue or her parents.

Hence, the earlier marriage performed by the parents of the detinue is perfectly valid and the subsequent marriage performed in the presence of the advocates and officer bearers of the Trade Union is invalid. After the above decision of the Division Bench, marriages performed by the Advocates are not valid and disciplinary action is to be initiated against those Advocates.

10. Hence, we are of the strong opinion that this is a fit case to refer the matter to the Bar Council of Tamil Nadu to initiate disciplinary action against the advocates who performed the marriage. The Bar Council of Tamil Nadu is directed to initiate disciplinary action against Kanagasabai M.A.B.L., and Balamurugan, Deputy Secretary, State Legal Wing, District Traders Union, Tiruppur, after issuing notice to them.

11. The Bar Council of Tamil Nadu is also directed to initiate disciplinary action against the lawyers who are conducting these types of marriages all over Tamil Nadu by issuing fake certificates after providing opportunity to them within a period of three months from the date of



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receipt of a copy of this order. The Law Enforcing Agency is also at liberty to proceed against the lawyers who are performing these types of marriages as well as the petitioner in the manner known to law.

12. In the result, as there is no illegal custody of the detenu as alleged by the petitioner, this Habeas Corpus Petition is dismissed.

[M.D.I.,J.] [R.V.,J.]
05.05.2023

Index: Yes/No
Internet: Yes/No
NCC: Yes/No

Note:

Registry is directed to send a certified copy of this order to the Secretary, Bar Council of Tamil Nadu & Puducherry, NSC Bose Rd, George Town, Chennai, Tamil Nadu 600104 along with affidavit and typed set of papers, for appropriate action.

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To

1. The Superintendent of Police,
Office of the Superintendent of Police,
Ramanathapuram.
2. The Inspector of Police,
Thirupalaikudi Police Station,
Ramanathapuram District.

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M.DHANDAPANI, J.

AND

R.VIJAYAKUMAR, J.

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ORDER MADE IN

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