

Manokaran Vs. State rep. by Inspector of Police, Erode District and Others

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Court : Chennai

Decided On : Jul-29-2016

Judge : S. Nagamuthu & V. Bharathidasan

Appeal No. : H.C.P.No. 1424 of 2016

Appellant : Manokaran

Respondent : State rep. by Inspector of Police, Erode District and Others

Judgement :

(Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Habeas Corpus directing the 1st respondent herein to produce the body of the detainee, the petitioner's minor daughter by name Susendri aged about 17 years from the illegal custody of the 2nd and 3rd respondent before this Court and set her at liberty at once.)

S. Nagamuthu, J.

1. The petitioner is the father of one Susendri. According to the petitioner, her date of birth is 07.10.1998 and thus, she is still a minor. She was studying B.Sc. II year in the Navarasam Arts and Science College at Arachalur. According to the petitioner, she has been found missing from 05.07.2016 onwards. Since the respondent police did not trace out the girl, the petitioner has come up with this Habeas Corpus Petition.

2. Today, when this Habeas Corpus Petition was taken up for hearing, the petitioner did not make appearance. The learned counsel for the petitioner made appearance. The second respondent/ Mr.Devaraj also made appearance and he is represented by a counsel. The first respondent produced the detenue Susendiri before this Court.

3. We have heard all of them.

4. The detenue told us that her date of birth is 07.06.1998 and not 07.10.1998. She further submitted that on 06.07.2016 on her own, she married the second respondent and she has been living with him as his wife. The second respondent also told us that he married Susendiri on 06.07.2016 at Nadupani, Pollachi and he has been living with her as her husband.

5. The learned counsel for the petitioner would submit that the detenue is still a minor as her date of birth is 07.10.1998. In order to show that her date of birth is 07.10.1998, the petitioner has already filed a copy of the birth certificate issued by the Executive Officer, Kodumudi Town Panchayat. The said certificate shows that the detenue was born at Saravana Hospital on 07.10.1998 and her birth certificate was registered on 13.10.1998 itself. From this certificate, prima facie, it is clear that even now, the detenue continues to be a child in terms of the Protection of Children from Sexual Offences Act.

6. The learned counsel appearing for the second respondent would submit that the date of birth of the detenue is actually 07.06.1998. In order to show that the date of birth is 07.06.1998, the second respondent has produced a copy of the Transfer Certificate issued by the Headmaster, Government Higher Secondary School, Minnampalayam, Erode District. The said certificate shows that she studied in the school between 2008 and 2013. According to the said certificate, her date of birth is 07.06.1998. Referring to the same, the learned counsel for the second respondent would submit that as on the date of marriage, since the detenue has attained majority, the marriage is a valid one and thus, the second respondent has not committed any offence.

7. We have considered the above submissions.

8. In this Habeas Corpus Petition, we cannot express any opinion as to whether the second respondent has committed any offence under the provisions of POCSO Act or not. Similarly, we cannot express any opinion as to whether the first respondent could effect arrest of the second respondent in connection with the said case for the purpose of investigation or not. In fact, we do not want to express any opinion regarding investigation. At the same time, prima facie, we should be satisfied in respect of the age of the detainee since her safety, security and custody is involved. As already pointed out that, there are two documents before us. The first one is the birth certificate which is the earliest in point of time which shows that the birth of the detainee was registered as early as 13.10.1998, itself. According to this certificate, her date of birth is 07.10.1998 and thus, she continues to be a child. It is common knowledge that the school certificate is subsequent. Whether the detainee was born on 07.10.1998 or 07.06.1998 cannot be gone into in depth at this stage under this jurisdiction because it involves proof of the said disputed fact by means of evidence. It is for the Special Court under POCSO Act to decide about the age and also about the custody of the detainee.

9. There are two conflicting documents before us and since the birth certificate is the earliest document in point of time and also a public document, going by the same, we direct the first respondent to produce the detainee Susendri before the Special Court under POCSO Act on 01.08.2016 and the said Court shall decide about the age of the detainee and also about the custody of the detainee. Until she is produced before the Special Court under the POCSO Act, the detainee shall be kept in the Child Welfare Home, KumalaanKuttai, Erode.

10. The petitioner is at liberty to approach the said Court for relief, if any, for which he is entitled to, in respect of the custody of the detainee. We make it clear that we have not expressed any opinion regarding the date of birth of the detainee and it is for the investigating officer to thoroughly investigate and it is also for the appropriate Court to decide about the same. We also make it clear that it is for the first respondent to decide whether to arrest the second respondent in connection with this case or not.

11. Accordingly, the Habeas Corpus Petition is disposed of.

