IN THE COURT OF APPEAL OF THE

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Appeal to set aside the Order of the High Court in terms of the provisions of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 read with Articles 141 and 154P of the Constitution.

Kandasamy Ravichandran
Present whereabouts not known

Corpus

CA (PHC) 110-2018

HC Vavuniya

Application No.

HCV/Writ/42/2006

Kandasamy Ponnammah
Velikkandal, Kandawalai.

Petitioner

Vs.

1. The Army Commander
   Army Head Quarters,
   Colombo 01.

2. The Officer Commanding
   211, Brigade
   Kandy Road,
   Vavuniya.

3. The Officer Commanding
   563, Brigade,
   Omanthai,
   Vavuniya.
4. Hon. Attorney General
   Attorney Generals Department,
   Colombo 12.

Respondents

And Now Between

Kandasamy Ponnammah
Velikkandal,
Kandawalai.

Petitioner – Appellant

Vs.

1. The Army Commander,
   Army Head Quarters,
   Colombo 01.

2. The Officer Commanding
   211, Brigade,
   Kandy Road,
   Vavuniya.

3. The Officer Commanding
   563, Brigade
   Omanthai,
   Vavuniya.

4. Hon. Attorney General
   Attorney Generals Department,
   Colombo 12.

Respondents - Respondents

Before	:	**Hon. M Sampath K. B Wijeratne,J.(CA)**
	:	**Hon. M. Ahsan R. Marikar, J.(CA)**
Counsel	:	K.S Ratnavel with Yokarasa Kething for the Appellant Dilan Ratnayake, ASG with N. Nishanthan, SC for the Respondents.
Written Submissions	:	Respondents filed on 16.06.2023 Petitioner-Appellant filed on 27.09.2023
Argued on	:	18.09.2024 03.10.2024
Decided on	:	08.11.2024

M. Ahsan R. Marikar, J. (CA)

Introduction

1) The Appellant had made this application by way of a petition of appeal dated 23rd April 2018 seeking the reliefs prayed for in the said petition which is reproduced as follows;

a) For notice to issue on Respondents,
b) That the Order dated 04.04.2018 be set aside,
c) That an Order be made giving effect to the findings of the Learned Magistrate of Vavuniya contained in the report dated 07.12.2018,
d) Grant the reliefs prayed for in the petition of the Petitioner in Application No; HCW/42/2006 in the High Court of Vavuniya,
e) For costs and,
f) For such other and further reliefs as it seems fit.

Facts of this case

2) The Appellant had contended that the Appellant had filed an application in the nature of a Writ of Habeas Corpus in the High Court of Vavuniya concerning her son *Kandasamy Ravichandran*. Acting in accordance with Article 141 of the Constitution, the High Court Judge had directed the Magistrate of Vavuniya to conduct an inquiry and report on the said matter.

3) Subsequently, the Learned Magistrate had submitted a report stating the 2nd and 3rd Respondents in that application were accountable for the said disappearance.

4) After receiving the said report from the Magistrate of Vavuniya, the Learned High Court Judge by his Order dated 4th April 2018 had dismissed the action of the Appellant.

5) Being aggrieved by the said Order of the High Court Judge, the Appellant had sought this appeal seeking the reliefs prayed for in the petition dated 23rd April 2018.

Disputed facts

6) This matter was taken up for argument on 18th September 2024 and on 3rd October 2024. After both parties had made their submissions, the case was concluded and fixed for judgement.

7) Upon considering the arguments raised by the parties, on perusal of the documents and written submissions, to arrive at a conclusion, I have to evaluate the following disputes to determine whether the Learned High Court Judge of Vavuniya had erred in dismissing the Habeas Corpus application.

   i) As per the Habeas Corpus application made by the Appellant at the High Court of Vavuniya under Article 141 has the Magistrate conducted a comprehensive inquiry?

   ii) Has the High Court Judge considered the facts pertinent to the inquiry?

   iii) If so, can this appeal be maintained?

i) As per the Habeas Corpus application made by the Appellant at the High Court of Vavuniya under Article 141, has the Magistrate conducted a comprehensive inquiry?

8) At the outset, I draw my attention to the definition of a Writ of Habeas Corpus. The general meaning of the Writ of Habeas Corpus is a legal procedure that allows an individual to challenge their

unlawful detention or imprisonment. The term derives from Latin and means that '*you shall have the body'*.

9) As per the book of ***Administrative Law***[1];

> *"The Writ of Habeas Corpus plays a part in administrative law, since some administrative authorities and tribunals have powers of detention. The cases most likely to arise are those where some person is detained as an illegal immigrant or in order that he may be deported, or as being unsound mind"*

10) Therefore, it is essential to consider the definition of '*arbitrary detention*' as articulated in ***Black's Law Dictionary***[2];

> *"The detention of a person without due process of law; the indefinite or unreasonable delayed holding of a suspect or defendant without bringing the person before a competent court, esp.in a case involving terrorism or illegal immigration."*

11) It is apparent that the Appellant filed a Writ of Habeas Corpus application before the High Court Judge of Vavuniya. Acting under Article 141, the High Court Judge directed the Magistrate of Vavuniya to conduct an inquiry and submit a report. In response, the Magistrate conducted the inquiry, considered the evidence, and submitted the report to the High Court Judge.

12) On the face of it, the Appellant was represented by Attorneys and had the opportunity of leading evidence and to cross examine the Respondent's Witnesses. Therefore, there is no doubt as per Article 141 that the Learned Magistrate had conducted a proper inquiry

[1] Wade, H.W.R. and Forsyth, C.F. (2014) *Administrative Law*, 11th ed. Oxford: Oxford University Press, p. 501

[2] Garner, B.A. (2014) *Black's Law Dictionary*, 11th ed. St. Paul, MN: Thomson Reuters, p. 563

and submitted a report to the Learned High Court Judge of Vavuniya.

ii) Has the High Court Judge considered the facts pertinent to the inquiry?

13) The Learned Magistrate of Vavuniya submitted his findings on the said inquiry dated 7th December 2016. In his findings he had decided that the Respondents should be accountable for the corpus *Kandasamy Ravichandran* who disappeared after entering the Omanthai checkpoint.

14) The Learned High Court Judge had considered the findings of the Learned Magistrate of Vavuniya as well as the evidence presented during the inquiry, however, he dismissed the Habeas Corpus application on the grounds that the evidence did not support the assertion that the corpus was taken into custody and illegally detained.

15) Given the existence of a dispute of fact, the Learned High Court Judge had declined to issue a Writ and dismissed the application submitted by the Appellant in the High Court.

iii) If so, can this appeal be maintained?

16) As the High Court Judge had dismissed the Habeas Corpus application, the Appellant had initiated this appeal as he was aggrieved by the said Order.

17) The grievance of the Appellant is that her son, an employee of the Multipurpose Cooperative Society of Mallawi Thunukkai, was supposed to travel to Vavuniya on the date the incident occurred.

To reach Vavuniya he had to pass through the Army checkpoint from the uncontrolled area.

18) As per the evidence and the document submitted to Court the corpus had entered the army checkpoint on 25th April 2006. The document marked as 1RB specifies the said *Kandasamy Ravichandran* had passed through the checkpoint. There are no details to support the assertion that the corpus was detained/arrested by the Army.

19) The evidence presented by the Appellant at the Magistrate's Court does not disclose any factual basis indicating that the corpus was detained by the Army at the Omanthai checkpoint.

20) The evidence submitted by her to the court, was hearsay as she stated that the General Manager of Multipurpose Cooperative Society had told her that her son was arrested. However, no witness was called from the Cooperative Society to verify that position.

21) During the argument stage, the counsel who appeared for the Appellant also admitted the said position. Aside from her testimony, there were no other witnesses to support the assertion made by the Appellant that the corpus was detained at the Omanthai checkpoint.

22) As per the Respondents' Witnesses and the documents submitted to court, the said corpus *Kandasamy Ravichandran* had crossed the Omanthai checkpoint manned by the Army and there is no evidence to suggest that he was detained or was in the custody of the Respondents and/or taken into the custody of the Police post located at the Omanthai checkpoint.

23) Counsel for the Appellant vehemently argued that the corpus entered from the uncleared area into the Omanthai checkpoint, and that the Respondent failed to produce any document to

substantiate that the corpus exited from the Omanthai checkpoint. Upon reviewing the evidence presented before the Magistrate, it is evident that the Omanthai checkpoint was primarily manned to facilitate the passage of individuals into government-controlled areas at the time in question. Furthermore, no separate records were maintained regarding entry or exit. The only record kept was of the individuals who passed through. In light of these circumstances, the argument advanced by Counsel for the Appellant cannot be accepted.

24) Thus, the High Court Judge in his decision had correctly noted that there was no evidence before the Court regarding whose custody the corpus was in, as referenced in Article 154P (4) and decided that the Magistrate had failed to consider the evidence led before him. In these circumstances, it is evident that the assertion of a disputed fact is supported by the evidence and documents reviewed.

25) Now I will draw my attention to the decision of **Kodippilage Seetha v Sarvanathan and Others[3];**

a) *The burden of proof must lie fairly and squarely on the party (Petitioner) who makes the assertion which is denied as here, that the corpus was taken into custody by the 1st Respondent*
b) *"an ordinary citizen making a serious allegation of the corpus being taken into illegal custody which would amount to a crime must prove the allegation beyond reasonable doubt"*

26) Further, In the case of ***Rosalind V Sudaralingam[4]*** it was held that in this Habeas Corpus application, the version of the Respondent Police Officers, that they never took the corpus into custody, was upheld as being true.

[3] [1986] 2 SLR 228
[4] [2005] 1 SLR 260

27) When referring to the aforesaid matters, the burden of proof rests upon the party who makes this application. The said burden of proof had not been fulfilled by the Appellant at the Magistrate Courts.

28) On the said grounds, my considered view is that the Appellant had failed to satisfy the Learned High Court judge to obtain the Writ of Habeas Corpus.

CONCLUSION

29) In view of the aforesaid reasoning, I dismiss the Appellant's petition of appeal dated 23rd April 2018.

30) No costs ordered.

Judge of the Court of Appeal

M Sampath K. B. Wijeratne, J. (CA)

I agree.

Judge of the Court of Appeal