IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for mandates in the nature of Writs of Habeas Corpus under Article 141 of the Constitution of the Republic of Sri Lanka.

AriyawanshaUdugamavithana
Theiwatte Kade,
Nehinna,
Dodangoda.

PETITIONER

CA/Writ (Habeas Corpus)
Application No:-
HB 02/2013

Vs,

1. Commander,
   Sri Lanka Army,
   Army Headquarters,
   Baladaksha Mawatha,
   Colombo 03.
2. Director,
   Criminal Investigation Department,
   Police Headquarters,
   Colombo 01.
3. Inspector General of Police,
   Police Headquarters,
   Colombo 01.
4. Commissioner General of Prisons,
   Department of Prisons,
   No. 150, Baseline Road,
   Colombo 09.

5. Ajith Rohana,
   Senior Superintendent of Police,
   C/o Inspector General of Police,
   Police Headquarters,
   Colombo 01.
6. Hon. Attorney General,
   Attorney General's Department,
   Colombo 12.

RESPONDENTS

7. Priyantha Deshapriya Udugamavithana,
   Theiwatte Kade,
   Nehinna,
   Dodangoda.

CORPUS

Before : **Vijith K. Malalgoda PC J (P/CA)**
&
H. C. J. Madawala J

Counsel : **Sanjeewa Ranaweera for the Petitioner**
Anoopa de Silva SSC for the Respondent

Argued on : 12 /08 /2015

Judgment Date : 02 /10 /2015

H. C. J. Madawala J

The petitioner has filed this Habeas Corpus Application on 27th of August 2013 to produce the corpus above named, Priyantha Deshapriya Udugamavithana of Nehinna, Dodangoda, who was unlawfully arrested/abducted and has been illegally detained by and / or in the illegal custody of 1st to 5th respondent named in the petition. The petitioner challenged the unlawful arrest and detention of his son and sought a mandate discharging or releasing him from detention custody.

When this matter came for hearing on 17-06-2014 both counsel moved that the matter be fixed for inquiry. After several dates,when this matter came for inquiry on 28-05-2015 both parties made their oral submissions in respect of the question whether this matter could be referred to the Magistrate Court. Both parties further under took to file their written submissions in respect of their application. Both parties had admitted that this incident had taken place 25 years ago. The petitioner had submitted that the alleged incident had occurred in 1989 and that the respondents strenuously argued that it is futile to proceed with this application and thus the Learned Magistrate should not be burdened with holding an inquiry in terms of the proviso to Article 141 of the constitution.

It was submitted by the counsel for the petitioner thatit is settledlaw that there is no requirement/necessity for court to be satisfied that the Corpus is within the custody or control of any one of the respondents, before referring the matter to a court of first instance for inquiry and report in terms of the proviso to Article 141 of the constitution.

It was also admitted by the petitioner that the corpus was allegedly taken in to custody over 25 years ago. The counsel for the respondent submitted that the petitioner was guilty of laches in making this application, and hence that this application should not be entertained for a subsequent events (which are more fully described in paragraphs 12, 13, 14 and 15 of the petition) that prompted the petitioner to invoke the Jurisdiction of this court under article 141 of the constitution. Particularly the 5th Respondents unequivocal statement that the corpus was in the custody of the state Authority. Further it was submitted by the respondents that the petitioner is complaining of a matter which transpired after 25years without any basis. The petitioner argued before this court that there is no time limit for a Habeas Corpus Application. He further submitted that the Habeas Corpus Application is not a discretionary remedy and it cannot be denied on the grounds of inordinate delay, futility.etc.

It was revealed during the arguments before this court that this application has been filed by the father of the Corpus on 22nd of June 2013 who is a 77 years old person. The Corpus had been the eldest of the four children of the petitioner. The corpus had worked as a tutor at a private educational institution in Anamaduwa in or about 1987 whilst reading for an external degree at the University of Peradeniya. The petitioner invoked the jurisdiction of this court based on a mere belief entertained by him to the effect that his son the corpus came to be arrested by the Sri Lanka Army. The petitioner himself did not place much reliance on the hearsay information and was not sure about the veracity of the said information. The alleged arrest of the corpus as per the information so received by the petitioner had taken place on or about the 23rd of August 1989. It was submitted that this application came to be filed,

- on a mere belief entertained by the petitioner
- on a mere belief entertained by the petitioner based on Hearsay evidence
- in respect of an alleged arrest which had taken place 26 years ago.

It was submitted that the petitioner has invited this court to pursue on an aimless voyage of discovery of an aged old incident, with no specific details in respect of the specific parties responsible for the alleged arrest being provided. It was the position of the respondents that the aforementioned circumstances do not warrant this court to order an inquiry to be held by a court of first instance. And in any event these court orders and inquiry to be held in a court of first instance, in the instance application the said act would tantamount to this court having opened the flood gates to entertain matters of similar vintage or even more.

We had considered the submissions made by both parties. We are of the view that there is no time limit for Habeas Corpus Application. However when considering the long delay of the instance application, we find that the instance Habeas Corpus Application, the culprit responsible for the alleged abduction had not been listed, identified or named.In the instant application the entirety of the matter lies upon a mere belief entertained by the petitioner, coupled with a vague account/ narration in uncertain terms of the chain of event relating to the alleged belief.

Article 141 of the constitution is identified as a constitutional provision intended to safeguard the liberties of a citizens. However the citizen should not be guilty of having slept over his right to assert his right. The gross delay on a part of a citizen to assert his rights, the citizen should be prepared to face the consequence of his delay. Long delay in filing Habeas Corpus Application coupled with the

failure on the part of the petitioner to identify, name the culprits responsible for the alleged adbuction further complements the absolute futility the waste of time to call upon the heads of the security forces the Director CID the Commissioner General of Prison to commence a search with no specific details of the parties responsible for the allege adbuction.

In the case of **Dahanayake and Others Vs. Sri Lanka Insurance Corporation Ltd. And Others**

Justice SaleemMarsoof, P. C, J. (P/CA) observed,

That it is settled law that inordinate delay invoking the jurisdiction of the court does not entitle the petitioners to any relief under writ jurisdiction. It is further stated that,no plausible explanation has been given by the petitioner for his delay in invoking the jurisdiction of this court. In fact, the petitioner did not give any direct explanation for his delay and/ or admit the fact that there was delay. However, without categorically admitting the delay, they attempted to mitigate his delay by stating that they made a complaint to the 2nd respondent.

In the case of **Juwanisvs.Lathief, Police Inspector, Special task force and others it was Held:**

(1988) 2 SLR Pg 185

"There is no-requirement that the Court of Appeal should first inquire into the question of custody (where it is denied) before proceeding further."

"The Court of Appeal can direct a judge of a Court of first instance to inquire into the alleged imprisonment or detention of the corpus and make its report despite respondent's denial of custody or control of the corpus."

"It is not necessary for the Court of Appeal to satisfy itself that the corpus is within the custody or control of the respondents before the matter is referred to a judge of a court of First instance for inquiry and report."

However we find that the petitioner himself did not place much reliance on the hearsay information and was not sure about the veracity of the above said information. We also find that thepetitioner had failed to explain the 26 years delay and give reasons on the part of the petitioner to file Habeas Corpus Application in this case.

Therefor we hold that due to gross delay on the part of the petitioner to make this application and failure on the part of the petitioner to identify or name the persons responsible for the alleged adbuction no purpose would be served by merely referring this matter for an inquiry before a Magistrate. Hence we dismiss this application without cost.

JUDGE OF THE COURT OF APPEAL

Vijith K. Malalgoda PC J (P/CA)

I agree.

PRESIDENT OF THE COURT OF APPEAL