

HEEN MENIKE
v.
THE COMMANDANT, R.D.F. CAMP AND OTHERS

COURT OF APPEAL
S. N. SILVA, J. (PRESIDENT) C.A.
H.C.A. NO. 30/92
DECEMBER 14, 1994.

Habeas Corpus – Arrested corpus – Disappearance – Exemplary costs.

Held :-

Where the arrest and detention of the corpus falls into the category of cases where a person who has been arrested and detained by the authorities disappears thereafter exemplary costs should be ordered.

Case referred to:

1. *Sebastian, M. Hongray v. Union of India* AIR 1984 SC 1026.

APPLICATION for writ of habeas corpus.

K. Tiranagama with *M. V. Goonewardena* for petitioner.
V. K. Malalgoda, S.C. for Attorney-General.

Cur. adv. vult.

January 13, 1995.

S. N. SILVA, J.

This is an application for a Writ of Habeas Corpus filed by the Petitioner in respect of Ratnayake Mudiyansele Jinadasa (the corpus). The Petitioner is the wife of the corpus who was the father of two children making his living by working as a driver. According to the Petitioner the corpus was arrested by a group of Army officers on 07.02.1990 and thereafter detained at the Beragala Army Camp.

Upon this application being filed notice was issued on the Respondents. The 5th Respondent filed an affidavit dated 28.07.1992 where he stated that the corpus who was in the custody of Lieutenant Susantha Attanayake of the Beragala Army Camp escaped from

custody on 12.03.1990. In the circumstances the matter was referred to the Chief Magistrate, Colombo for an inquiry and report in terms of the proviso to Article 141 of the Constitution. Learned Chief Magistrate has held an inquiry with notice to all parties and has made his report dated 27.04.1994. He has come to specific findings that the corpus was arrested and detained by Army officers attached to the Beragala Camp. He has held that the 2nd and 3rd Respondents are responsible for the disappearance of the corpus. He has also held that the 4th and 5th Respondents being the superior officers should take responsibility for the acts of the 2nd and 3rd Respondents. He has specifically disbelieved the evidence adduced by the Respondents that the corpus escaped from the custody. In view of these findings of the learned Chief Magistrate a rule *nisi* was issued by this Court on 12.07.1994 on the 1st Respondent and the Commander of the Sri Lanka Army directing that the corpus be produced before this Court or that information regarding his whereabouts be furnished to this Court on 05.09.1994. In response to the rule *nisi* the Commander of the Army has filed an affidavit dated 03.11.1994 that he has no information as to the arrest and detention of the corpus.

In the circumstances stated above, the arrest and detention of the corpus falls into the category of cases where a person who has been arrested and detained by the authorities disappears thereafter.

The matter of making an appropriate order in such a case was considered by this Court in H.C.A. 164/89, 171/89 and 166/89 decided on 02.12.1992. In those applications it was decided by Court that the decision of the Indian Supreme Court in the case of *Sebastian M. Hongray v. Union of India* ⁽¹⁾ should be followed and exemplary costs ordered against the Respondents who have failed to account for the detention of the corpus. I adopt, in this case the reasons stated in the judgment dated 02.12.1994 referred above and direct the 1st Respondent to pay a sum of Rs. 100,000/- as costs to the petitioner. The costs should be paid on or before 31.03.1995. If this amount is not paid as directed further action will be considered in this matter as to contempt of Court. I also direct the Registrar of this

Court to forward copies of the proceedings recorded in the Magistrate's Court to the Inspector General of Police to peruse the evidence recorded and to direct further investigations in the matter if there is evidence as to the commission of a cognizable offence. The Registrar is also directed to forward a copy of the proceedings with this judgment to the Hon'ble The Attorney-General for appropriate action to be taken by him. The Petition is accordingly allowed with costs to be paid as stated above by the 1st Respondent.

Petition allowed with costs.
