

1962

Present : Herat, J.

A. M. AVAUMMAH, Petitioner, and V. F. SOLOMONSZ, Respondent

S. C. 250 of 1962—In the matter of an Application for the issue of a Mandate in the nature of a Writ of Habeas Corpus under Section 6 of the Courts Ordinance

Habeas corpus—Detention of a person by an executive officer of the Crown—Scope of the officer's right to plead in justification an order of another officer—Immigrants and Emigrants Act (Cap. 351), s. 28 (2).

In an application for a Writ of Habeas Corpus made in respect of a person who was averred to be unlawfully detained by an officer-in-charge of a Police Station under an order made by the Permanent Secretary to the Ministry of Defence and External Affairs under section 28 (2) of the Immigrants and Emigrants Act—

Held, that when the detention of a person by an executive officer of the Crown is challenged as illegal by way of a Writ of Habeas Corpus, it is not a sufficient answer to justify that alleged detention by merely saying that the respondent is holding the corpus under an order made by some other executive officer of the Crown. In such a case it is necessary for the respondent to satisfy the Court as to the legality of the order under which he purports to detain the corpus.

APPLICATION for a Writ of Habeas Corpus.

M. Tiruchelvam, Q.C., with *V. Kumaraswamy*, for the Petitioner.

S. Pasupati, Crown Counsel, for the Respondent.

May, 15, 1962. HERAT, J.—

This is an application for a Writ of Habeas Corpus made by the wife of the person who is averred to be unlawfully detained. The respondent to the application is one Mr. V. F. Solomonsz, officer-in-charge of the Police Station at Slave Island. The petitioner alleges that the corpus, her husband, is unlawfully detained. The matter came up towards the end of last term and it was directed that it should be listed at the earliest opportunity during the present term.

The respondent has filed an affidavit to the effect that he is holding the corpus under an order made by the Permanent Secretary to the Ministry of Defence and External Affairs under section 28(2) of the Immigrants and Emigrants Act, Chapter 351. Learned Crown Counsel argues that that is a sufficient matter to discharge the respondent from producing the corpus and cites in support the dictum of Mr. Justice T. S. Fernando in the case reported in 58 N. L. R. at page 87. With the greatest respect I cannot agree with that dictum. In my opinion, when the detention of a person by an executive officer is challenged as illegal by way of a Writ of Habeas Corpus, it is not a sufficient answer to justify that alleged illegal detention by merely saying that the respondent is holding the corpus under an order made by some other executive officer of the Crown. It is necessary for the respondent who is but a servant of the Crown, to satisfy this Court as to the legality of the order under which he purports to detain the corpus. No such effort has been made in this particular case so that without saying anything further, the *prima facie* case of illegal detention averred in the petition is not met.

I therefore hold that the detention of the corpus is illegal and that he should be forthwith released. I allow the application and grant the prayer in the petition. The petitioner is entitled to the costs of this application.

The respondent, Inspector Solomonsz, is here and I order him to release the corpus forthwith as I have declared his detention illegal. The corpus is free now to leave this Court wheresoever he pleases.

Application allowed.