

HCP(MD) No.723 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	01.07.2026
Pronounced on	07.07.2026

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA
and
THE HONOURABLE MS.JUSTICE R.POORNIMA

HCP(MD) No.723 of 2026

Sangavi

... Petitioner

Vs.

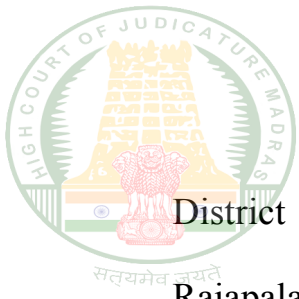
The State of Tamil Nadu Rep. by
1. The Superintendent of Police
Ramanathapuram District,
Ramanathapuram

2. The Inspector of Police
Paramakudi Town Police Station,
Paramakudi,
Ramanathapuram District

3.Kalaiselvi
(R3 implied as per the order of this
Court dated 15.06.2026 in CrI.M.P(MD) NO.11233 of 2026)

... Respondents

Prayer:-Petition filed under Article 226 of the Constitution of India seeking
a writ of habeas corpus directing the second respondent/the Inspector of
Police, Paramakudi Town Police Station, Paramakudi, Ramanathapuram



HCP(MD) No.723 of 2026

District to secure and produce the minor child Saimithran, S/o. Rajapalanikumar, Male aged 5 years before this Court and hand over custody to the petitioner.

For Petitioner : Mr.R.C.Paul Kanagaraj, Senior Counsel
for Mr.S.Sugumar
For R1 and R2 : Mr.D.Venkatesh
Government Advocate(Crl.Side)
For R3 : Mr.D.Senthil.

ORDER

A.D.JAGADISH CHANDIRA,J.

The instant habeas corpus petition is filed by the mother of one Saimithran S/o. Raja Palani Kumar (Hereinafter 'minor child'), seeking for a direction directing the 2nd Respondent i.e. Inspector of Police, Paramakudi Town Police Station to secure and produce the minor child before this Hon'ble Court and further thereto to handover the custody of the minor child to the petitioner.

2. According to the petitioner, her marriage with one Raja Palani Kumar was solemnized as early as in the year 2019 and that there forth, the minor child was born out of the wedlock on 23.07.2020. Further, thereafter, while she was pregnant with her second son, the said Raja Palani Kumar,



HCP(MD) No.723 of 2026

had unfortunately died due to a road accident on 15.09.2023. After the demise of the said Raja Palani Kumar, she remarried one Kannan, who was employed abroad and he was extending financial support for the maintenance and upbringing of her two children. That being so, the petitioner now alleges that the 3rd respondent, who is the grandmother of the minor child on 14.01.2026 picked a quarrel at the petitioner's parental house and thereby forcibly took away the minor child from her lawful custody. The petitioner claims to have filed a complaint before the Ilayangudi police whereupon her custody of the minor child had been restored. However, on 15.02.2026 when, the petitioner was near the Paramakudi Bus Stand, the 3rd Respondent once again forcibly took away the victim child from her lawful custody. Following which, the petitioner filed a complaint on 09.03.2026 with the All Women Police Station, Mudukulathur, and to her vain no action was taken and hence she had filed a complaint on 29.03.2026 before the second respondent where also no effective action was initiated. Therefore, she had on 17.04.2026 sent a detailed representation to the Superintendent of Police, Ramanathapuram District and immediately thereafter filed Crl. M.P. No. 294 & 295 of 2026 before the learned Judicial Magistrate, Paramakudi seeking for the search, recovery and production of the minor child before the said Court. The said



HCP(MD) No.723 of 2026

petitions were heard and directions were passed to produce the minor child before the said Court, and upon the production of whom, the said Court had directed the production of the child before the Child Welfare Committee for passing suitable orders in respect of the custody of the minor child. Even, thereafter, the minor child remains away from the lawful custody of the petitioner and hence, the instant habeas corpus petition has come to be filed.

3. Mr. R.C. Paul Kanagaraj, learned Senior Counsel appearing for the petitioner submits that the Child Welfare Committee has no jurisdiction to pass directions in respect of the minor child as there was no determination of whether the minor child was a 'child in need of care and protection'. He would further submit that as per Section 6 of the Hindu Minority and Guardianship Act, 1956, upon demise of the father of the minor child, the petitioner being the mother of the minor child, is the natural guardian of the minor child and that thus she is the only person having lawful custody of the minor child. Lastly, he would submit that the welfare of the minor child should be taken into paramount consideration in custody matters and, in that regard, he would submit that the educational needs, the emotional welfare and the holistic development of the minor child would be adversely affected if the minor child is not restored to the petitioner's lawful custody.



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4. *Per Contra*, the learned counsel appearing for the third respondent would submit that the petitioner has now remarried and ever since her second marriage, the minor child has been in the care and custody of the third respondent. According to him, the minor child has now developed an emotional attachment with the third respondent and that the minor child has also enrolled in Sri. Kanna Matriculation Higher Secondary School where he is continuing his education while under the custody of the third respondent. Further, the learned counsel would rely on a RTI correspondence obtained by the third respondent, which reflects a letter submitted by the petitioner before the All Women Police Station, Muthukulathur, wherein, the petitioner admits that she had voluntarily sent the minor child with the third respondent and that the minor child is also refusing to return to her lawful custody. He would further submit that the custody of the minor child with the third respondent is not illegal as the Child Welfare Committee has identified that the third respondent as a fit person to whom the minor child be placed with pending inquiry by the Committee. Therefore, he would submit that the third respondent's custody of the minor child being in a manner known to law, the instant Habeas Corpus petition is not maintainable and therewith liable to be dismissed in *limine*.

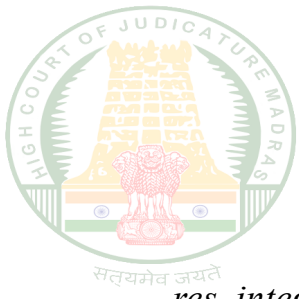


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5. The learned Government Advocate (Criminal Side) appearing for the respondents 1 and 2 has filed a brief status report detailing that the petitioner's complaint was taken on record as CSR No. 142 of 2026 and the same was closed as a matter involving a civil dispute pertaining to the conflicting guardianship rights of the petitioner and the third respondent. He would further submit that his status report also reflects that the learned Judicial Magistrate, Paramakudi has directed the minor child to be produced before the Child Welfare Committee, Ramnad, and that pursuant to which the Child Welfare Committee has also in turn handed over the custody of the minor child to the third respondent.

6. Heard the learned counsels appearing on either side and perused the materials on record.

7. This Court finds that the preliminary issue to be decided at the first instance is whether the petitioner can maintain the instant habeas corpus petition, in light of the custody of the third respondent being in a manner known to law.



8. In this regard, this Court finds that this question is no longer

res integra and that the same has been settled in ***Tejaswini Gaud and Others v. Shekhar Jagdish Prasad Tewari and Others [(2019) 7 SCC 42]***.

Asper the ratio of **Tejaswini Gaud**, *supra*, in child custody matters a writ of habeas corpus is maintainable only where it is proved that the detention of a minor child by a parent or others was illegal and without any authority of law. The relevant extract of **Tejaswini Gaud**, *supra*, is as follows;

"19.Habeas corpus proceedings is not to justify or examine the legality of the custody. Habeas corpus proceedings is a medium through which the custody of the child is addressed to the discretion of the Court. Habeas corpus is a prerogative writ which is an extraordinary remedy and the writ is issued where in the circumstances of the particular case, ordinary remedy provided by the law is either not available or is ineffective; otherwise a writ will not be issued. In child custody matters, the power of the High Court in granting the writ is qualified only in cases where the detention of a minor by a person who is not entitled to his legal custody. In view of the pronouncement on the issue in question by the Supreme Court and the High Courts, in our view, in child custody matters, the writ of habeas corpus is maintainable where it is proved that the detention of a minor child by a parent or others was illegal and without any authority of law.

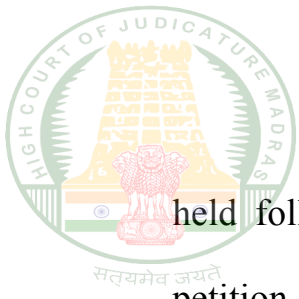


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20. In child custody matters, the ordinary remedy lies only under the Hindu Minority and Guardianship Act or the Guardians and Wards Act as the case may be. In cases arising out of the proceedings under the Guardians and Wards Act, the jurisdiction of the court is determined by whether the minor ordinarily resides within the area on which the court exercises such jurisdiction. There are significant differences between the enquiry under the Guardians and Wards Act and the exercise of powers by a writ court which is summary in nature. What is important is the welfare of the child. In the writ court, rights are determined only on the basis of affidavits. Where the court is of the view that a detailed enquiry is required, the court may decline to exercise the extraordinary jurisdiction and direct the parties to approach the civil court. It is only in exceptional cases, the rights of the parties to the custody of the minor will be determined in exercise of extraordinary jurisdiction on a petition for habeas corpus.

(emphasis supplied by this Court)

9. Further, in ***Nirmala v. Kulwant Singh [(2024) 10 SCC 595]***, the Supreme Court while deciding an appeal against the grant of a writ of habeas corpus considered that the grandmother's custody therewith was owing to the father therein placing the custody of the minor child therein with the grandmother therein and taking into consideration the said facts,



held following **Tejaswini Gaud**, *supra*, has held that, the habeas corpus petition therein ought not have been entertained by the High Court therein.

The relevant extract of **Nirmala**, *supra*, is as follows;

"23.It can thus be seen that this Court in Tejaswini Gaud case [Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari, (2019) 7 SCC 42 : (2019) 3 SCC (Civ) 433] has held that the habeas corpus is a prerogative writ which is an extraordinary remedy. It has been held that recourse to such a remedy should not be permitted unless the ordinary remedy provided by the law is either not available or is ineffective. It has been held that in child custody matters, the power of the High Court in granting the writ is qualified only in cases where the detention of a minor by a person who is not entitled to his legal custody. It has further been held that in child custody matters, the writ of habeas corpus is maintainable where it is proved that the detention of a minor child by a parent or others was illegal and without any authority of law.

...

29.It can thus be clearly seen that according to the case of the respondent father himself, in the peculiar facts and circumstances of the case, a family environment was required for the child especially from the grandparents and that he had placed the custody of the minor child with the appellant grandmother for taking his care. It can thus clearly be seen that it is not a case that the appellant



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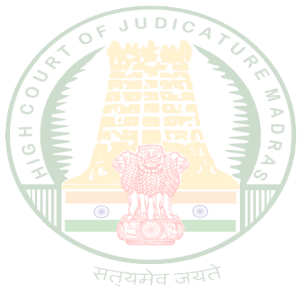
HCP(MD) No.723 of 2026

grandmother had illegally kept the custody of the minor child. It is the respondent father who had placed the custody of the minor child with the appellant grandmother.

30. We are of the considered view that in the peculiar facts and circumstances of the case, the High Court ought not to have entertained the habeas corpus petition under Article 226 of the Constitution of India. Since a detailed enquiry including the welfare of the minor child and his preference would have been involved, such an exercise could be done only in a proceeding under the provisions of the Guardians and Wards Act, 1890.

(emphasis supplied by this Court)

10. This Court finds that even in the instant case, as reflected from the RTI correspondence, the petitioner has handed over the custody of the minor child to the 3rd Respondent and further, thereafter, the petitioner has had a change of heart, resulting in her filing various complaints and petitions before various forums. Pursuant to one of her such petitions, the Child Welfare Committee has now determined the third respondent to be a fit person to have custody of the minor child. That being so, the petitioner who is at liberty to challenge the directions of the Child Welfare Committee has failed to do so and has instead preferred to file the instant habeas corpus petition. Hence, at no point of time was the third respondent's custody of the minor child illegal or without the authority of law.



HCP(MD) No.723 of 2026

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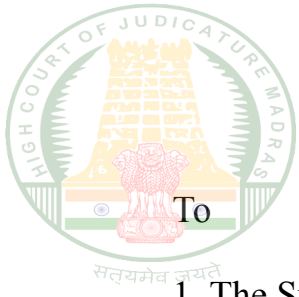
11. Keeping in mind the ratio in *Tejaswini Gaud, supra*, and considering the facts of the present case that the third respondent's custody of the minor child was neither illegal nor without the authority of law, this Court finds that the instant Habeas Corpus Petition is not maintainable.

12. Having decided the preliminary issue in the negative, this Court is inclined to dismiss the instant habeas corpus petition at its threshold.

14. In the result, this instant Habeas Corpus Petition stands dismissed and the petitioner is at liberty to work out her remedy in the manner known to law.

[A.D.J.C.,J.] [R.P.,J]
.07.2026

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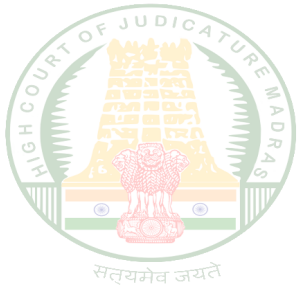
HCP(MD) No.723 of 2026

To

1. The Superintendent of Police
Ramanathapuram District,
Ramanathapuram

2. The Inspector of Police
Paramakudi Town Police Station,
Paramakudi,
Ramanathapuram District

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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HCP(MD) No.723 of 2026

A.D.JAGADISH CHANDIRA, J.

and

R.POORNIMA,J.

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Pre Delivery order made
in
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