

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2015

CORAM

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
AND
THE HONOURABLE MR.JUSTICE R.MAHADEVAN

H.C.P. No.2258 of 2015

Syed Taher Ali

... Petitioner

-Vs-

1.State rep. by
The Assistant Commissioner of Police (L&O),
D-2 Police Station, Anna Salai,
Chennai-600 002.

2.The Inspector of Police (L&O),
D-2 Police Station, Anna Salai,
Chennai-600 002.

3.Nawabjan Sumaiya Yasmeen

.... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Habeas Corpus to cause production of body of the minor child Syed Rummaan, S/o.Syed Taher Ali, aged 6½ years, now in the illegal custody of the third respondent herein before this Court and set him at liberty forthwith.

For Petitioner : Mr.G.Jayachandran

For Respondents : Mr.A.N.Thambi Durai
Additional Public Prosecutor
for R1 and R2

Ms.Nathiya Srinivasan for R3

O R D E R
(Order of the Court made by S.TAMILVANAN,J.)

This petition has been filed under Article 226 of the Constitution of India, seeking custody of his minor child Syed Rummaan, S/o.Syed Taher Ali, aged about 6½ years.

2.It is an admitted fact that petitioner is the father and third respondent is the mother of the minor child and the said child is in the custody of the third respondent, who is none other the mother of the minor son.

3.On the aforesaid facts and circumstances of the case, we are of the view that when the child is in the custody of the mother, seeking an order in the nature of Habeas Corpus Petition by filing this petition, which is not maintainable, would not be proper. As the child is only with the custody of the mother, the question of illegal detention does not arise. Therefore, we are of the view that the dispute between the petitioner/father of the child and third respondent/mother of the child is only a question of fact that cannot be decided by this Court. Hence, filing this type of petition would be construed only as an abuse of process of law. It is open to the petitioner to approach the appropriate forum seeking his remedy.

4.With the above observation, this petition is dismissed.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

vga

To

1.The Assistant Commissioner of Police (L&O),
D-2 Police Station, Anna Salai,
Chennai-600 002.

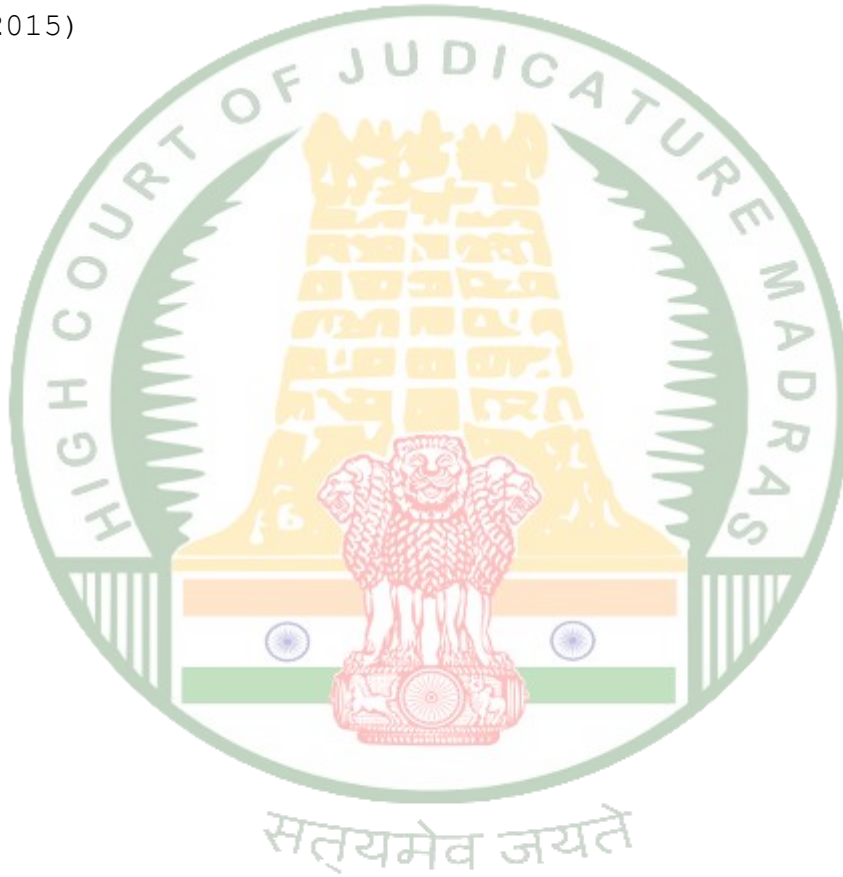
2.The Inspector of Police (L&O),
D-2 Police Station, Anna Salai,
Chennai-600 002.

3.The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

+1cc to M/s.M.Mushthaq Ahed, Advocate, S.R.No.59650
+1cc to Ms.Nathiya Srinivasan, Advocate, S.R.No.59336

H.C.P. No.2258 of 2015

NM(CO)
CA(19/11/2015)



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