



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.08.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR. JUSTICE V.S.RAVI

H.C.P. (MD) No.971 of 2015

D.Lawrence

... Petitioner

Vs.

1.The Superintendent of Police,  
Pudukkottai District.

2.The Deputy Superintendent of Police,  
Keleranur Division,  
Pudukkottai District.

3.The Inspector of Police,  
Mathur Police Station,  
Pudukkottai District.

4.Ugine

5.Jenifer

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, directing the respondents 1 to 5 to produce the person of the petitioner's granddaughter namely Minor.Lennsy Christy, D/o.Ugine, aged two years before this Court and hand over the custody of the detenu to the petitioner.

For Petitioner

: Mr.A.K.Manickam

For Respondents

: Mr.K.S.Duraipandian,

1 to 3

Addl. Public Prosecutor

For respondents 4 & 5

: No appearance

ORDER

(Order of the Court was made by S.NAGAMUTHU, J.)

This petition has been filed seeking production of a minor child by name Lensy Christy D/o.Ugine, aged two years. The fourth respondent is the father of the child / detenu. The petitioner is the maternal grandfather of the detenu. There is also a civil dispute between them in G.W.O.P.No.7 of 2015 before the Principal District Judge, Tiruchirpalli. According to the petitioner, the mother of the child died on 13.07.2013. From the date of death of the mother of the child, the child was all along under the custody of the petitioner. It is further alleged that on 01.05.2015, the fourth respondent viz., the father of the child has taken the child into his custody. It is also alleged that the fourth respondent is working in the Indian Army and therefore, he has left the child in the custody of the fifth respondent, who is the second wife of the fourth respondent. In those circumstances, seeking custody of the child, the petitioner has come up with this petition.



also perused the records carefully.

3. Admittedly, the petitioner is not a guardian of the child. The fourth respondent, being the father, is the guardian of the child. The child is now in his custody. If the petitioner has got any grievance regarding the same, he can work out his remedy before the Civil Court. Though it is stated by the petitioner that the child had been in the custody of the petitioner from 03.07.2013 to 01.05.2015, that would not give any legal right to the petitioner to continue to have the custody of the child detrimental to the right of the fourth respondent to have the custody of the child. In our considered opinion, the custody of the child with the fourth and fifth respondents would not amount to illegal custody.

4. The learned counsel for the petitioner would rely on a judgment of a Division Bench of this Court in R.Nirmala Vs. Y.Shanthi, reported in 2009 (3) MLJ (Crl.) 826. That was a case where totally a third party, who had nothing to do with the child, was keeping the child. In those circumstances, the Division Bench has held that the aunt of the minor child was entitled for the custody. But, here in this case, it is not so. As we have already pointed out, the child is in the custody of the father, who is the natural guardian of the child. In view of the same, no direction, as prayed for, could be given in this petition.

5. In the result, this Habeas Corpus Petition fails and accordingly the same is dismissed. It is made clear that any of the observations made in this order are only for the purpose of this Habeas Corpus Petition and therefore, the Civil Court shall not be influenced by these observations.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

gcg

To

1. The Superintendent of Police,  
Pudukkottai District.

2. The Deputy Superintendent of Police,  
Keeranur Division, Pudukkottai District.

3. The Inspector of Police,  
Mathur Police Station, Pudukkottai District.

4. The Addl. Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

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