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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

HABEAS CORPUS PETITION (MD) No.98 of 2015

S.Durga Devi

.. Petitioner

Vs.

1.The Commissioner of Police,
Madurai City,
Madurai.

2.The Inspector of Police,
All Women Police Station,
Madurai South,
Madurai City.

3.K.Suyamburaja

4.Krishnamoorthy

.. Respondents

Prayer:- Habeas Corpus Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus directing the respondents to produce the person or body of the detenu, the petitioner's child, namely Adheep, S/o.Suyamburaja, aged 1-1/2 years before this Court and hand over to the petitioner's custody and pass such further or other orders.

For Petitioner

: Mr.M.Solaisamy

For RR 1 & 2

: Mr.T.Mohan,

Addl. Public Prosecutor.

For RR 3 & 4

: Mr.Ajmal Khan

Senior Counsel for Mr.A.Velan

ORDER

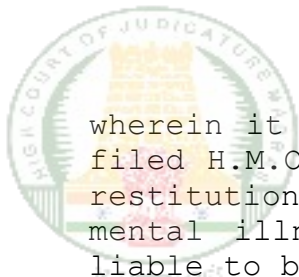
(Order of the Court was made by A.SELVAM, J)

This Habeas Corpus Petition has been filed under Article 226 of the Constitution of India praying to direct the respondents 1 and 2 to trace out and produce the detenu by name Adheep, aged 1-1/2 years, son of the petitioner.

2. It is stated in the petition that the detenu is the son of the petitioner and third respondent is the husband of the petitioner and father of the detenu. The third respondent has forcefully taken away the detenu. Under the said circumstances, the present petition has been filed for getting the relief sought for therein.

<https://hcservices.ecourts.gov.in/hcservices/>

3. On the side of the respondents 3 and 4, counter has been filed



wherein it has been stated to the effect that the petitioner has already filed H.M.O.P.No.35 of 2015 on the file of the Family Court, Madurai for restitution of conjugal rights. Further, the petitioner is suffering from mental illness. Under the said circumstances, the present petition is liable to be dismissed.

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4. As pointed out earlier, this Habeas Corpus Petition has been filed under Article 226 of the Constitution of India praying to direct the respondents 1 and 2 to trace out and produce the detenu mentioned in the petition.

5. It is an admitted fact that the third respondent is the father of the detenu and husband of the petitioner. Since the detenu is under the care and custody of the third respondent, this Court cannot consider the same as illegal custody.

6. As stated in the counter, the petitioner has already filed H.M.O.P.No.35 of 2015 on the file of the concerned Family Court for restitution of conjugal rights. As per Section 7 of the Family Courts Act, 1984 the petitioner can file a petition for getting custody of the detenu.

7. Considering the pendency of H.M.O.P.No.35 of 2015 on the file of the concerned Family Court and also considering that the third respondent is the father of the detenu and his custody cannot be treated as illegal, this Court is of the view that the relief cannot be granted and altogether, the present Petition deserves to be dismissed.

8. In fine, this Habeas Corpus Petition deserves dismissal and accordingly is dismissed. The petitioner is directed to file relevant petition before the concerned Family Court for getting custody of the detenu.

Sd/-

Asst. Registrar(T&P)

//True Copy//

Sub.Asst.Registrar

To

- 1.The Commissioner of Police,
Madurai City, Madurai.
- 2.The Inspector of Police,
All Women Police Station,
Madurai South,Madurai City.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/s Ajmal Associates, SR.No.6699/15

+1cc to M.Solaisamy Sr.No.6700/15

pm/ 21.02.2015 / 2p / 6c

H.C.P (MD) No.98 of 2015
12.02.2015