

In the High Court of Judicature at Madras

Dated: 12.02.2015

Coram:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

H.C.P.No.3203 of 2015

J.Shayen

.. Petitioner

vs.

1.State by,

Commissioner of Police,
Office of the Commissioner of Police,
Veppery, Chennai.

2.The Superintendent of Police,
Superintend Office,
Vellore District, Vellore.

3.The Inspector of Police,
Choolai Medu Police Station,
Chennai

4.The Inspector of Police,
Tirupathur Police Station,
Vellore,

5.K.Junaith

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus directing the respondent herein to produce the body and person of the detenu by name SAHAANA, aged about 2 years, daughter of the petitioner herein before this Court.

For Petitioner .. Mr.M.Senthamizh Selvan

For Respondents .. Mr.V.M.R.Rajendran,A.P.P.

O R D E R

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

The petitioner is the mother of the detenu, by name, Sahaana, aged about 2 years. The fifth respondent is the husband of the petitioner. According to the petitioner, the fifth respondent, namely, the father of the female child, has been illegally detaining the child. Therefore, she has come up with this habeas corpus petition.

2. The fifth respondent has filed a counter, wherein it is stated inter alia that divorce was effected between the petitioner and the fifth respondent in the Jamath on 21.10.2015. In the counter it has also been stated that in the Jamath it was agreed upon by the petitioner that the child shall be in the custody of the fifth respondent and that is why the fifth respondent is holding the child in his custody.

3. Today when the matter was taken up, the petitioner and the fifth respondent were present before this Court. The fifth respondent produced the detenu (the child). They were represented by their respective counsel also. After some deliberation, the petitioner insisted that the child should be only in her custody. The fifth respondent, though initially was reluctant, later on agreed to hand over the child to the petitioner, but on two conditions. The first condition is that he should be given the visitation right and second is that the Kula Nama should be accepted by the petitioner, as it was true. The petitioner accepted for the same. The petitioner has also filed an affidavit to the said effect, in which, she has stated as follows:

"1. I state that I am the petitioner herein and the mother of the detenu by name Sahaana (age 2 years old) and as such I am well acquainted with the facts of the case.

2. The petitioner humbly submits that her marriage was held on 11.3.2012 with one Joonath S/o.Kulab Jaan, residing at No.22/55, Ellammal Koil Street, Tirupaththur Taluk, Vellore before the kith and kins.

3. On 21.10.2015 before the Jamathars the petitioner executed a Kula Nama in the presence of Notary Public at Thirupathur and also in the presence of the family members of the petitioner. On the

basis of the above said Kula Nama, the Fort Mosque and IDGAH Mosque Tirupathur had nullified the said marriage between the petitioner and the 5th respondent in the presence of the family members of the petitioner and the respondent on 22.10.2015. The petitioner agreed to her divorce.

4.The petitioner agrees for the grant of visiting rights to the 5th respondent to visit the child on 1st Sunday of Every Month."

4. In view of the above settlement reached between the parties before this Court, the habeas corpus petition is disposed of in the following terms:

(i) The detinue, child Sahaana, aged two years, is entrusted to the petitioner by the fifth respondent in open Court for custody. The petitioner shall not cause any harm to the detinue.

(ii) The fifth respondent shall have right to visit the child at the house of the petitioner on the first Sunday of every English calendar month. If the fifth respondent wants to take the child for one day, the petitioner shall permit him to take the child with him and return the child in the evening on the same day.

(iii) As per terms of the agreement, the Kula Nama has been accepted by the parties as true and accordingly, the marital ties between the petitioner and the fifth respondent has been dissolved.

(iv) The copy of the Kula Nama signed by the petitioner, her parents, and other witnesses as well as Jamathdars, on 21.10.2015, shall be treated as valid document.

(v) If any of the parties feel that the counter party has violated any of the above terms, he or she is at liberty to approach this Court for modification of this order.

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-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Commissioner of Police,
Office of the Commissioner of Police,
Veppery, Chennai.

2.The Superintendent of Police,
Superintend Office,
Vellore District, Vellore.

3.The Inspector of Police,
Choolai Medu Police Station,
Chennai

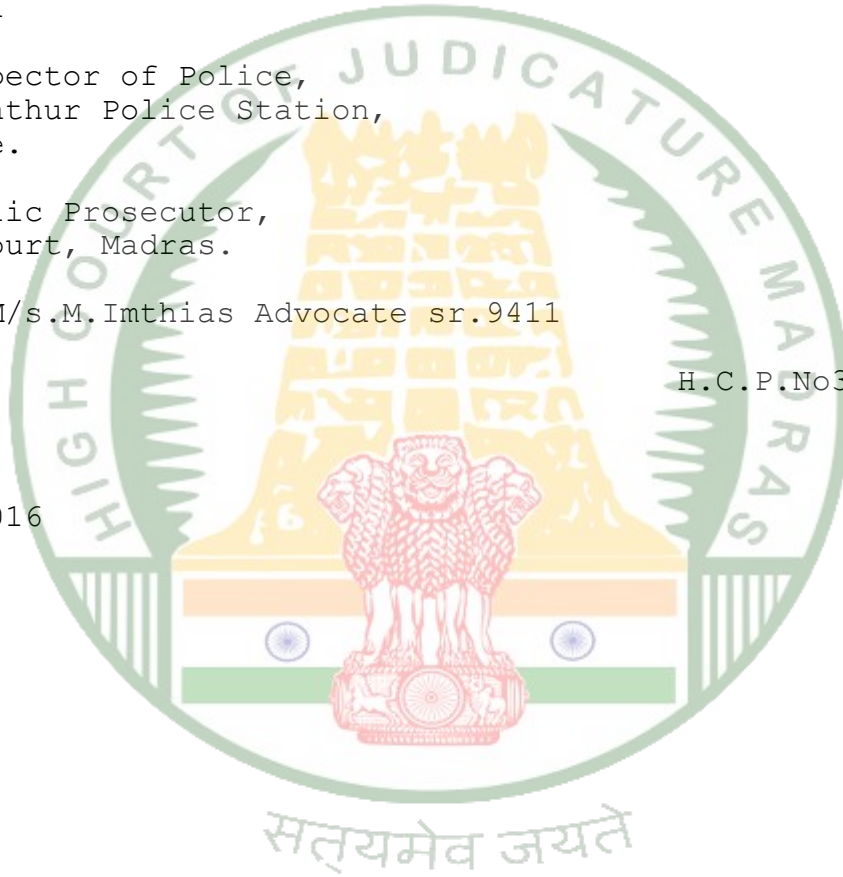
4.The Inspector of Police,
Tirupathur Police Station,
Vellore.

5.The Public Prosecutor,
High Court, Madras.

+1 cc to M/s.M.Imthias Advocate sr.9411

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