

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

H.C.P.No.1653 of 2016

C.Inbavalli

.. Petitioner

vs.

1. The State,
Rep. by the Commissioner of Police,
Thiruppur District,
Thiruppur.

2. The Inspector of Police,
All Women Police Station,
Thiruppur North,
Thiruppur.

3. S.Rajendran

4. R.Shanthi alias Thamayanthi.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus directing the respondents 1 and 2 herein to produce the body and person of the said detenu Ms.Divya aged 15 years, the niece of the petitioner before this Court and thereafter, set her at liberty.

For Petitioner
For Respondents

.. Mr.K.Balaji
.. Mr.V.M.R.Rajentren, APP

ORDER

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

The petitioner is the aunt of one Divya, aged 15 years. She is studying in X Standard. Her date of birth is 29.10.2001. According to the petitioner that when the detainee was a child of just 2 months, the petitioner took her to her custody and she has been all along maintaining her. According to her, she is educating her also. The 3rd respondent is the brother of the petitioner and the 4th respondent is the wife of the 3rd respondent. The respondents 3 and 4 are the parents of the detainee. According to the petitioner, earlier an attempt was made by respondents 3 and 4 to take the detainee by force into their custody. This resulted in a petition before the District Child Welfare Committee, Tirupur. The Committee passed an order entrusting the custody of the child to the petitioner. Thereafter, according to the petitioner, through the State Commission for Protection of Child Rights, the detainee was taken back and handed over to respondents 3 and 4. According to the petitioner, the said order passed by the commission is against the best interest of the child. With these allegations, the petitioner has come up with this Habeas Corpus Petition.

2. Today, when the Habeas Corpus Petition was taken up for hearing, the detainee was produced by the 2nd respondent. The petitioner and her mother Muthammal made appearance. The respondents 3 and 4 also made appearance. The petitioner and her mother made lot of allegations against respondents 3 and 4 and respondents 3 and 4 also in turn made lot of allegations against the petitioner and her

mother. Those allegations cannot be gone into by this Court. We are concerned only with the welfare of the child/detenu. When we enquired the detenu, she told in open Court that she is willing to go and be in the custody of the petitioner alone. But the respondents 3 and 4 insisted that the child should be in their custody. We allowed the parties to have interaction with each other. The respondents 3 and 4 also had interaction with the girl.

3. When the Habeas Corpus Petition was taken up after about three hours, again the parties appeared. This time, the detenu reiterated her stand that she would go and live only with the petitioner. The respondents 3 and 4 after having heard the child, told the Court that they are also interested only in the welfare of the child and her education. They further told that they have got no objection for the child/detenu being in the custody of the petitioner, but there should not be any harm caused either mentally or physically to the child and her education should not be in any manner disturbed. The said statement made by the respondents 3 and 4 is recorded. The petitioner assured the Court that she would take care of the child without causing any harm to her and she would also educate her properly. That statement is also recorded.

4. The learned counsel for the petitioner would submit that the District Child Welfare Committee is the competent authority to decide about the custody of the child. In this regard, according to the learned counsel, the District Child Welfare Committee,

Tirupur has passed order entrusting the child only to the petitioner. He would further submit that the State Commisison for Protection of Child Rights has no power to pass any order in respect of the custody of the child.

5. We do not want to go into this issue as we are concerned only with the safe custody and welfare of the child. Since respondents 3 and 4 have expressed no objections for the child being in the custody of the petitioner and since the petitioner is willing to take back the child in good humour, we pass the following order:

"The order of District Child Welfare Committee, Tirupur and the order of the State Commission for Protection of Child Rights shall stand set aside and the child is entrusted to the custody of the petitioner. In future, if the respondents 3 and 4 feel that the child is not properly maintained by the petiitoner, they are at liberty to approach the District Child Welfare Committe for appropriate relief. In such an event, the District Child Welfare Committe shall hear the parties, hold proper enquiry and then pass appropriate orders."

[S.N., J.]

[V.B.D.,J.]

17.08.2016

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To

1. The Commissioner of Police,
Thiruppur District,
Thiruppur.

2. The Inspector of Police,
All Women Police Station,
Thiruppur North,
Thiruppur.

3. The Public Prosecutor, High Court, Madras.

S.NAGAMUTHU, J.,
AND
V.BHARATHIDASAN, J.,
kua

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