

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN
and
THE HON'BLE MR.JUSTICE S.BASKARAN

H.C.P.No.2105 of 2016

G.Rukmani

.. Petitioner

Vs

1.The Assistant Commissioner of Police,
G-1, Vepery Police Station,
Vepery,
Chennai-600 007.

2.The Inspector of Police,
G-1, Vepery Police Station,
Vepery,
Chennai-600 007.

3.N.Ukkum Chand

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, directing the respondents 1 and 2 to produce the petitioner's minor daughter Paluck, aged 2-1/2 years, who is under illegal custody of the third respondent, before this Court and to set her at liberty and hand over her custody to the petitioner.

For Petitioner : Mr.J.Ravikumar

For Respondents : Mr.V.M.R.Rajentren
Additional Public Prosecutor
for RR1 and 2
for Mr.P.Visvassundaran for R-3
M/s.Achari and Antoni Associates

ORDER

[Order of the Court was made by M.JAICHANDREN, J.]

Heard the learned counsels appearing on behalf of the petitioner, as well as the respondents.

2 This Habeas Corpus Petition has been filed, praying that this Court may be pleased to issue a Writ of Habeas Corpus, directing the respondents 1 and 2 herein to produce the minor daughter of the petitioner, namely Paluck, aged about 2-1/2 years, before this Court and to set her at liberty.

3 The petitioner has stated that she is the mother of the detinue. She had married the third respondent, on 4.12.2011. Thereafter, they have been living at Bangalore in the house of the third respondent. Out of the said wedlock, a girl child, namely Paluck, was born. The in-laws of the petitioner had started demanding payment of dowry. Hence, certain disputes had arisen, between the petitioner and the members of the family of the third respondent. While so, the third respondent had deserted the petitioner and her daughter.

4 The petitioner had further stated that, on 9.9.2016, the third respondent had come to the house of the petitioner's father and had used abusive language and had also threatened him, demanding a sum of Rs.25 lakhs. Thereafter, the third respondent had kidnapped the minor daughter of the petitioner, namely, Paluck, aged about 2-1/2 years. The petitioner had lodged a complaint, with the second respondent, on 10.9.2016. The said complaint was given C.S.R. No.507/2016. Since the second respondent had not taken effective steps to secure the detinue from the custody of the third respondent, the petitioner has preferred the present Habeas Corpus Petition, before this Court.

5 An additional affidavit, dated 21.11.2016, had been filed on behalf of the petitioner. In the said affidavit, it has been stated that the third respondent had married another woman, in Rajasthan, on 10.11.2016. As the third respondent had, forcibly, taken the minor daughter of the petitioner and is keeping her in an unlawful custody, this Court may direct the third respondent to hand over the custody of the minor girl, namely, Paluck, to the petitioner, who is her mother.

6 When the matter had come up for hearing, earlier, this Court had found it fit to send the matter to the Tamil Nadu Mediation and Conciliation Centre, High Court of Madras, for attempting an amicable settlement of the disputes, which had arisen between the petitioner and the third respondent. However, the Tamil Nadu Mediation and Conciliation Centre had sent a Mediation Report, dated 24.10.2016, stating that the parties are unable to arrive at an amicable settlement. Thereafter, this Court had taken up the matter, for further hearing.

7 The learned counsel appearing on behalf of the petitioner had submitted that the third respondent, who is the father of the minor girl, namely, Paluck, had never been with her since her birth. However, he had taken away the minor child

of the petitioner from her lawful custody and is keeping the minor girl child in his custody, contrary to the principles of law. The learned counsel appearing on behalf of the petitioner had further submitted that the lawful custody of the detainee, who is a minor girl, aged about 2-1/2 years, ought to be with her mother. Taking into account the paramount consideration of the minor girl child, this court ought to hand over the custody of the detainee to the petitioner.

8 The learned counsel appearing on behalf of the petitioner had further submitted that an agreement had been entered into between the petitioner and the third respondent, wherein, it had been agreed that the third respondent would hand over the custody of the child to the petitioner, on his remarriage to a third person. As the third respondent had got married, in Rajasthan, an obligation has been cast on him to hand over the custody of the detainee, to the petitioner, as per the said agreement.

9 The learned counsel appearing on behalf of the petitioner had placed reliance on the following decisions, in support of his contentions :

- (a) Dr. (Mrs.) Veena Kapoor Vs. Shri Varinder Kumar Kapoor [(1981) 3 SCC 92]
- (b) Smt. Manju Tiwari Vs. Dr. Rajendra Tiwari and another [AIR 1990 SC 1156]
- (c) Syed Saleemuddin Vs. Dr. Rukhsana and others [(2001) 5 SCC 247];
- (d) Surya Vadanani Vs. State of Tamil Nadu and others [CDJ 2015 SC 182]

10 Per contra, the learned counsel appearing on behalf of the third respondent had submitted that the minor child, namely, Paluck, is staying with the third respondent, safely and comfortably. He is taking care of all her needs, without any difficulty. He had further submitted that the petitioner had also decided to marry a third person, in the near future. In such circumstances, the claims made by the petitioner, with regard to the custody of the detainee, ought to be rejected, by this Court, in limine.

11 We have heard the contentions raised on behalf of the petitioner, as well as the third respondent. We have also perused the records available before us.

12 The third respondent and the minor girl child, Paluck, had appeared before this Court. On enquiry, it was found that the minor child, namely, Paluck, was safe and comfortable with the third respondent. We had no reason to believe that there is any deficiency in the care rendered by the third respondent towards his minor daughter.

13 In view of the submissions made on behalf of the parties concerned and on considering the decisions cited by the learned counsel appearing on behalf of the petitioner, we are convinced that the claims made by the petitioner have not been substantiated with sufficient evidence. This Court, while hearing the Habeas Corpus Petition, would not, normally, conduct a roving enquiry to hold that the custody of the minor child, with one of her parents, is unsafe and unlawful. So long as the minor child is safe and comfortable with one of her parents, it is the normal practice of this court to let the parties seek their reliefs, with regard to the custody of the minor child, before the appropriate forum, in the manner known to law. At this stage, this Court does not find any reason to believe that the custody of the minor child, namely, Paluck, with the third respondent, is contrary to the paramount interest of the child in question.

14 It is a well established position of law that the Supreme Court may pass any order, using its extraordinary power, enshrined under Article 142 of the Constitution of India, to do complete justice. However, this Court is not vested with similar powers. In the given facts and circumstances of the case, this Court is of the considered view that the relief prayed for by the petitioner, in the present Habeas Corpus Petition, cannot be granted, by this Court, at this stage. Hence, we find it appropriate to dismiss the Habeas Corpus Petition, leaving it open to the parties concerned to approach the appropriate court to seek the custody of the minor girl child, if so advised, in the manner known to law. Accordingly, the Habeas Corpus Petition stands dismissed.

-s/d-
Assistant Registrar

True Copy

सत्यमेव जयते
Sub-Assistant Registrar

VVK

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To

1.The Assistant Commissioner of Police,
G-1, Vepery Police Station,
Vepery,
Chennai-600 007.

2.The Inspector of Police,
G-1, Vepery Police Station,
Vepery,
Chennai-600 007.

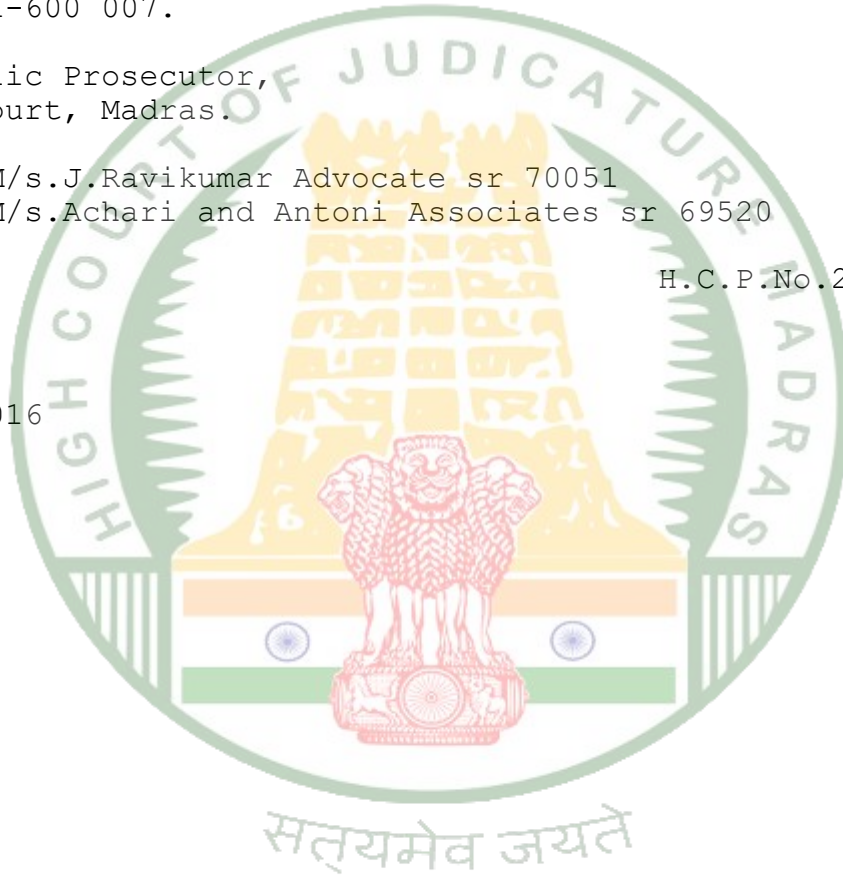
3.The Public Prosecutor,
High Court, Madras.

+1 cc to M/s.J.Ravikumar Advocate sr 70051

+1 cc to M/s.Achari and Antoni Associates sr 69520

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