

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2016

CORAM

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

H.C.P.No.2174 of 2016

E.Jeyanthi

.. Petitioner

Vs

1.The Superintendent of Police,
Villupuram District.

2.The Inspector of Police,
Aro Will Police Station,
Villupuram.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, to direct the respondents to set at liberty petitioner's son Master E.Kavian, aged 6 years and produce him before this court and restore the petitioner's son Master E.Kavian to the petitioner.

For Petitioner : Mr.S.Shajipaul

For Respondents : Mr.V.M.R.Rajentren
Additional Public Prosecutor

ORDER

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

Heard the learned counsel appearing on behalf of the petitioner, as well as the learned Additional Public Prosecutor appearing on behalf of the respondents.

2 This Habeas Corpus Petition has been filed, praying that this Court may be pleased to issue a direction to the respondents to set at liberty, the minor son of the petitioner, E.Kavian, aged about 6 years, after producing him before this Court.

3 The petitioner has stated that the husband of the petitioner, namely, Elangovan had died, on 13.2.2016. The petitioner has two children. After the death of her husband, some of his relatives had driven her away from her matrimonial home and had taken her son along with them. In such circumstances, the petitioner had filed a complaint before the second respondent, on 2.9.2016. However, as no effective steps had been taken to set the detenu at liberty and to hand over the custody of the detenu to the petitioner, the petitioner has preferred the present Habeas Corpus Petition, before this Court.

4 The learned counsel appearing on behalf of the petitioner had placed before this court the following decisions, in support of his claim.

"(i) Ms. Githa Hariharan and another Vs. Reserve Bank of India and another [AIR 1999 SC 1149]

(ii) Balbir Kaur Vs. Smt. Jit Kaur and others [AIR 2001 Punjab and Haryana 124]."

5 The learned counsel had submitted that the petitioner, being the mother of her minor son, namely, E. Kavian, is the natural guardian of the detenu. However, some of the relatives of her deceased husband are keeping the detenu in illegal custody, contrary to the well known principles of law. Hence, the petitioner has preferred the present Habeas Corpus Petition, before this Court.

6 The learned Additional Public Prosecutor appearing on behalf of the respondents had submitted that the minor child, namely, E. Kavian, is with his grand parents, due to certain disputes that had arisen between the petitioner and the relatives of her deceased husband. He had also submitted that the minor child and his grand parents are present in Court and that there is no apprehension about the safety of the child, at present.

7 This Court, having taken note of the submissions made on behalf of the petitioner, as well as the respondents and on perusal of the records available, comes to the conclusion that the decisions cited on behalf of the petitioner are not applicable to the present case. This Court, while exercising its jurisdiction, in a Habeas Corpus Petition, under Article 226 of the Constitution of India, does not, under normal circumstances, decide the disputed issues, relating to the custodial matter. Such issues are decided by the Family Court concerned, as per the relevant provisions of law, relating to the custody of the minor children. It is not the case of the petitioner that her minor child is in the custody of strangers.

8 It is not in dispute that the minor child is living with his paternal grand parents, after the death of the husband of the petitioner. It is also noted that the cases cited by the learned counsel appearing on behalf of the petitioner are relating to the matters decided by the courts concerned, either under the Guardians and Wards Act, 1890, or under the Hindu Minority and Guardianship Act, 1956, and therefore, they are not applicable to the facts and circumstances of the present case. It is also clear that such issues would have to be decided, based on the evidence, both oral, as well as documentary, by the courts concerned, taking into consideration the paramount interest of the minor child in question. As such, this Court is of the view that the relief prayed for by the petitioner cannot be granted by this Court, in the present Habeas Corpus Petition. Hence, the Habeas Corpus Petition stands dismissed. However, it goes without saying that it would be open to the petitioner to seek her relief, if any, before the appropriate forum, in the manner known to law.

Sd/-

Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

vvk
To

- 1.The Superintendent of Police,
Villupuram District.
- 2.The Inspector of Police,
Aro Will Police Station,
Villupuram.
- 3.The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr.K. Sundararaj, Advocate SR.66895

H.C.P.No.2174 of 2016

SKV(CO)
Eu 10.12.16