

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2016

CORAM
THE HONOURABLE MR.JUSTICE M.JAICHANDREN
and
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

H.C.P.No.306 of 2016

S.Vijayasankar

.. Petitioner

vs.

1.The Inspector of Police,
Mangadu Police Station,
Chennai - 600 122.

2.Tmt. Joanofarc

3.Arulkumar

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to direct the respondents to produce the corpus of the minor detenu by name Pooja, daughter of the petitioner aged 8 years before this Court and hand over the custody of the minor child to the petitioner.

For Petitioner : Mr.S.Doraisamy

For Respondents : Mr.V.M.R.Rajentren
Additional Public Prosecutor,
for R1
Mr.V.P.Sengottuvel
For R2 & R3

ORDER

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

This Habeas Corpus Petition has been filed, praying that this Court may be pleased to direct the respondents, to produce the corpus of the minor detenu, by name Pooja, the daughter of the petitioner, aged 8 years, before this Court and hand over the custody of the minor child to the petitioner.

2.The petitioner has stated that he is the father of the detinue, and the natural guardian of the minor child, Pooja, aged about 8 years. It has been stated that the petitioner had married the daughter of the second respondent by name Mary Selvam, on 01.11.2006, at Tiruvannamalai, as per the Hindu rites and customs. After the marriage, they had settled down in Pune. After working for two years, in Pune, they had shifted their residence to Chennai. The detinue is the only child of the petitioner and she is studying in III Standard, in St.Francis School, Kolapakkam, Chennai.

3.It has been further stated that the petitioner is a M.C.A., graduate and is working in M/s.Medquest Marketing PTE Limited, at Singapore. The wife of the petitioner had been working as a Senior System Engineer in IBM India Private Limited, Chennai. Due to certain illness, she had to undergo a surgery. The surgery was conducted on 14.01.2016. However, she did not recover from the surgery. She died, on 17.01.2016, due to a massive heart attack. Thereafter, the second respondent, who is the maternal grand mother of the detinue, had taken the minor child of the petitioner and she is keeping her in illegal custody.

4.It has also been stated that the second respondent had lodged a complaint before the first respondent stating that the petitioner was attempting to beat her. Based on the said complaint, the first respondent had made an enquiry with the petitioner. However, no effective steps had been taken, by the first respondent Police, to secure the minor child from the illegal custody of the second respondent and to hand over the minor child to the petitioner.

5.In such circumstances, the petitioner has preferred the present Habeas Corpus Petition. When the matter had been listed before this Court, on 15.03.2016, it had been sent to the Tamil Nadu Mediation and Conciliation Centre, to arrive at an amicable settlement between the petitioner and the second respondent. However, the Tamil Nadu Mediation and Conciliation Centre, had sent a report, stating that the parties were unable to arrive at an amicable settlement and therefore, the Mediation was a failure.

6.When the matter had been listed before this Court, on 31.03.2016 and 06.04.2016, we made enquiries with the second respondent as well as the minor child, namely, Pooja. The minor child, had made it clear that she would like to be with the second respondent, for the present, and she had also stated that she would love to have her father, who is the petitioner herein, living along with the second respondent, at Erode. However, the

petitioner is not interested to have such an arrangement. On the other hand, the petitioner has stated that he would take care of the minor child and that she would be given a good education at Chennai.

7. In view of the differences of opinion between the petitioner and the second respondent, we deem it appropriate to state, it is for the petitioner and the second respondent to settle the matter, with regard to the custody of the child, before the appropriate forum, in the manner known to law. The relief prayed for by the petitioner cannot be granted by this Court, at this stage. Therefore, we are inclined to dismiss the Habeas Corpus Petition. Hence, it is dismissed. For the present, the minor child will be with the second respondent. However, it is made clear that, as agreed between the petitioner and the second respondent, that the petitioner can visit his minor child, namely Pooja, at the residence of the second respondent, at Erode, on every Saturdays and Sundays, between 10.00 a.m. and 6.00 p.m. The said arrangement shall continue, until further orders are passed by the appropriate forum.

jbm

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police,
Mangadu Police Station,
Chennai - 600 122.

2. The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr. S. Doraisamy, Advocate Sr 22384

+ 1 cc to Mr. V. P. Sengottuvel, Advocate Sr 22095

KR/12/7/16

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