

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2016

CORAM

THE HON'BLE Mrs.JUSTICE HULUVADI G.RAMESH
And
THE HON'BLE MR JUSTICE V.PARTHIBAN

W.A.No.1033 of 2016
and
C.M.P.No.13501 of 2015

S.Arunagiri Appellant

Vs.

1.The Additional Director General
of Police (Law & Order)
Government of Tamil Nadu,
Chennai.

2.The Superintendent of Police,
Thanjavur

3.The Superintendent of Police,
Ariyalur

4.Selvaraj

5.Poongothai

6.Jagatheesan

7.Shobha

8.L.Jestin Chellakumar

... Respondents

Writ Appeal preferred under Clause 15 of the Letters Patent against the order dated 26.07.2016 made in W.P.No.24278 of 2016. Writ petition filed under Article 226 of the constitution of India praying this Hon'ble Court of writ of certiorarified Mandamus to call for the records and quash the reports of the enquiry dated 07.07.2015 and 22.08.2015 in Na.Ka. NO. G- 1/ 14437/ 2015 issued by the second respondent and consequently direct the first respondent to conduct fair enquiry on the petitioners complaints dated 07.04.2015 and 18.11.2015 and the High Court order dated 11.06.2015 together against the respondents R4-R6 and file the action taken report before the Honourable Court within a time.

For Appellant :Mr.R.Sankarasubbu

For Respondents :P.Kumaresan,G.A.for R1 to R3
Mr.D.Ramesh Kumar for R7
No appearance for R4 to R6
Notice dispensed with for R8
vide order dated 21.10.2016

JUDGMENT

(Judgment of the Court was delivered by HULUVADI G.RAMESH,J)

This writ appeal is directed against the dismissal order dated 26.07.2016, passed in W.P.No.24278 of 2016.

2. The appellant herein, as petitioner, has filed the writ petition seeking to quash the enquiry report submitted by the second respondent/The Superintendent of Police and also seeking a direction to the first respondent/Additional Director General of Police to conduct fair enquiry on his complaints, dated 07.04.2015 and 18.11.2015.

3. The learned single Judge, delving deep into the matter, has observed that just because the findings of the Enquiry Officer are not palatable to the writ petitioner, that cannot be a reason to set aside the reports of the Enquiry Officer, and accordingly dismissed the writ petition, leaving the parties open to work out their remedies before the concerned forum. Aggrieved by the said order, the writ petitioner is before this Court, by way of writ appeal.

4. The learned counsel for the appellant submitted that the Deputy Superintendent of Police, Thanjavur, has forcibly taken the custody of the child from the father and handed over the custody to the mother and now, the child has been illegally detained by the mother. He would further submit that before handing over the custody of the child to the mother, the child has not been produced before the Magistrate and thereby, the Deputy Superintendent of Police has committed mischief and the Superintendent of Police has also not conducted enquiry into the matter in a fair manner.

5. The things happened before the Police or any other authority appears to be a matter to be dealt with before a separate forum. So far as the custody of the child is concerned, now the child is in the custody of the mother and the mother is taking care of the child for the present. The next

course of action open to the parties is that the mother has to make an application before the Family Court, where the Maintenance Case is pending, in which, the appellant herein can also make suitable application for custody of the child and in which case, it is for the Court concerned, to take a decision in respect of the handing over of the child to the mother or father, after making enquiry into the matter and after getting the willingness of the child, if necessary, as per the procedure contemplated under the Guardians and Wards Act and also as per the relevant provisions of the law.

6. As far as the restoration of the child's custody is concerned, the grievance of the appellant/writ petitioner is that the action of the respondent police in taking away the custody of the child forcibly from the appellant and handing over the same to the mother in violation of the Human Right etc.

7. It appears that on the complaint given by the mother before the police, the police, in all bona fides, has taken the custody of the child as if they could do some justification to extend the relief. As we observed already, it is a matter to be dealt with before the Family Court under the Guardians and Wards Act or under the relevant provisions of law. We also observe that in that case, even enquiry has to be held with regard to the handing over of the custody of the child to the father or the mother and if necessary, the willingness of the child, also has to be obtained. For that, a separate forum is available and writ proceedings cannot be initiated. The appellant can file an application before the Family Court where the dispute is pending between the appellant and the 7th respondent, his wife, and the Family Court could make separate hearing for the same to decide the custody of the child.

8. It appears, the learned Judicial Magistrate has held preliminary enquiry and passed an order in all bona fides, with which we cannot find any fault. However, it is open to the appellant to file an application before the Family Court as indicated above.

9. Repeatedly the learned counsel for the appellant contended that the custody of the child cannot be taken over by the Police, on the complaint lodged by the wife of the appellant.

10. It has already been observed that this aspect cannot be gone into in a writ proceedings and accordingly, the learned single Judge has passed the order, which warrants no interference, at the hands of this Court.

11. With the above observation, the writ appeal is dismissed. No costs. Connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

msk

To

- 1.The Additional Director General
of Police (Law & Order)
Government of Tamil Nadu,
Chennai.
- 2.The Superintendent of Police,
Thanjavur
- 3.The Superintendent of Police,
Ariyalur.
4. The Judicial Magistrate-II, Thanjavur.

+ 1 cc to Mr.D. Rameshkumar, Advocate Sr.70472
+ 3 ccs to Mr.R. Sankarasubbu, Advocate Sr.70345
+ 1 cc to Government Pleader Sr.70956

W.A.No.1033 of 2016

SV(CO)
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