

In the High Court of Judicature at Madras

Dated : 23.6.2017

Coram :

The Honourable Mr.Justice NOOTY.RAMAMOHANA RAO

and

The Honourable Mr.Justice S.M.SUBRAMANIAM

Habeas Corpus Petition No.1043 of 2017

K.Sanjeevi Kumar ...Petitioner

Vs

1.The Inspector of Police, R-10
MGR Nagar Police Station,
Chennai-89.

2.S.Menaka ...Respondents

PETITION under Article 226 of The Constitution of India seeking to issue a Writ of Habeas Corpus directing the respondents to produce the minor S.Mukesh Kumar, aged about 14 years before this Court, who is illegally detained by the second respondent herein and hand over custody of the child to the petitioner.

For Petitioner : Mrs.AL.Gandhimathi

For Respondent-1: Mr.V.M.R.Rajentran, APP

ORDER

(Order of the Court was made by NOOTY.RAMAMOHANA RAO,J)

This petition is filed seeking a Writ of Habeas Corpus for producing a 14 year old son of the writ petitioner by name S.Mukesh Kumar and also to hand over his custody to the writ petitioner.

2. It appears that the writ petitioner and the second respondent were married on 10.3.2002 and thereafter, set up their matrimonial home at Chennai. A male child was born to them on 17.2.2003 at Madurai - the place of residence of the parents of the second respondent - wife. It also appears that there were

certain differences between the wife and the husband. Consequently, the wife, it is alleged, left the company of the writ petitioner unilaterally and unjustly on 06.3.2017 without information/intimation/ permission of the writ petitioner. It is the further case of the writ petitioner that the second respondent - wife has also taken away their 14 year old son along with her. It is also the case of the writ petitioner that his son was attending Padma Seshadri Bala Bhavan Senior Secondary School, K.K. Nagar, Chennai and the second respondent appears to have withdrawn him from the said school and is illegally detaining him.

3. It is the specific averment of the writ petitioner towards the end of paragraph 3 of the affidavit filed in support of the writ petition that after the wife has sent a legal notice proposing a divorce on mutual consent basis, which proposal the writ petitioner did not agree, it is thereafter, at the request of the writ petitioner, his son has been produced on 02.4.2017 in the chambers of the learned counsel for the writ petitioner and the writ petitioner has interacted with his son. Since his son is not responding to the telephone calls made by him thereafter, the writ petitioner suspects that his son is facing some grave threat or bodily harm or injury and hence, he moved the above writ petition.

4. We are a bit surprised that in spite of causing production of their son by the second respondent on 02.4.2017 nearly after the alleged departure of the second respondent wife from the matrimonial home on 08.3.2017, the writ petitioner suspects injury or harm to the son at the hands of the second respondent - wife. We are not willing to subscribe to any such unfounded allegations. If a mother of a 14 year old child attempts to cause, generally and in normal conditions, any harm, the writ petitioner has every right to invoke the jurisdiction of the competent Civil Court either for securing the custody of the child by getting himself declared as the guardian or for securing visitation rights. Instead of availing the ordinary jurisdiction of a competent Civil Court, the writ petitioner has chosen to shortcut the same and instituted the above writ petition seeking a Writ of Habeas Corpus.

5. We are of the opinion that the writ petitioner is trying to short-circuit the legal process, by which, he can secure the custody of the child by taking recourse to the extraordinary remedy of seeking a high prerogative Writ of Habeas Corpus. We see no justifiable reason to subscribe to the information that the son of the petitioner is facing any threat or bodily harm or injury, particularly when he is in the custody and company of his own mother - the second respondent herein. The parties have to lead appropriate evidence before a Civil Court to establish

any allegation or counter allegation, because a Writ Court would not collect any such evidence and a resort to the Habeas Corpus Petition is the most inappropriate thing. We are, therefore, of the opinion that the writ petition deserves to be dismissed.

6. Accordingly, the above writ petition is dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Inspector of Police, R-10 MGR Nagar Police Station,
Chennai-89.

2.The Public Prosecutor,
High Court, Madras.

+lcc to Ms.A.L.Gandhimathi, Advocate Sr.44622

HCP.No.1043 of 2017

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