

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2017

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN
and
THE HON'BLE MR.JUSTICE T.MATHIVANAN

H.C.P.No.107 of 2017

P. Saravanarajan

.. Petitioner

Vs

1. Devakumari
2. The Director General of Police,
Kamarajar Salai,
Kailasapuram,
Mylapore,
Chennai-600 004.
3. The Commissioner of Police,
No.132, Commissioner Office Building,
E.V.K. Sampath Road,
Vepery, Chennai-600 007.
4. The Inspector of Police,
Theni District, Theni. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, directing respondents to produce the minor daughter, namely, Shruthi, aged about 6 years, who has been abducted and now in the illegal detention against the order's of the United Kingdom Court, by the first respondent herein, namely, Mrs.Devakumari, daughter of Rajendran, and hand over the custody of the minor girl child to the petitioner.

For Petitioner : Mr.G.Vijay Anand
for M/s.G.Vijayanand Associates
For Respondents : Mr.V.M.R.Rajentran, APP
for RR 2 to 4

ORDER

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

Heard the learned counsel appearing on behalf of the petitioner.

2 This Habeas Corpus Petition has been filed by the petitioner, praying that this Court may be pleased to issue a Writ of Habeas Corpus, directing the respondents to produce the minor daughter, namely, Shruthi, aged about six years, who had been abducted and kept under the illegal custody, by the first respondent, contrary to the order passed by the Royal Court of Justice, Strand, London, England, and to hand over the minor girl child to the petitioner.

3 It had been stated, by the petitioner, that the marriage between the petitioner and the first respondent had been solemnized, on 24.8.2007, at Arya Vysya Thirumana Mandapam, Kombai Village, Uthamapalayam Taluk, Theni District, as per the Hindu rites and customs. The said marriage had been performed by the family members of both the petitioner, as well as the first respondent. It had been registered on the file of the Registrar of Marriage, Thevaram, in M.C.No.85 of 2007. It had been further stated that the petitioner, who is a qualified engineer, had been working with the CAPGEMINI, a leading Multi National Software Company. The petitioner had to return back to his office situated at London, United Kingdom. The petitioner and the first respondent had travelled to London, on 8.9.2007, and had been living together, as husband and wife, in their matrimonial home. While so, the first respondent had become pregnant and that she had to come back to India, for delivering the child. However, due to improper medical care, the child had died, during delivery. In such circumstances, the petitioner had resigned his job, at London, and had moved over to Chennai, for a much lesser salary.

4 It had been further stated that a girl child was born to the couple, on 21.12.2009, and she had been named as Shruthi. The petitioner and the first respondent had gone back to London to find a more lucrative job. At that time, the first respondent had developed certain bad habits, like drinking, partying, etc. Due to the wayward behaviour of the first respondent, certain disputes had arisen between the petitioner and the first respondent. The first respondent had left the petitioner, at London, and had returned to India. In such circumstances, the petitioner had approached the Royal Court of Justice, Strand, London. By an order, dated 22.4.2016, the said Court had directed the first respondent to return back to England, with the minor girl child. However, the first respondent had continued to keep the minor child, namely, Shruthi, in India, under her illegal custody, contrary to the order granted by the English Court. In such circumstances, the petitioner has preferred the present Habeas Corpus Petition, before this Court, for obtaining necessary orders.

5 The learned counsel appearing on behalf of the petitioner had insisted that this Court has the power and the

jurisdiction to hold that the custody of the minor girl child, namely, Shruthi, with the first respondent, is illegal in nature. He had further submitted that this Court has the jurisdiction to pass an appropriate order, giving effect to the order passed by the English Court, situated in the United Kingdom. The learned counsel had relied on certain decisions, in support of the said contentions.

6 In Dr.V.Ravi Chandran Vs. Union of India and others, reported in, CDJ 2009 SC 1990, the Supreme Court had been called upon to decide certain complicated issues relating to the custody of the child, who was a citizen of the United States of America. A Court of the United States had also passed certain orders with regard to the custody of the child. In such circumstances, the Supreme Court had passed an order, laying down certain conditions, with regard to the custody of the child and the procedures to be followed, for taking back the child to the United States of America.

7 In Surya Vadanam Vs. State of Tamil Nadu and others, reported in, AIR 2015 SC 2243, the Supreme Court had passed an order, with regard to the custody of the child, who was ordinarily a resident of a foreign country. In the said case, the Closest Concern Doctrine, Principle of Comity of Courts and First Strike Principle to be followed, for deciding the custody of the child, had been decided. It had been held that the question of the welfare of the child should be left to the foreign court, which has the most intimate contact with the matter. It had also been held that the domestic court should not hold a detailed inquiry, for deciding the question of repatriation, unless there are special reasons for doing so.

8 In R.Nirmala Vs. Y.Shanthi, reported in, (2009) 3 MLJ (Cr1) 826, the petitioner had the custody of the minor child, as the foster mother, right from the date of its birth. The custody of the child continued till the date on which the father had taken away the child. A Division Bench of this Court had held that, as no explanation had been given, by the respondent, regarding the custody of the child with the foster mother, the petitioner was entitled to the custody of the minor child. In such circumstances, this Court had directed the father of the child to hand over the custody of the minor child to the petitioner.

9 We had heard the submissions made by the learned counsel appearing on behalf of the petitioner and had perused the decisions placed before this Court. This Court is not convinced with the contentions put forth by the learned counsel appearing on behalf of the petitioner. It is an admitted fact that the detinue, namely, Shruthi, who is a minor, is in the custody of her mother, who is residing in India, at present. It

has not been brought to the notice of this court, as to how the custody of the minor girl child in the custody of her mother, the first respondent herein, is, prima facie, illegal and contrary to the order passed by the English Court. Even otherwise, it is not for this Court to implement the order passed by the Royal Court of Justice, Strand, London, without knowing the present position of the case said to be pending on the file of the said English Court. We are of the view that the decisions, cited by the learned counsel appearing on behalf of the petitioner, cannot be applied to the facts and circumstances of the present case.

10 In such view of the matter, we find it appropriate to come to the conclusion that the Habeas Corpus Petition, filed by the petitioner, is not maintainable. Hence, the Habeas Corpus Petition stands dismissed.

s/d-
Assistant Registrar

//True Copy//

Sub-Assistant Registrar

To

1. The Director General of Police,
Kamarajar Salai,
Kailasapuram,
Mylapore,
Chennai-600 004.
 2. The Commissioner of Police,
No.132, Commissioner Office Building,
E.V.K. Sampath Road,
Vepery, Chennai-600 007.
 3. The Inspector of Police,
Theni District, Theni.
 4. The Public Prosecutor,
High Court, Madras.
- +1 CC to Mr. G.Vijay Anand, Associates Advocate sr 5486

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