

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
&
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

H.C.P.NO.397 OF 2017

T.Vijayalakshmi ... Petitioner

Versus

1. The Superintendent of Police,
Krishnagiri District.
2. The Inspector of Police,
All Women Police Station,
Krishnagiri.
3. E.Periyannan,
... Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus praying to direct the 1st and 2nd respondents to produce the petitioner's children namely (1) Gunasekaran, aged 10 years and (2) Shruthi, aged 14 years from the 3rd respondent before this Court and set the deteneue at liberty.

For petitioner : Mr.M.Ravi

For Respondents : Mr. V.M.R.Rajendran

Addl.Public Prosecutor (R1 and R2)

O R D E R

(Order of the Court was made by Dr.Anita Sumanth,J.)

The petitioner is one T.Vijayalakshmi, mother of the detenues Gunasekaran, aged 10 years and Shruthi, aged 14 years. The petitioner would state that her husband had died by consuming poison and her children were taken from her by the 3rd respondent, her husband's brother who believed that she was responsible for the demise of her husband.

2. She would contend that the 3rd respondent is illegally detaining her children and files the present Habeas Corpus Petition seeking production and return of her children Gunasekaran and Shrruthi to her. In this connection, she had

filed a complaint before the second respondent on 24.1.2017 which has not, according to her , resulted in any action till date.

3. When the matter was called for hearing, the petitioner was present in Court. The detenues Gunasekaran and Shruthi as well as the 3rd respondent E.Periyannan were present as well.

4.This Court, in order dated 6.2.2015 has considered, an identical request as in the present Habeus Corpus Petition made by the petitioner in 2015, and rejected the same.

5. We have noted that the petitioner was stated to have murdered her husband and that a case was registered in Crime No.270 of 2014 on the file of the 2nd respondent. In these circumstances, this court was of the view that she was not a fit person to be given custody of the children, considering that the welfare of the children was paramount.

6. The counsel appearing for the petitioner would justify the present Habeus Corpus Petition stating that the circumstances at present were different in so far as the petitioner had been acquitted by the trial court by judgment dated 17.8.2016 passed by the Principal District Judge, Krishnagiri, in S.C.No.2 of 2016.

7. We have heard the counsel appearing for the parties, as well as heard the 3rd respondent and the detenues. The children have expressed a clear desire that they wish to stay only with their uncle, the 3rd respondent herein and their grand mother. They state that they are afraid to go back to their mother. In view of the categorical statement made by the detenues and in view of the history of the petitioner, we are not inclined to grant custody of the children to the petitioner. It is a question of fact finding as to whether the petitioner is presently fit and capable enough to be entrusted with the responsibility of bringing up the two children . We not, in this Habeas Corpus petition, inclined to embark upon such an exercise.

8. In this view of the matter, since we are of the opinion that the children are not being illegally detained, but being brought up by the 3rd respondent, their uncle, and their grand mother, the relief sought for in this Habeus Corpus Petition is not liable to be granted. Hence, this petition is dismissed. The petitioner is at liberty to approach other appropriate fora, if she wishes to pursue the matter further.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Superintendent of Police,
Krishnagiri District.
2. The Inspector of Police,
All Women Police Station,
Krishnagiri.
3. The Addl. Public Prosecutor,
High Court, Madras.

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