

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2017

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU
and
THE HON'BLE DR.JUSTICE ANITA SUMANTH

H.C.P.No.449 of 2017

G.Saraswathi

.. Petitioner

versus

State rep. By

1.Inspector of Police (L&O),
G3 Kilpauk Police Station,
Chennai.

2.Udayakumar

..

Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, to direct the first respondent to produce the detenus (1) Henry Paulraj, aged about 5 years and (2) Solomonraj, aged about 3 years, before this Court and hand over their custody to the petitioner.

For Petitioner : Mr.P.Prince Premkumar

For R.1 : Mr.V.M.R.Rajentren,

Additional Public Prosecutor

For R2 : Mohammed Fayaz Ali

ORDER

[Order of the Court was made by S.NAGAMUTHU,J.]

The petitioner is the mother of two children by name, (1) Henry Paulraj, aged about 5 years and (2) Solomonraj, aged about 3 years. According to the petitioner, the children have been taken illegally by the second respondent and kept in confinement. The second respondent is none else than the husband of the petitioner.

2.On service of notice, the second respondent appeared before this Court along with his counsel. He has also produced the children before this Court.

3. When the matter came up before us today (19.04.2017), in the morning session, there appears to be some chance for settlement of the issues between the petitioner and the second respondent. Therefore, as requested by the learned counsel on either side, we referred the matter to the Mediation Centre attached to this Court for mediation. In the afternoon session, the Mediator has sent a report to this Court stating as follows:-

"Both parties discussed issues. Both the children were present during the discussion and moved naturally between both parties. Both parties have a lot of serious issues to resolve and in this agitated state, they are not able to consider options. Hence at this stage, it is not a fit case for mediation. The matter is referred back to the Hon'ble Court."

4. When we enquired the parties, "Whether they are ready to go for further mediation", they refused. So far as the custody of the minor children is concerned, they were all along in the custody of the second respondent. Hence, now the learned counsel for the petitioner would submit that the children may be entrusted to the custody of the petitioner. The same was opposed by the second respondent and his counsel.

5. We enquired the children. They are too young to understand the circumstance and to take a decision, on their own. At one stage, the first son, Henry Paulraj, aged about 5 years told us that he is willing to go with his father and after some time, he preferred to go with his mother. The second son Solomonraj, aged about 3 years, told us that he is willing to go with his mother. However, these two children are incapable to take a decision, on their own, at this stage.

6. After considering the fact that Solomonraj is aged hardly 3 years, in our considered view, it would be in the interest of the child to keep Solomonraj in the custody of the petitioner, for the present, leaving it open for the second respondent to work out his remedy in this regard before the Civil Court. Similarly, so far as the first son, Henry Paulraj is concerned, he is aged more than 5 years and since, he has been all along in the custody of the second respondent, he is allowed to be in the custody of the second respondent. The petitioner can work out her remedy in respect of the custody of the first son before the Civil Court. In fact, the learned counsel for the petitioner submitted that the petitioner would be satisfied if the second child viz., Solomonraj, aged about 3 years is entrusted to the custody of the petitioner. The said statement is also recorded.

7. In the larger interest of the children and considering the request made by both parties, we also direct that between 10th and 13th day of every English calendar month, the petitioner shall hand over the child Solomonraj, aged about 3 years to the second respondent and the second respondent shall keep the child for three days and return the child to the petitioner. Similarly, between 20th and 23rd day of every English calendar month, the second respondent shall hand over the child Henry Paulraj, aged about 5 years to the petitioner and the petitioner shall keep the child for three days and return the child to the second respondent. The above arrangement is purely temporary, taking into consideration the welfare of the children. Further, the parties are at liberty to work out their remedies before the competent Civil Court and the above said arrangement shall not be a hindrance for the Civil Court to decide independently about the custody of the children. The Inspector of Police, Kilpauk, Chennai, shall ensure the compliance of the above conditions.

8. With the above directions, the Habeas Corpus Petition is disposed of.

Sd/-
Asst. Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1. Inspector of Police (L&O),
G3 Kilpauk Police Station,
Chennai.

2. The Public Prosecutor
High Court, Madras.

+2 cc's to M/s. Mohamed Fayaz Ali, Advocate, sr.23687.

gmi (co)
krd 26/4

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