

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.04.2017

CORAM

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

H.C.P No.510 of 2017

Jenny Nirmala Karuna Manoharan .. Petitioner

Vs

1.The Commissioner of Police,
Coimbatore City,
Coimbatore - 18

2. The Regional Passport Officer,
Regional Passport Office,
786, Avinashi Road,
ATT Colony,
Gopalapuram,
Coimbatore-18

3. S. Prathyuman Guhan .. Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India to issue a order or direction more particularly in the nature of writ of habeas corpus directing the respondents 1 to 3 to produce the body of the detenu by name Seyon Prathyuman, aged 3 years before this Court and to entrust him to the petitioner's custody.

For Petitioner : Mr.N. Manokaran.

For R.1 & R.2 : Mr.V.M.R. Rajentren
Additional Public Prosecutor

For R.3 : Mr.M.S. Krishnan
Senior Counsel for
Ms.Udaya P.S. Menon

ORDER

(Order of the Court was made by S. NAGAMUTHU,J.,)

The petitioner is the wife of the third respondent. The marriage between them was solemnized on 18.01.2013 at Coimbatore. After the marriage, they lived together as husband and wife initially in Chennai. Out of the wed lock, a male child was born on 14.04.2014 (Seyon Prathyuman). Thereafter, both of them left India on 20.12.2014 on account of their avocation and stayed back in United States of America.

2. While in United States of America, there arose misunderstanding between them. It is alleged that before American Court, the petitioner initiated matrimonial proceedings, in which, order was passed in respect of the custody of the child. In essence, the direction is that the child should not be removed from United States of America by the third respondent at all. It is the allegation of the petitioner that violating the above said order, the third respondent has taken the child to India and he has been keeping the child and the child Seyon Prathyuman is in the illegal custody of the third respondent. With this allegation, the petitioner has come up with this habeas corpus petition, seeking custody of the minor child, aged about 3 years.

3. When this petition came up for hearing before this Court on 11.04.2017, the petitioner as well as the third respondent appeared before us. The third respondent produced the child before this Court. After having heard the parties to some extent, this Court directed the child to be in the custody of the petitioner and the case was adjourned to 12.04.2017.

4. When the matter was taken up for hearing on 12.04.2017, again, the parties appeared before us with their respective counsel. Mr.M.S. Krishnan, learned Senior Counsel entered appearance for the third respondent. Mr.N. Manokaran, learned counsel appeared for the petitioner. Both the counsel made their submissions. The matter was also referred to Mediation Center. Since the dispute could not be solved in the Mediation, the matter was again adjourned to 13.03.2017 and the child was allowed to be in the custody of the petitioner.

5. When the matter came up for hearing on 13.04.2017, the matter was again heard to some extent and it is reported to this court that there was likelihood of settlement between the parties and therefore, the matter was adjourned to 17.4.2017 for reporting settlement.

6. Today, when the matter was taken up for hearing, the

petitioner and the third respondent appeared before us. The petitioner produced the child. We heard them and also heard Mr.N. Manokaran, learned counsel for the petitioner and Mr.M.S. Krishnan, learned Senior Counsel, appearing for the third respondent. The parties along with their respective counsel submitted that all the disputes between the parties have been settled and they have also executed a Memorandum of Settlement. The Memorandum of Settlement dated 17.04.2017 has been filed. The parties as well the learned counsel appearing for the parties would submit that in terms of the Memorandum of Settlement, this habeas corpus petition may be closed and the parties shall abide the terms of the settlement. The Memorandum of Settlement reads as follows:

" 1. The petitioner and the 3rd Respondent herein, have entered into the following terms of settlement;

2. The Petitioner Mother and the 3rd Respondent Father shall abide by the pre-existing consent order dated 5.2.2016 of the Superior Court of Connecticut subject to the following arrangements agreed in view of the change in circumstances.

3. The Petitioner shall have legal, and physical custody of the minor child in accordance with law. The petitioner will be entitled to take the child with her to USA and the 3rd respondent shall not obstruct the said travel process either in person or through court of law in India or any other manner whatsoever.

4. The petitioner shall bring the child to India twice in a year preferably in the months of December and July for a total period of 40 days and the child will remain with the 3rd respondent during this time, and the 3rd respondent can have the child for a period of 20 days in USA. The airfare for the child's trips to and from India shall be shared equally by the Petitioner and the 3rd Respondent.

5. The Petitioner shall bring the child to India in the month of April instead of July, to enable the 3rd Respondent father to celebrate the child's birthday in every alternate year. On the child being brought in April, the Petitioner need not bring the child again in the month of July in the said year.

6. The 3rd Respondent Father will have Skype or Face Time access to the child for 4 days per week and also at a convenient time for the child and vice versa when the child is within the custody of the 3rd Respondent during the above said 60 days period.

7. The petitioner will ensure that her complaints that may result in penal consequences against the 3rd Respondent are not pursued by her for unauthorised removal of the child from USA to India by giving untrue representation in USA. The 3rd Respondent shall withdraw the suit in O.S.No.20 of 2017 and G.W.O.P No.338 of 2017 pending in the file of the Family Court, Coimbatore and his complaints made to any other authorities in India. The Petitioner will not obstruct the right of the 3rd Respondent to process his application for passport or visa, and all other objections stand withdrawn.

8. The Petitioner agrees to withdraw her allegations made against the 3rd Respondent, in her no fault divorce petition No.TTD-FA156010024 pending on the file of the Foreign Court. The 3rd Respondent agrees to withdraw the allegations made against the petitioner in his O.S.No.20 of 2017 and G.W.O.P No.338 of 2017 pending on the file of the Family Court, Coimbatore and in the counter affidavit filed in the above H.C.P No.510 of 2017.

9. Both the petitioner and the 3rd Respondent have agreed to abide by the decree of divorce to be granted by the Foreign Court in TTD-FA156010024, and not on any other issue.

10. Neither the Petitioner nor the 3rd Respondent shall indulge in hammering of negative feelings in the mind of the child against the respective parties because such a dislike does not serve the interest of the child.

11. The petitioner shall inform the relocation of the child within USA or elsewhere in the event of any change in residence. Similarly, the 3rd Respondent shall not take away the child outside India or the USA when the child is with him.

12. The Petitioner and the 3rd Respondent shall

abide by the above terms for the healthy growth and development of the child's personality, keeping in mind the paramount welfare of the child.

Dated at Chennai on this the 18th day of April 2017.

7. The learned counsel on either side would submit that both the petitioner and the third respondent will appear before the Family Court at Coimbatore on 24.04.2017 and file a petition before the said Court, seeking divorce by mutual consent. On the appointed day by the Family Court, the parties shall appear again to enable the Court to grant divorce by mutual consent.

8. For the present, since the petitioner is going to be in India for few more weeks, she has handed over the child to the third respondent and the third respondent shall keep the child safely and return the child to the petitioner after three weeks from today.

9. The Regional Passport Officer, the second respondent herein, may restore the passport of the third respondent Mr.S. Prathyuman Guhan as well as the passport of the child Seyon Prathyuman. In other words, the petitioner shall be entitled to get the passport of the child restored by the second respondent and the third respondent shall be entitled to get his passport restored.

10. It is further directed that the parties shall bind themselves by the terms and conditions of the Memorandum of Settlement.

11. The parties together undertook to pay Rs.50,000/- (Rupees fifty thousand only) to Mr.M.K. Kabir and Rs.50,000/- (Rupees fifty thousand only) to Mr.A.J. Jawad, who acted as mediators in this matter. With the above direction, the habeas corpus petition is closed on the above terms.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

sr

To

- 1.The Commissioner of Police,
Coimbatore City,
Coimbatore - 18
2. The Regional Passport Officer,
Regional Passport Office,
786, Avinashi Road,
ATT Colony,
Gopalapuram,
Coimbatore-18
- 3.The Judge,
Family Court,
Coimbatore.
- 4.The Public Prosecutor, High Court, Chennai

Copy To

- 1)Mr.M.K.Kabir, Medietor High court
mediation and conciliation centre,
High Court, Madras.
- 2)Mr.A.J.Jaward,
Medietor High court Mediation and Conciliation Centre,
High Court, Madras.
- 3)The Secretary,
Mediation and Conciliation centre,
High Court, Madras.

+1cc to Mr.N.Manokaran, Advocate SR.No.23208
+2cc to J.Sivandaraaj, Advocate SR.No.23179

H.C.P.No.510 of 2017

EV(CO)
GN(19/04/2017)

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