

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2017

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

and

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

H.C.P.No. 66 of 2017

Dr.M.Shobia

.. Petitioner

Vs.

1.N.T.Suresh

2.Thiagarajan

3.Vijayalakshmi

4.The Superintendent of Police
Vellore District
Vellore

5.The Inspector of Police
All Women Police Station
Ranipet Vellore District .. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus directing the 4th and 5th respondents to produce the petitioner's child Mouleesh, now aged about 4 years before this Court, who is illegally confined by the respondents 1 to 3 and handover the child to the petitioner.

For Petitioner : Mr.D.Rajagopal

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

Addl. Public Prosecutor for R4 &R5
Mr.A.Gokulakrishnan for R1 to R3

ORDER

[Order of the Court was made by T.Mathivanan, J.]

Heard Mr.D.Rajagopal, learned counsel appearing for the petitioner, Mr.A.Gokulakrishnan, learned counsel appearing for the respondents 1 to 3 and Mr.V.M.R.Rajentren, learned Additional Public Prosecutor appearing for respondents 4 and 5. We have also perused the averments of the affidavit filed in support of the petition along with the relevant materials available on record. Having given our due consideration on the facts and circumstances of the case, the following order is being passed.

2.The petitioner herein is the wife of the first respondent. She has approached this Court with this petition after invoking the provisions of Article 226 of the Constitution of India to issue a writ of Habeas Corpus in the form of order or direction directing the respondents 4 and 5 to produce her minor son Mouleesh, aged about four years, before this Court, who is said to be in illegal confinement of respondents 1 to 3.

3.It is alleged that the marriage between the petitioner and the first respondent was solemnized in the year 2011 at Natrampalli and during the course of their wedlock for a short span of time, she had delivered a male child, namely Mouleesh. It is also alleged that the petitioner had been facing harassment at the hands of the first respondent and thereafter, she had parted her way along with her son.

4.When the matter stood thus, that in the month of June 2016, the first respondent being the husband of the petitioner came to her house, stayed along with her and assured that he would not create any problem in future. Again after two weeks, he started harassing and torturing her and on account of this reason, she had lodged a complaint before the All Women Police Station on 26.07.2016. That on 10.11.2016, at about 03.00 am, she was beaten up by the first respondent and her son was forcibly snatched from her hand and in spite of her cry, the first respondent had gone away along with the child. Despite her complaint with the concerned police officials, there was no response and ultimately she gave a representation on 14.12.2016 to the superintendent of police, Vellore requesting to direct the local police to take action to restore the custody of her child. Since there was no effective steps, she stands before this Court with this petition.

5.When the petition is taken up for hearing, the first respondent was present along with the child. At the first instance, we would like to say that the facts which are narrated in the affidavit are relating to matrimonial dispute. It is also explicit that under the guise of filing this petition in the nature of writ of habeas corpus, the petitioner wants to

have the custody of the child.

6. When the child was produced before this Court, we have been keeping keen watch on the behavioral attitude of the child towards his father i.e., the first respondent. We are satisfied that the child finds comfort with the first respondent and therefore, we are of considered view that the comfort and paramount welfare of the child are very much important. Further we find that the petition itself is not maintainable before this Court as the redressal of the dispute has to be availed elsewhere.

7. The learned counsel for the petitioner Mr.D.Rajagopal, while advancing his argument has submitted that the child is in illegal custody of the first respondent and therefore, he has urged this Court to direct the first respondent to entrust the child with the petitioner, being the mother. The learned counsel for the petitioner has also made reference to the judgment of the Supreme Court in Rajesh K Gupta V. Ram Gopal Agarwala and others reported in 2005-CRI.L.J.2581 (1).

8. We have also gone through the above cited decision carefully and after giving our due consideration, we are of the view that the facts and circumstances narrated in the above cited decision are not made applicable to the present case on hand.

9. It is a common judicial parlance that the father of the child is the natural guardian and accordingly the child Mouleesh is very much attached with the first respondent and in this connection we may say that the custody of the child with the first respondent is not illegal and not against the nature of the law.

Keeping in view of the above fact, we consider that no further order is necessary in this petition and hence, this petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gpa

To

1.The Superintendent of Police
Vellore District
Vellore

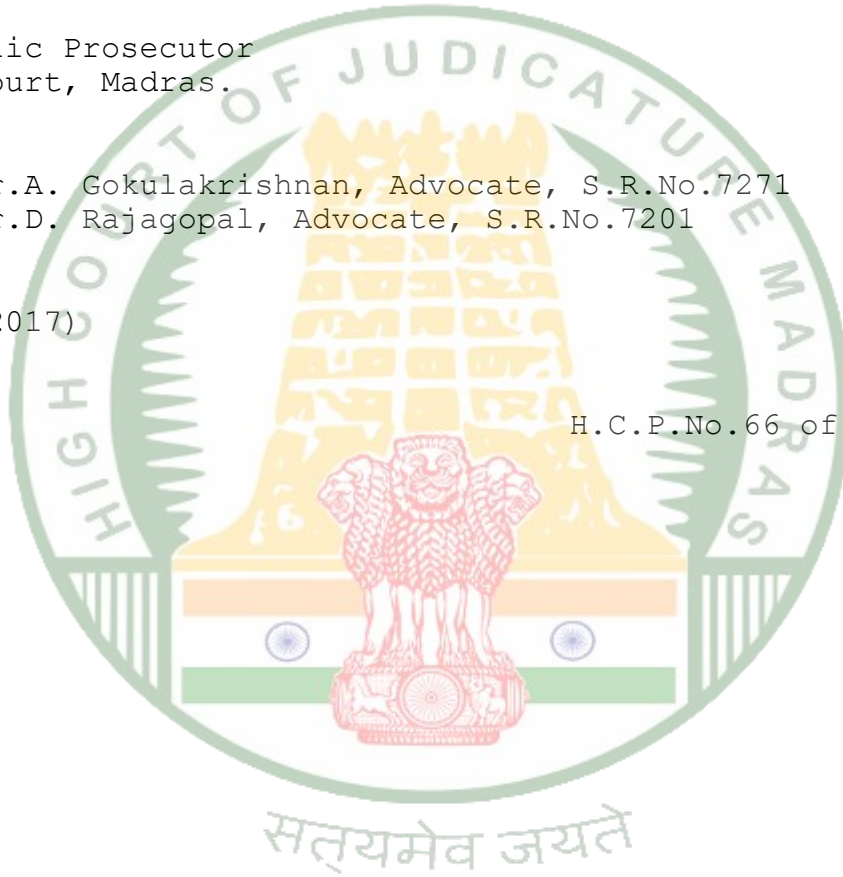
2.The Inspector of Police
All Women Police Station
Ranipet Vellore District

3.The Public Prosecutor
High Court, Madras.

+lcc to Mr.A. Gokulakrishnan, Advocate, S.R.No.7271
+lcc to Mr.D. Rajagopal, Advocate, S.R.No.7201

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