

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2017

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
and
THE HONOURABLE MR.JUSTICE T.MATHIVANAN

H.C.P.No. 80 of 2017

Meena .. Petitioner

Vs.

1. State Rep. by
Inspector of Police
Vellavedu Police Station
Tiruvallur District

2.Murali .. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus directing the 1st respondent herein to produce the body of the detinue, the petitioner's minor son by name Jayaprakash, aged 3 ½ years, before this Court and set him at liberty.

For Petitioner : Mr.W.Camyles Gandhi

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

Addl. Public Prosecutor for R1

Mr.G.A.Thiyagarajan for R2

ORDER

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

Heard Mr.W.Camyles Gandhi, the learned counsel appearing on behalf of the petitioner, Mr.V.M.R.Rajentren, the learned Additional Public Prosecutor appearing for the first respondent and Mr.G.A.Thiyagarajan, learned counsel appearing for the second respondent.

2. This petition is filed by the petitioner seeking a direction as against the first respondent to produce her minor son by name Jayaprakash, aged about 3 ½ years before this Court and entrust him with her custody.

3.The second respondent is none other than her husband. It

is alleged that on 30.10.2016, at about 03.30pm, the second respondent without her knowledge and consent, had taken away her child by name Jayaprakash, aged about 3 ½ years, from her custody. In this connection, she had lodged a complaint with the first respondent on 02.11.2016 and on receipt of the complaint, the first respondent had assigned C.S.R.No.679 of 2016 on the very same date, but no action was initiated in respect of her complaint. According to the petitioner, the custody of her minor child with the second respondent is illegal and therefore, she has approached this Court with this petition.

4. When the petition was taken up for hearing today, the child was produced by the first respondent. The petitioner was also present. But, the second respondent, who is the husband of the petitioner, was not present. On interrogation, the petitioner has stated that the marriage between her and the second respondent Murali was solemnized in the year 2012 and out of their wedlock, she had delivered a male child and now the child is aged about 3 ½ years. She would further state that 9 months after the birth of her child, she came to her parental house on account of matrimonial tiff.

5. On enquiry, the petitioner has stated that the child was forcibly taken away from her custody by her husband, who is the second respondent herein, on 30.10.2016 and a complaint to that effect was lodged by her with the first respondent police.

6. We have observed the behavioural attitude of the child towards his mother and we find that the child is very comfortable with his mother and we are of the view that the comfort of the child is the paramount consideration and therefore, we consider that in the absence of the second respondent, the child may be entrusted with the custody of the mother, who is the petitioner herein.

Accordingly, the first respondent is directed to entrust the custody of the child with the petitioner. The second respondent is directed to seek his remedy, if any, before the appropriate forum. The Habeas Corpus Petition is closed with the above direction.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gpa

To

1. The Inspector of Police
Vellavedu Police Station
Tiruvallur District

2.The Public Prosecutor
High Court, Madras.

+lcc to Mr.G.A. Thiyagarajan, Advocate, S.R.No.8052

+lcc to Mr.W. Camyles Gandhi, Advocate, S.R.No.7331

br(CO)

md(09/03/2017)

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