

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

H.C.P.No.2345 of 2016

Dr.Arun Kumar Pugalenth
rep., by his Power Agent,
Mr.Pugalenth
... Petitioner

versus

1. Mithradas
2. Sharmila
3. The Inspector of Police,
All Women Police Station - East,
Coimbatore 641 045.
4. The Commissioner of Police,
Coimbatore.
... Respondents

Petition filed under Article 226 of the Constitution for the issuance of a Writ of Habeas Corpus, directing respondents 3 and 4 to produce the two detenus, being Aaditya, minor son of the petitioner, aged 9 years and Aishwarya, minor daughter of the petitioner, aged about 6 years and set them at liberty forthwith.

For petitioner : Mr.Suresh
For 1st Respondent : Mr.R.Mubarak Basha
For 2nd Respondent : Mr.S.Chandrasekar
For Respondents 3 and 4 : Mr.V.M.R.Rajentren,
Addl Public Prosecutor

O R D E R

(Order of this Court was made by Justice S.MANIKUMAR)

Alleging that minor son, Aaditya, aged about 9 years and Aishwarya, minor daughter, aged about 6 years, are in illegal custody of Ms.Sharmila, mother and another person, the 1st respondent herein, Writ of Habeas Corpus, is sought for, by the father, represented by his father/power agent, Mr.Pugalenth. He has contended that H.M.O.P.No.356 of 2016, has been filed before the Sub Court, Tambaram, Chennai, for divorce. The 2nd respondent-mother has failed to appear on the

hearing dates. Children were not permitted to be seen. Writ petitioner wants to provide better education to the children, but the 2nd respondent-mother is not willing to reveal the details of the minor children. Grand father/power agent of the petitioner, has made a complaint, on 14.10.2016, to the Inspector of Police, B-7 Ramanathapuram Police Station, at Coimbatore, which has been forwarded to the All Women Police Station - East, Coimbatore and registered in C.S.R.No.474 of 2016, dated 14.10.2016. As no steps were taken by the Police, left with no other alternative, writ of habeas corpus is sought for.

2. Respondent No.1 has filed a counter affidavit, denying allegation of detention. He has further stated that unnecessarily, he has been dragged on, as a party to the present proceedings. Allegations made against him, regarding relationship, with the 2nd respondent, has been denied. Unlawful custody of the children by him, is also denied.

3. Second respondent-mother has filed a counter affidavit, denying the alleged relationship. Exchange of notices, between the parties, both in United Kingdom and India, has been admitted. According to her, as on today, children are in United Kingdom. She has contended that the writ petitioner has not appeared before the Tambaram Sub Court, nor has filed any application, seeking visitation rights. Terming the Habeas Corpus Petition, as abuse of process of law, respondent No.2 has prayed for dismissal of the petition.

4. Inspector of Police, All Women Police Station, in his counter affidavit, has stated that CSR.No.474 of 2016, dated 14.10.2016, has been enquired. According to Respondent No.2, the writ petitioner and 2nd respondent, are husband and wife. They have two kids. H.M.O.P.No.356 of 2015, is pending. When Respondent No.1 was enquired, he has stated that he was married to Krupa Elizabeth Tholan and he has a son. His Family is residing in Dubai. According to Police, enquiry with the 1st respondent, revealed that he had friendly relationship with the petitioner's family and nothing more than that, and that children were not under his custody. As allegations made against the 1st respondent were not true, C.S.R.No.474 of 2016 was closed on 18.10.2016. Enquiry with the Foreigners Regional Registration Officer, Bureau of Immigration, Chennai, revealed that children came to India on 20.09.2016 and returned to U.K., on 09.11.2016. He has prayed to accept the status report.

Heard the learned counsel appearing for the parties and perused the materials available on record.

5. Admittedly, the writ petitioner is residing at Singapore. Father/power agent of the petitioner, has filed the Instant Habeas Corpus Petition. The 1st respondent has denied

the allegations. So also, the 2nd respondent-mother of the children. Police, on enquiry into C.S.R.No.474 of 2016, has recorded the statement of the first respondent, who had categorically deposed that he had friendly relationship with the petitioner's family and nothing more than that. Respondent No.1 has denied the illegal custody. Enquiry with the Foreigners Regional Registration Officer, Bureau of Immigration, Chennai, has revealed that both the minor children came to India on 20.09.2016 and returned to U.K., on 09.11.2016. Family of the 1st respondent is stated to be at Dubai, for the past one year. In the abovesaid circumstances, this Court is of the view that there cannot be any adjudication, as regards the allegation of relationship, in this habeas corpus petition and suffice to consider, as to whether, there is any illegal detention.

6. As on today, minor children are stated to be, in the custody of the 2nd respondent-mother, at United Kingdom. Averments that the petitioner is not allowed to see by the 2nd respondent, has been denied. Contention has been made that even in H.M.O.P.No.356 of 2015, no petition has been filed for visitation rights. On the facts and circumstances of the case, we are of the view that the children, with the 2nd respondent-mother cannot be said to be in illegal custody. Though the petitioner is also entitled to love and affection of the children, provide guidance and education and other obligation, both statutory and moral, there is no prima facie case of illegal detention, warranting issuance of the writ of habeas corpus.

7. Learned counsel for the petitioner submitted that father, languishing to see his children, atleast, be permitted to see and talk to them, on electronic and social media. Learned counsel for the 2nd respondent-mother submitted that there is no objection, in contacting the children, in any of the above modes.

8. On the facts and circumstances of the case, notwithstanding the inter-se disputes, between the parties, this Court is of the view that while considering the rights of parents, vis-a-vis, children's right, the latter has to be given more importance, by both parties. We hope that the parties, inter se, would erase their differences, if any, in the best interest of children.

9. For the reasons, stated supra, this Habeas Corpus Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police,
All Women Police Station - East,
Coimbatore 641 045.

2. The Commissioner of Police,
Coimbatore.

3. The Public Prosecutor, High Court, Madras.

+ 2 ccs to Mr.S. Chandrasekarn, Advocate Sr.13986

H.C.P.No.2345 of 2016

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