



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.02.2017**

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBBIAH**

AND

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

H.C.P. [MD] .No.265 of 2017

J.Selvakumar

: Petitioner

Vs.

1.State rep. by its,
Commissioner of Police,
Tirunelveli District.

2.The Assistant Commissioner of Police,
Tirunelveli Town.

3.The Inspector of Police
Pettai Police Station,
Tirunelveli District.

4.S.Devi

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to produce the body of the petitioner's children namely Son S.Shrihari, S/o.Selvakumar, aged about 9 years and daughter S.Varshini, D/o.Selvakumar, aged about 5 years, before this Court in person or body from the illegal custody of the fourth respondent and handover their custody to the petitioner.

For Petitioner : Mr.S.Ilamvaludhi

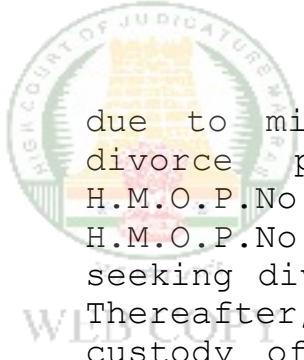
For Respondents 1to3 : Mr.K.S.Duraipandian,
Additional Public Prosecutor

O R D E R

[Order of the Court was made by **R.SUBBIAH, J.**]

The present Habeas Corpus Petition has been filed by the petitioner seeking a direction to produce his children before this Court from the illegal custody of the fourth respondent and hand over their custody to the petitioner.

2. In the affidavit filed in support of the petition, it is averred that the petitioner got married to the fourth respondent on 26.02.2007 and due to wedlock, they have been blessed with one son and one daughter, who are the detenues herein. After sometime,



due to misunderstanding, the petitioner was forced to file a divorce petition before the Sub Court, Ponnammallee, in H.M.O.P.No.42 of 2010. Simultaneously, the fourth respondent filed H.M.O.P.No.176 of 2015 before the Family Court, Tirunelveli, seeking divorce. Subsequently, divorce was granted on 23.12.2015. Thereafter, the petitioner preferred G.W.O.P.No.255 of 2015 for custody of his children and in the said petition, he filed an interlocutory application seeking visitation right and the Court below passed an order enabling him to visit his children every month on the last Saturday and Sunday in a temple. However, observing that since there was an interim order granting visitation right, the Family Court dismissed G.W.O.P.No.255 of 2015 stating that there is no need to proceed further. But, in spite of visitation right given to the petitioner, he was prevented by the fourth respondent from meeting his children. Hence, the petitioner has come up with the present Habeas Corpus Petition.

3. Today, when the matter was taken up for consideration, the petitioner and the fourth respondent along with their children are present and we have also enquired them.

4. In our considered view, a Habeas Corpus Petition is maintainable only when there is an illegal custody. Admittedly, in the case on hand, the detenus are in the custody of their mother only, which is not stated to be an illegal custody. Therefore, the Habeas Corpus Petition is dismissed. However, the petitioner is at liberty to work out his remedy before the Family Court, Tirunelveli.

Sd/-

Assistant Registrar(C)

/True copy/

Sub Assistant Registrar

To

1.The Commissioner of Police, Tirunelveli District.

2.The Assistant Commissioner of Police, Tirunelveli Town.

3.The Inspector of Police

Pettai Police Station, Tirunelveli District.

4.The Additional Public Prosecutor,

Madurai Bench of Madras High Court, Madurai.

+1 cc to M/s.S.Ilamvaludhi, Advocate in SR.No. 10132

SML

CSL/BS/10.03.2017 : 2P/6C