



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P.[MD].No.1625 of 2016

Sri Lavanya

.. Petitioner

Vs.

1. The Superintendent of Police,
Dindigul District,
Dindigul.

2. The Inspector of Police,
All Women Police Station,
Palani, Dindigul District.

3.Vasanth Kumar

.. Respondents

PRAYER: Habeas Corpus Petition has been filed under Article 226 of the Constitution of India, directing the respondents 1 and 2 to secure the detenu Nithin S/o.Vasanth Kumar, 3rd respondent herein, aged about 7 years from the illegal custody of the 3rd respondent and hand over his custody to the petitioner.

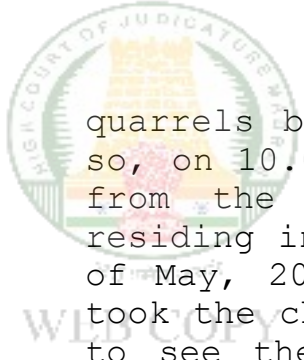
For Petitioner	:	Mr.T.Lenin Kumar
For Respondents 1 & 2	:	Mr.K.S.Duraipandian, Additional Public Prosecutor
For 3rd respondent	:	Mr.Ramu

ORDER

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

The petitioner, who is the mother of the detenu viz., Nithin, aged about 7 years, has come up with this Habeas Corpus Petition seeking a direction to the respondents to produce the detenu before this Court and to hand over the custody of the detenu to her.

2.It is stated in the affidavit filed in support of the petition that the third respondent is the husband of the petitioner and the marriage between the petitioner and the third respondent took place on 11.11.2009, without the consent of the parents of the petitioner. After the marriage, they commenced their matrimonial life in the third respondent's house. Out of this marriage, on 20.06.2010 the petitioner gave birth to a male child viz., the detenu. After about four years, there was frequent



quarrels between the petitioner and the third respondent. While so, on 10.03.2016 the third respondent had sent out the petitioner from the matrimonial home and therefore, the petitioner was residing in her parental home along with the child. In the month of May, 2016, the third respondent approached the petitioner and took the child along with him stating that his parents are willing to see the face of the child and he will bring back the child immediately. Believing the words of the third respondent, the petitioner handed over the custody of the child, but the third respondent did not bring back the child. Whenever the petitioner approached the third respondent to send back the child, the third respondent did not return the child. Hence, on 22.09.2016 the petitioner lodged a complaint before the second respondent. As there was no response to the same, the petitioner has come up with the present Habeas Corpus Petition.

3. When the matter came up for hearing on 05.12.2016, we referred the matter to the Mediation and Conciliation Centre attached to this Bench. Since the mediation ended in failure, the matter was again listed before the Court. Today the petitioner, the third respondent and the detenu appeared before this Court. When we enquired, the petitioner told that her child is in illegal custody of the third respondent. More over, the third respondent is also involved in a criminal case and the said case is pending in Crime No.97 of 2015 for the offence under Sections 8(c) r/w 20 (b) (ii) (A) of the NDPS Act and thus, she prays to hand over the child to her. The third respondent herein denied the allegation of the petitioner stating that the child is with him for a long time and that if the child is sent along with the petitioner, she will not take care of the child. When we enquired the minor, he expressed his unwillingness to go along with his mother/petitioner.

4. When we expressed our opinion that the father of the child cannot restrict the mother to see the child, the third respondent agreed to permit the petitioner/mother to visit the child once in a week. In this regard, they have also filed a joint memo wherein it is stated as follows:

"It is submitted that as the mediation and subsequent counseling conducted to unite the petitioner and the 3rd respondent got failed, the petitioner decided to approach the concern civil Court seeking for custody of the minor child / detenu. As an interim measure, the petitioner may be permitted to visit the minor child / detenu. The 3rd respondent also agreed to permit the petitioner to visit the child. As such, the third respondent will drop the child by every Sunday at 09.00 a.m. in Sithivinayagar Temple, C.S.I. Road, Palani Andavar Nagar, Palani, Dindigul District and pick up the child in the same temple



at 06.00 p.m. In that event, the petitioner has to pick up the child in the same temple at about 9.00 a.m. and drop him at about 6.00 p.m. The above said agreement arrived at between the parties without prejudice to the rights and interest of the both the petitioner and the 3rd respondent before the Civil Court."

5. Recording the above joint memo filed by the parties, this Habeas Corpus Petition is closed. However, the petitioner is at liberty to work out her remedy for the custody of the child before the appropriate forum.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Superintendent of Police,
Dindigul District, Dindigul.
2. The Inspector of Police,
All Women Police Station,
Palani, Dindigul District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.M.Ramu, Advocate, SR.No.257

**Order made in
H.C.P. [MD].No.1625 of 2016
Dated: 02.01.2017**

gcg

SH/PM-AMI/SAR-1:20.01.2017:3P/5C