



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 12.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

Contempt Petition (MD)No.525 of 2016

Anbukkarasi

: Petitioner

Vs.

1.Mr.Subrahmanyam Jaishanker, I.F.S.,
The Secretary,
Government of India,
External Affairs,
South Block,
New Delhi.

2.M.Manoharan

: Respondents

PRAYER: Contempt Petition is filed under Section 11 of Contempt of Courts Act, 1971, praying to punish the respondents for the willful disobedience of the orders of this Court passed in H.C.P. (MD)No.508 of 2012, dated 05.08.2015.

Prayer in Habeas Corpus Petition(MD)No.508/2012:

Petition praying that in the circumstances stated therein and in the affidavit filed therewith, the High Court will be pleased, issue writ & Habeas corpus to produce the body of the detenu, minor child viz., Hareendra, S/o. Manoharan, aged 11 months before this Honourable Court, illegally detained by the respondents 3 to 8 and handover the custody of the detenu to the petitioner forthwith.

For Petitioner	: Mr.S.Doraisamy
For Respondent No.1	: Mrs.S.Srimathy, Senior Panel Counsel for Central Government

ORDER

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

The present Contempt Petition has been filed alleging non-compliance of the order passed by this Court dated 05.08.2015, made in H.C.P.(MD)No.508 of 2012.

<https://hcservices.ecourts.gov.in/hcservices/>

2. The facts and circumstances, which necessitated the petitioner to file this Contempt Petition, are as follows:

2.1. The petitioner herein is the mother of a male child known as Hareendra. The second respondent herein is the father of the



child. The second respondent is keeping the child in Singapore. Alleging that the said custody is illegal, the petitioner has filed the petition in H.C.P.(MD)No.508 of 2012.

2.2. In such a situation, this Court, by order dated 16.07.2012, directed the second respondent herein to restore the child to the petitioner. But, the said order was not complied with by the second respondent. Again, this Court passed another order on 01.08.2012, requesting the first respondent herein, who is the ninth respondent in H.C.P.(MD)No.508 of 2012, to take all steps to repatriate the second respondent to India, so that, the earlier order can be enforced. That order was also not complied with. Again, when the said petition came up for hearing on 15.11.2012, this Court dismissed the same holding that the dispute is civil in nature and the dispute regarding the custody of the child is to be resolved only through the Civil Court.

2.3. Thereafter, the petitioner filed Review Application (MD) No.1 of 2013 seeking to review the said order. The Review Application was allowed by this Court, by order dated 30.08.2013, wherein this Court again restored the Habeas Corpus Petition and directed the first respondent to enforce the order dated 16.07.2012 at the earliest.

2.4. As against the said order made in the Review Application, a Special Leave Petition was filed by the second respondent before the Hon'ble Supreme Court in Special Leave to Criminal Appeal Nos.1608-1609/2014. However, the Special Leave Petition was dismissed by the Hon'ble Supreme Court on 20.04.2015.

2.5. When the said Habeas Corpus Petition came up for hearing on 05.08.2015, the learned Senior Panel Counsel for the first respondent submitted that already steps have been taken to comply with the order of this Court. But, it has been brought to the notice of the Government that the custody of the child has been handed over to the second respondent on the orders of a Singapore Court and, therefore, there are legal hurdles to repatriate the child. However, this Court has passed the following order:

"7. In our considered opinion, the 9th respondent is bound by the orders of this Court. We are hopeful that the 9th respondent would comply with the order at the earliest. In the above said circumstances, since the orders have been passed, one for the custody of the child to the petitioner by the third respondent and the other to the 9th respondent to repatriate the third respondent to India, there is no scope to pass any more order in this Habeas Corpus Petition. If the petitioner has got any grievance that the earlier orders have not been complied with, it is always open to her to initiate proceedings for contempt.

8. With the above observation, this Habeas Corpus Petition is closed with a direction to the parties to



comply with the earlier orders passed in this Habeas Corpus Petition."

2.6. Since the said order has not been complied with, now, the present Contempt Petition has been filed.

3. Counter-affidavit has been filed by the first respondent stating that on 13.08.2012 the Indian High Commission in Singapore sent a request to the Ministry of Foreign Affairs, Singapore to serve the notice on the second respondent for compliance of the order of this Court. On 04.09.2012 the Ministry of Foreign Affairs, Singapore conveyed that they are unable to assist in the matter as India is not a signatory to the Hague Commission on the Civil Aspects of the International Child Abduction. The efforts on the part of the High Commission in Singapore, the Ministry of Foreign Affairs, Singapore, vide their note dated 25.08.2014, conveyed the views of Ministry of Law, Singapore, on the matter stating that Order 65 Rule 2 of the Rules of Court requires a letter of request from a Court or other Tribunal of a foreign country addressed to the Minister for Law of the Republic of Singapore for the judicial process to be served. The Ministry of Home Affairs, Government of India, is the Nodal Ministry in the matters related to Letter Rogatory and mutual legal assistance request. It is also stated that as per the information received from the Indian High Commission in Singapore, the second respondent is a Singaporean national and, therefore, the repatriation of the second respondent is not applicable. If a person wanted for trial in India and is presently residing in a foreign country, this process may have the effect of extradition, negotiated on the basis of established international legal principles. There exists an extradition arrangement between India and Singapore. The Gazette of India notification dated 20 January, 1972, states the application of provisions of the Extradition Act 1962 other than Chapter III to the Republic of Singapore. As per Section 2(c) (ii) of the Extradition Act, 1962, "Extradition Offence" means (in relation to a foreign State other than a treaty State) an offence punishable with imprisonment for a term which shall not be less than one year under the laws of India or of a foreign State and includes a composite offence. The Ministry of External Affairs, being the Nodal Ministry, in matters related to extradition, will take appropriate steps when a formal request for extradition is received from the concerned law enforcement agency in respect of the person wanted from Singapore for trial in India. Thus, it is stated that the first respondent has taken earnest efforts to comply with the order of this Court.

4. When the present Contempt Petition was taken up for consideration, the learned Senior Panel Counsel for Central Government would submit that the first respondent would send a Superintendent of Police, Thanjavur District, within a period of three weeks from the date of receipt of a copy of this order, with a request to move the concerned Magistrate, where the petitioner is residing, by filing an appropriate application as per the provisions of the Extradition Act, 1962 and in the event



of passing an order by the Magistrate concerned on the said application, the first respondent shall take necessary steps to repatriate the second respondent.

5. In view of the submission made by the learned Senior Panel Counsel for the Central Government, we are of the opinion that there is no need to pass any specific order in this petition. Hence, recording the statement made by the learned Senior Panel Counsel for the Central Government, the Contempt Petition is closed.

Sd/-
Assistant Registrar[CO]

/True copy/

Sub Assistant Registrar

To

1) Mr. Subramanyam Jaishanker, I.F.S.,
The Secretary,
Government of India,
External Affairs,
South Block,
New Delhi.

2) The Superintendent of Police,
Thanjavur District

+1cc to M/S S. Srimathy, Advocate, SR.2485
+1cc to Mr. S. Doraisamy, Advocate, SR.2738
SML
KK-MPA-SAR3-31.01.17-4P-5C

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