

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 17.07.2018

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA
AND
THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

H.C.P. NO.1369 OF 2018

Shanthi .. Petitioner

- Vs -

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

2. The Inspector of Police,
Pudhupalayam Police Station,
Thiruvannamalai District.

3. Anthienthal Children Assylum,
No.103, Perumpakkam Street,
Anaipiranthai,
Thiruvannamalai District.

4.Muralidharan

5.Uma .. Respondents

Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of habeas corpus directing the respondents herein to produce the body and person of the detenu, by name, Saidharsan, Son of Ravichandran, aged about 12 years, before this Court and hand over to the petitioner.

For Petitioner : Mr.V.Neethidurai

For Respondents: Mr. R.Prathap Kumar, APP
for R1 and R2

Mr.S.Anburaja for RR4 & 5

ORDER

(DELIVERED BY DR. S.VIMALA, J.)

The petition has been filed by the mother of the detenu, seeking direction to the respondents to produce the detenu by name Saidharsan S/o. Ravichandran aged about 12 years before this Court.

2. In the supporting affidavit, the petitioner states that the detenu was given to her at the age of five months by way of an oral adoption. She further states that she and her husband

were spending money for the welfare of the child, for education and also for his necessities; the 4th and 5th respondent used to visit the detenu and at one point of time, due to business enmity, they have taken the child from the custody of the petitioner. A complaint was preferred for getting the custody of the child.

3. Today, the petitioner, the 4th and 5th respondents, who are the biological parents of the detenu as per the records are also present. The detenu is also produced before the Court.

4. On enquiry, the detenu submitted that he wants to go with the petitioner Shanthi.

5. On a perusal of the records, it is seen that already the matter was proceeded before the Judicial Magistrate No.III, Thirupathur, regarding the custody of the child and the Court had ordered the custody of the child to the petitioner and directed the 4th and 5th respondents herein to approach the appropriate forum for proper remedy in accordance with law. However, the detenu was handed over to the 3rd respondent herein, namely, Anthienthal Children Asylum, Thiruvannamalai District. Thereafter, the petitioner approached the 3rd respondent for custody of child. But, they refused to hand over the child. Therefore, the petitioner made a complaint before the respondent Police, but, it did not yield any result. Hence, this Habeas Corpus Petition was filed.

6. A perusal of the records show that the detenu was living along with the petitioner from the age of 5 months.

7. We enquired the child. Paramount interest of the child is the prime consideration. Considering the wishes expressed by the child, the custody is entrusted to the petitioner.

8. Furthermore, the detenu is willing to go only with the petitioner. Considering the same, this Court is of the view that the detenu is to be handed over to the petitioner Shanthi.

9. The plea of oral adoption requires resolution by appropriate Civil Court. The parties shall work out their remedy before the appropriate forum with regard to permanent custody of the child.

10. With the above observations, this Habeas Corpus Petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Superintendent of Police,
Thiruvannamalai District,
Thiruvannamalai.
2. The Inspector of Police,
Pudhupalayam Police Station,
Thiruvannamalai District.
3. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.V.Neethidurai, Advocate SR.NO.47640

GJII(CO)
sm:25.10.2018

H.C.P. NO.1369 of 2018



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