

In the High Court of Judicature at Madras

Dated: 03.04.2018

Coram:

The Hon'ble Mr.Justice M.VENUGOPAL
and
The Hon'ble Mrs.Justice R.HEMALATHA

H.C.P.No.295 of 2018

Padmapriya .. Petitioner

Vs.

1.State rep. by
The Inspector of Police,
All Women Police Station,
Udumalpet.

2.The Superintendent of Police,
District Police Office,
Tiruppur District.

3.K.Amudhasagar

R3-Impleaded as per the order of this
Court dated 15.03.2018 in
Crl.M.P.No.4166/18 in HCP.295/2018. ... Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus to direct the respondents 1 & 2 to produce the person and body of the petitioner's minor son A.Hithesh 1 ½ years old and her husband Amudhasagar aged 34 years before this Court and hand over the custody to the petitioner herein.

For Petitioner	:	Mr.N.Muthukumaran
For Respondent	:	Mr.R.Ravichandran
Nos.1 & 2	:	Additional Public Prosecutor
For Respondent-3:	:	Ms.R.Gowri

O R D E R

[Order of the Court was made by
M.VENUGOPAL, J.]

This Habeas Corpus Petition has been filed by the Petitioner to direct the Respondents 1 & 2 to produce the person and body of the Petitioner's minor son A.Hithesh aged about 1½ years and her husband Amudhasagar, aged 34 years before this Court and hand over the custody of them to her.

2.Heard the Learned counsel for the Petitioner, Learned Additional Public Prosecutor appearing for the Respondents 1 and 2 and the Learned counsel for the Third Respondent.

3.According to the Petitioner/Wife, she got married with her husband namely, Amudhasagar (detenue) on 14.02.2013 at N.N.Mahal, Harur and that the marriage was an arranged one. As a matter of fact, the said marriage was solemnized as per Hindu rites and customs. As a result of wedlock, two children were born. One minor A.Hithesh, who is aged about 1½ years and minor A.Sasthika, aged about four years.

4.The Learned counsel for the Petitioner submits that the petitioner at the time of her marriage was provided with 50 sovereigns of gold, household articles and a sum of Rs.2,50,000/- to purchase 5 sovereigns of gold chain, two wheeler (Honda Unicorn Bike) for her husband as dowry. On 20.12.2017 at about 9.30 a.m., her Husband beat her at the instigation of her Mother-In-Law and took her mangalayam and pulled her out from the matrimonial house which was informed over phone by her husband's family to her mother. Subsequently, her minor son was forcibly taken from her to their custody on the same day. Indeed, the petitioner had sustained grievous injuries all over the body and she was pressurised to come to Harur and thereafter taken treatment at Government Hospital, Harur on 31.12.2017.

5.The grievance of the Petitioner is that her 1½ year son Hithesh was not returned and his whereabouts as well as her husband whereabouts were not known to her. On 03.01.2018, she has given a complaint to the first respondent and that CSR.No.1 of 2018 was issued. Since the First Respondent/Inspector of Police, All Women Police Station, Udumalpet had failed to trace her child and her husband, she gave a complaint on 08.01.2018 before the Inspector of Police, Harur Police Station. Again, she has lodged a complaint to the Second Respondent and also to his sub-ordinates on 23.01.2018. Since no action has been taken on her complaints, she has filed the present Habeas Corpus Petition before this Court.

6. According to the Learned Additional Public Prosecutor appearing for the Respondents 1 & 2, the First Respondent/Inspector of Police, All Women Police Station, Udumalpet had conducted an enquiry on 24.08.2017 and the gist of the complaint petition is that the petitioner's four years daughter was to be handed over to her from the custody of her husband. On 24.08.2017, the petition No.365 of 2017 (given by the Petitioner was disposed of by the Inspector of Police, AWPS, Udumalpet, Tiruppur District) inter-alia stating that the Petitioner as well as her husband viz., detenue agreed to live at Chennai by means of separate residence and that the petitioner's husband had informed the police that within one week he would look out for a house and will lead a separate life at Chennai along with his wife viz., the Petitioner. In the meanwhile, during the course of enquiry, it was decided that the Petitioner (Padmapriya) would take her three year female child along with her and that the male child will be looked after by the Husband and petition was closed without proceeding any.

7. Per contra, it is the submission of the Learned counsel for the Third Respondent that the marriage between the parties took place on 14.02.2013 and that the first girl child was born on 06.11.2013, was named as Sasthika and the second boy baby was born on 05.07.2016 who was named as Hithesh Aarnava and due to the constrained relationship which got aggravated between the Petitioner and her husband, made the petitioner to suffer agony and she was put with great anguish without peace of mind.

8. The Learned counsel for the Third Respondent brings to the notice of this Court that the husband had filed HMOP.No.27 of 2018 against the wife namely, the Petitioner seeking a decree of divorce which is pending on the file of the Sub Court, Udumalpet. Also that the husband had filed GWOP.No. 2018 on the file of the Principal District Court, Tiruppur seeking custody of his minor girl child which is now pending adjudication.

9. In this connection, the Learned counsel for the Third Respondent points out that only as a counter blast, the Petitioner/wife has preferred the instant Habeas Corpus Petition with a view to harass her husband.

10. Considering the fact that the dispute between the Petitioner/wife and the Third Respondent/husband pertains to matrimonial proceedings in HMOP.No.27 of 2018 and GWOP.No. 2018 which are pending on the file of the respective trial Courts and also this Court taking note a primordial fact that the dispute between the Petitioner/wife and the Third Respondent/husband pertains to matrimonial one and also seeking custody of the minor girl child Sasthika, comes to an

irresistible and inescapable conclusion that the Petitioner cannot convert the matrimonial dispute or pending custody matter in GWOP into that of the present Habeas Corpus Petition and seek necessary reliefs to produce the body of her minor son and her husband aged about 34 years. Suffice for this Court to point out that the present Habeas Corpus Petition by taking note of the pendency of HMOP.No.27 of 2018 and GWOP.No. 2018 on the file of the trial Courts is devoid of merits. Consequently, the present Habeas Corpus Petition fails.

11.In fine, the Habeas Corpus Petition stands dismissed. However, this Court grants liberty to the Petitioner/wife as well as the Third Respondent/husband to work out their remedies in the pending HMOP and GWOP by raising all legal and factual issues for redressal of their grievances.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

DP
To

1.The Inspector of Police,
All Women Police Station,
Udumalpet.

2.The Superintendent of Police,
District Police Office,
Tiruppur District.

3.The Public Prosecutor,
Madras High Court.

+1cc to Mr.R.GOURI, Advocate, S.R.No.24709

+1cc to Mr.N.MUTHUKUMARAN, Advocate, S.R.No. 24574

H.C.P.No.295 of 2018

RJ(CO)
TR(24/04/2018)

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