

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.04.2018

CORAM

THE HON'BLE Mr. JUSTICE M.VENUGOPAL
and
THE HON'BLE Mrs. JUSTICE R.HEMALATHA

H.C.P.No.663 of 2018

B.Nanthakumar

.. Petitioner

Vs

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

2.The Sub-Inspector of Police,
Molasi Police Station,
Namakkal District.

3.Dhanalakshmi

4.Palaniyappan

5.Athiyappan @ Suresh

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS, directing the respondents to produce petitioner's minor son namely Rithik aged about 13 years from the illegal custody of the Respondents 3 to 5 and produce him before this Court and handover to the petitioner and set him at liberty.

For Petitioner : Mr.Jerry V.V.Sundar

For RR 1 and 2 : Mr.R.Ravichandran
Government Advocate (Crl. Side)

For RR 3 to 5 : Served

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O R D E R

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

Heard the Learned Counsel for the Petitioner, Learned Government Advocate (Crl. Side) for the Respondents 1 & 2 and the Learned Counsel for the Respondents 3 to 5.

2.The Petitioner, being the Husband of the 3rd Respondent, has preferred the present Habeas Corpus before this Court praying for passing of an order in directing the Respondents to produce his minor son viz., Rithik, aged about 13 years from the illegal custody of the Respondents 3 to 5.

3.According to the Petitioner, he is an Advocate practising before the High Court, Madras and with a view to settled down in Chennai, he brought his wife/3rd Respondent and his son in the year 2010 and were living peacefully.

4.The version of the Petitioner is that he was taking care of his family with utmost responsibility care, love and affection. Furthermore, during May 2014 they were called by his father-in-law viz., the 4th Respondent to his house to have a settlement of properties in regard to the 4th Respondent and his family members. Adding to his father-in-law's request, he along with his wife and his son Rithik on 21.05.2014 went to his Father-in-law's house.

5.The Learned Counsel for the Petitioner submits that during the family discussion, the Petitioner's Father-in-Law and his brother's son viz., the 5th Respondent/Athiyappan @ Suresh attacked the Petitioner severely and as such, he called the 3rd Respondent/Wife to return back to Chennai. However, the 4th Respondent had not permitted the 3rd Respondent to come along with the Petitioner. But, the 3rd Respondent/Wife chose to stay with his father and refused to send her minor son also.

6.The Learned Counsel for the Petitioner points out that the Petitioner was injured severely and was admitted as an inpatient in the nearby Hospital and filed a complaint before the 2nd Respondent, which was numbered in Crime No.109 of 2014. Although the Petitioner took several attempts to contact his Wife viz., the 3rd Respondent and to see his son Rithik, the Petitioner despite all his efforts was not allowed to meet his son and that the 3rd and 4th Respondents had refused to allow him to see his son.

7.The Learned Counsel for the Petitioner brings it to the notice of this Court that when the Petitioner tried to see his son Rithik at the School where he was studying, he was informed that he was prohibited from visiting his son in the School on the advise and the letter written by his wife viz., the 3rd Respondent. Numerous attempts were made by the elders of the Petitioner's family and the elders of the Village to reunite with his wife. In spite of the elders counselling, according to the Petitioner, his wife viz., the 3rd Respondent had refused to come with him and stated that only if the 4th and 5th Respondents

permit her, then, she would come with him to the matrimonial home.

8.The real grievance of the Petitioner is that his son is under the control of 4th and 5th Respondents. Further that, he is a Father, who is separated from his son even visiting or catching a glimpse of him and in this regard, the act of the 4th and 5th Respondents in having control of his son had caused much agony to him. Later, he has filed the present Habeas Corpus Petition seeking for necessary directions being issued by this Court in directing the Respondents to produce his minor son viz., Rithik, aged about 13 years.

9.Today, the 3rd Respondent/wife of the Petitioner and his minor son Rithik aged about 13 years are produced before this Court by the 2nd Respondent/Sub Inspector of Police, Molasi Police Station, Namakkal District.

10.This Court interacted with the Petitioner's wife viz., the 3rd Respondent and also her minor son Rithik. The 3rd Respondent/Wife informed this Court that her son Rithik is studying at Sree S.P.K. Public Senior Secondary School, Thiruchengode and the Petitioner/ Husband is conducting Motor Accident Claim Cases and he used to beat her after consumption of Alcohol and her marriage with the Petitioner took place in the year 2004 and that currently she is residing with her mother at Molasi. She also informed that she has a sister living at Sankagiri. Further, the minor son Rithik informed this Court that he is studying in 7th standard and he is interested to be under the care and custody of his mother viz., the 3rd Respondent and he further informed this Court that he is not interested to go along with his father.

11.The 3rd Respondent upon an enquiry made by this Court informed that she has no objection for the Petitioner/Husband/Father of her minor son Rithik to come to Village Molasi in Namakkal District to see her and her minor son.

12.Considering the fact that the 3rd Respondent, owing to certain differences of opinion with her Husband/Petitioner, is residing separately along with her mother and she is also nurturing her minor son Rithik, aged about 13 years and also this Court, taking note of the fact that her minor son has clearly expressed that he is not interested to go along with the Petitioner/Father, this Court comes to an irresistible and inescapable conclusion that the minor son of the Petitioner who is under the care and custody of her mother viz., the 3rd Respondent cannot be characterised in Law, by any stretch of imagination, that he is under the illegal Detention of either the 3rd Respondent or much less the other Respondents 4 and 5.

13. Viewed in that perspective, this Court disposes of the Habeas Corpus Petition, as nothing survives for adjudication and also this Court permits the minor Rithik, aged about 13 years, son of the Petitioner and the 3rd Respondent to go along with his mother viz., the 3rd Respondent.

14. Before parting with this case, this Court pertinently points out that the disposal of the present Habeas Corpus Petition will not preclude the Petitioner to visit his wife viz., the 3rd Respondent and the child Rithik at his wife's place at Molasi on any day in a month, of course, after due prior intimation to the 3rd Respondent/Wife in this regard. When the Petitioner/Husband visits his Wife viz., the 3rd Respondent and his son Rithik at the Wife's house as stated supra, then, it is lucidly made quite clear that the 3rd Respondent's father and any other person shall not cause any hindrance/obstacle/inconvenience/disturbance to such meeting.

Sd/-

Assistant Registrar (CS IX)

//True Copy//

Sub Assistant Registrar

sgl

To

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

2. The Sub-Inspector of Police,
Molasi Police Station,
Namakkal District.

3. The Public Prosecutor,
High Court, Madras.

RJI (CO)
RRK (19/04/2018)

H.C.P.No.663 of 2018

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