

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2018

CORAM:

THE HON'BLE MR.JUSTICE M.VENUGOPAL
AND
THE HON'BLE MRS.JUSTICE M.NIRMAL KUMAR

H.C.P.No.767 of 2018

Elangovan

.... Petitioner

vs.

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

2.The Inspector of Police,
Panruti Police Station,
Cuddalore District.

3.Nagappan

.... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of habeas corpus to direct the First and Second Respondents to secure the detainees Mugilarasi, 5 years and Kokilarasi, 1 ½ years, now confined by the Third Respondent herein and to produce them before this Court and entrust the custody of the detainees in the hands of the Petitioner to secure the ends of justice.

For Petitioner : Mr.R.Sankarasubbu

For Respondents : Mr.R.Pratap Kumar
Additional Public Prosecutor
for R1 and R2

ORDER

(Order of the Court was made by M.VENUGOPAL,J.)

Heard the Learned Counsel for the Petitioner, Learned Additional Public Prosecutor for R1 and R2 and the Learned Counsel for the Third Respondent.

2.The Petitioner/husband has filed the present Writ of Habeas Corpus Petition, praying for passing of an Order by this Court in directing the First and Second Respondents to secure

the Detenue, viz., Mugilarasi, aged five years and Kokilarasi, aged 1 ½ years, now confined by the Third Respondent.

3.Today, the Second Respondent/Inspector of Police, Panruti Police Station, Cuddalore District, has produced the Petitioner's minor daughters, viz., Mugilarasi, aged five years and Kokilarasi, aged 1 ½ years from the custody of the Third Respondent, father-in-law of the Petitioner.

4.According to the Petitioner, he married his wife Tamilarasi on 30.11.2012, as per Hindu Rites and Customs and his marriage took place in Shanmuga Thirumana Mandapam, Sri Thirukaamiswarar Nagar, Villianur, Puducherry State.

5.This Court has enquired the Petitioner's wife, Tamilarasi, who has stated that she is presently working as Teacher in Seventh Day Advent School, Panruti and taking classes for +1 and +2 courses. She receives a salary of Rs.7000/- per month and her date of appointment in the said School is on 21.05.2018. She had further stated that she had filed a Divorce Petition in H.M.O.P.No.34 of 2018, on the file of the Learned Sub Judge, Panruti, against her husband (the petitioner herein) and the said case comes up for hearing before the trial Court on 18.06.2018. For the last one year ever since May 2017, she is living separately with her father, viz., the Third Respondent at S.Eripalayam, Murugan Koil Theru, Siruvathur Union, Panruty Taluk, Cuddalore District. The two minor children, viz., Mugilarasi and Kokilarasi are under her care and custody. Further, her first daughter Mugilarasi, aged five years, is studying in UKG in Seventh Day Advent School, Panruti. The other female child Kokilarasi, aged 1 ½ years, is looked after by her and the said child is under her custody.

6.Considering the fact that owing to certain differences of opinion between the Petitioner/husband and his wife, Tamilarasi (Petitioner in H.M.O.P.No.34 of 2018, on the file of the Sub Court, Panruti), the wife of the Petitioner is living separately away from the Petitioner/husband and she is living along with her father, viz., the Third Respondent herein and under her custody, her two minor children Mugilarrasi and Kokilarasi are there, this Court is of the considered view that in the present Habeas Corpus Petition nothing survives for further adjudication, because of the reason that the Second Respondent/The Inspector of police, Cuddalore District, Cuddalore, has produced the Petitioner's two minor daughters from the custody of his father-in-law. Furthermore, the Petitioner's wife, Tamilarasi, is present before this Court and informs this Court categorically that she is not willing to live with her husband and she is desirous of continuing the pending matrimonial proceedings in H.M.O.P.No.34 of 2018, before the trial Court. Added further, the wife of the Petitioner, viz.,

Tamilarasi, who had studied up to M.A.(Economics), M.Phil(Ph.D.) informs this Court that she has no objection for the Petitioner/husband to visit her two minor children, viz., Mugilarasi and Kokilarasi every Saturday.

7.Hence, this Court permits the Petitioner to visit his two minor daughters, who are under the care and custody of the Third Respondent (father-in-law of the Petitioner), at S.Eripalayam, Murugan Koil Theru, Siruvathur Union, Panruty Taluk, Cuddalore District, on every Saturday from 10.00 a.m. to 12.00 noon and he should inform his wife well in advance the time and date of his visit. It is also made clear that the Third Respondent/the Father-in-Law of the Petitioner should not be an impediment to see the children. Liberty is granted to the Petitioner/husband to take part in the H.M.O.P. Proceedings and to contest the same before the concerned trial Court, in accordance with law. Equally it is open to the Petitioner/husband to move necessary Interlocutory Application in the pending H.M.O.P.No.34 of 2018 Proceedings and seek custody/visitation right of his two children. Till such time, the Petitioner is permitted to visit his two minor children in the Third Respondent's house as aforesaid.

With the aforesaid observation and direction, this Habeas Corpus Petition is disposed of.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

msk

To

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

2.The Inspector of Police,
Panruti Police Station,
Cuddalore District.

3.The Public Prosecutor,
High Court, Madras

+1 CC to Mr.R. Sankara Subbu, Advocate sr 35138.

H.C.P.No.767 of 2018

KGK(CO)

SP(18/06/2018)