

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2018

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA
AND
THE HON'BLE MRS. JUSTICE S.RAMATHILAGAM

H.C.P.No.797 of 2018

Nazimunisha

... Petitioner

versus

1. The Inspector of Police,
K-3, Aminjikarai Police Station,
Chennai.

2. Javeed Syed

3. The Chair Person,
Child Welfare Committee,
No.330, Purasaiwakkam High Road,
Kellys, Chennai.

... Respondents

(R3 is impleaded as per the order
of this Court dated 13.06.2018 made
in Crl.M.P.No.7884/2018 in H.C.P.No.797/2018)

Hebeas Corpus Petition filed under Article 226 of
Constitution of India praying for the issuance of Writ of Habeas
Corpus, to direct the respondents to produce the detinue
Thammana, aged 8 years (minor) before this Court and hand over
to the petitioner.

For Petitioner : Mr.K.Sakthivel

For R1 : Mr.Prathap Kumar,
Additional Public Prosecutor

For R2 : Mr.Mubarah Ahamed
for M/s.Ahmad Associates

For R3 : Ms.Shaikh Mehrunisa

ORDER

Dr.S.Vimala, J.,

This petition has been filed by the petitioner/mother of
the detinue, seeking direction to the respondents to produce
her daughter Thammana, aged about 8 years before this Court.

2. It is the case of the petitioner/mother of the detenue that she was married to the second respondent in the year 2007 and out of wedlock, the child Thammana was born in the year 2010; later on, disputes arose between the husband and wife; in respect of the complaint given by her husband, a case was registered in K-3 Aminjikarai Police Station against her and she was arrested by the Police on 14.03.2018 and thereafter, she was released on bail on 04.04.2018. When she was in the police custody, the child came to the custody of the Child Welfare Committee.

2.1. The husband/second respondent preferred W.P.No.6618 of 2018, seeking for the issuance of writ of mandamus, directing the first respondent to release the child Thamana from the custody of the Child Welfare Committee and permit her to live with him in terms of Section 59 of the Juvenile Justice (Care and Protection of Children) Act, 2000. The Court, on 03.04.2018, passed an order in the absence of the petitioner and even without impleading the mother of the child/petitioner herein. The order reads as under:

"Shorn of unnecessary facts, it is seen that the petitioner is the father of the minor female child, namely, Thamanna Syed, aged about 8 years. A case in Crime No.61 of 2018 on the file of Aminjikarai Police Station was registered and during the course of investigation, the police arrested the mother of the child J.Najmunnisa Syed on 14.03.2018. At the time of producing her before the Court, the child accompanied her and therefore, the child was handed over to the custody of the Child Welfare Committee, Kellys, Chennai. While so, the petitioner, who is the father of the child, has filed the present petition to direct the respondent to hand over the child to him.

2. Today, Ms.Shaikh Mehrunisa, learned counsel appearing for the respondents fairly submitted that the enquiry conducted by the Child Welfare Committee reveals that the child is anxious to go with her father.

3. The child is said to be in the custody of the 2nd respondent/The Mottukkal, Good Shepherd Convent, Nungambakkam, Chennai.

4. In such view of the matter, this Court directs the Child Welfare Committee to hand over the child immediately to the petitioner herein. It is always open to the mother to file appropriate proceedings seeking guardianship, if so advised.

5. With the above direction, this Writ Petition is allowed. Consequently, the connected miscellaneous petition is closed. No costs."

Accordingly, the Child Welfare Committee has handed over the

custody of the child to the father/second respondent herein. Aggrieved over that, a Writ Appeal has been filed and the same is pending consideration.

3. Now, it is the case of the father of the child/second respondent herein that the child had been admitted in a school at Trichy.

4. It is needless to point out that there is lot of allegation by the husband against the wife, which is of course pending enquiry and pending trial. However, the right of the mother to have the visiting right of the child cannot be declined. Further, it is needless to say that the custody issue will be decided by the concerned Court.

5. Considering the interest of the child, the petitioner, who is seeking permission to visit the child, is permitted to see the child in the mosque, which is located near by to the residence of the second respondent at Trichy, as the child is studying in the school at Trichy.

6. The petitioner will have the visiting rights to see the child once in 15 days, i.e. on Saturday in the mosque, which is near to the residence of the second respondent. This arrangement shall continue till the custody issue is decided by the concerned Court.

7. The second respondent shall communicate his residential address and also the address of the mosque in writing to the learned counsel for the petitioner, within a period of three days from the date of receipt of a copy of this Order, so as to make the petitioner to see her child every fortnight on Saturday.

8. At the time of visiting the child, the second respondent shall ensure the safety and security of the petitioner. The petitioner is permitted to take one female assistant along with her while exercising the visiting rights.

9. With these observations, this Habeas Corpus Petition is closed.

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Sd/-
Assistant Registrar (CS IV)

//True copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
K-3, Aminjikarai Police Station,
Chennai.
2. The Chair Person,
Child Welfare Committee,
No.330, Purasaiwakkam High Road,
Kellys, Chennai.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.Ahmed Associates, Advocate SR.No.39183
+1cc to Mr.K.Sakthivel, Advocate SR.No.39055

H.C.P.No.797 of 2018

NRI (CO)
GN(28/06/2018)



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