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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.04.2019
Pronounced on : .07.2019

CORAM:

THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

H.C.P.No.1631 of 2015

Karthikeyan Kandavelou ... Petitioner/Father of the Detenue

-Vs-

- 1.The Commissioner of Police,
Chennai.
 - 2.The Inspector of Police,
C-2, Elephant Gate Police Station.
 - 3.Ponniyin Selvi,
W/o.Karthikeyan Kandavelou.
- ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, directing the respondents to produce the minor child, Meenakshi Kandavelou, daughter of Karthikeyan Kandavelou and Ponniyinselvi Kovilur Manoharan, aged 3 years before this Court and set her at liberty and into the custody of the petitioner and further permit the repatriation of the minor child Meenakshi Kandavelou by the petitioner to her native jurisdiction of USA in accordance with the order passed by the Supreme Court of the State of New York County of Westchester on 23rd June 2015.

For Petitioner :Mr.T.R.Rajagopal
Senior Counsel for
M/s.Usha Tholgappian

For R1 and R2 :Mr.C.Iyyapparaj
Additional Public Prosecutor

For R3 :Mr.V.Raghavachari



ORDER

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

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Petitioner seeks a direction to the respondents to produce the minor child Meenakshi Kandavelou daughter of the petitioner and the 3rd respondent aged about 3 years and set her at liberty and entrust her into the custody of the petitioner and further permit the repatriation of the minor child to her native jurisdiction of USA in accordance with the order passed by the Supreme Court of the State of New York County of Westchester on 23.06.2005.

2. The facts of the case are as follows:-

2.1. The petitioner and the 3rd respondent got married on 28.06.2006 at Vedapureeshwarar Temple, Pondichery according to Hindu Rites and Custom and it was an arranged marriage. The petitioner had completed MBBS in Government Stanley Hospital, Chennai in the year 2001 and now presently working as (Hematology/Oncology Fellowship in Albert Einstein College of Medicine/Montefiore Medical Centre) at Bronx, NY USA. The 3rd respondent was working as Programmer Analyst in Direct Energy Montebello, NY USA and after the marriage both the petitioner and the 3rd respondent moved to Baltimore, USA and started living there. Initially they stayed at Connecticut State till 2009 and thereafter they moved to New York in the year 2011, where they purchased a house at New York in their name jointly.

2.2. The petitioner and the 3rd respondent are the Green Card Holders in USA. Due to medical complication, the conception of the child was delayed and eventually through IVF (Test Tube) a girl child was born to them on 26.05.2012 at New York, who was named Meenkashi and presently she is 3 years old and the girl child is a citizen of USA by birth. The parents of the petitioner were taking care of the child and household chores which helped both to carry on their professional carrier without any interference. In June 2013, when the parents of the petitioner left to India, the girl child was put in a day care since both the petitioner and 3rd respondent were employed. After the child suffered multiple health problems culminating in Pneumonia, one Nanny was hired to take care of the child at home. However, such an arrangement did not serve the welfare of the child, the said Nanny was terminated. By the time the mother of the petitioner had returned to USA and joined them in January 2015 and took care of the child. The petitioner was also involved in day to day chores of the child both physically and emotionally.



2.3. During 2014, the 3rd respondent informed the petitioner that she was planning to go to India for her brother's wedding, which was supposed to be held in the end of 2014, for which she booked tickets during October 2014 with the plan of leaving to India on 05.02.2015 and returning to USA on 09.03.2015. Since, the petitioner did not receive any invitation, he enquired about the marriage. The 3rd respondent informed to the petitioner that the marriage stood cancelled. The petitioner asked the 3rd respondent to reschedule the trip to India as and when the marriage is fixed, but the 3rd respondent was unduly adamant to visit India along with the girl child, as per the earlier schedule and assured she would return on 09.03.2015.

2.4. On 05.02.2015, the 3rd respondent came to India along with the girl child. During the last week of February 2015, the petitioner was shocked to learn from British Airways that the 3rd respondent had cancelled her return ticket to USA without any prior information to the petitioner. The petitioner enquired about the cancellation of the ticket. The 3rd respondent replied that she would reschedule her return program and inform the same to him. Thereafter, the petitioner made phone calls, e-mails and messages for knowing about the return of the 3rd respondent to USA with the minor child, she did not respond. The petitioner was kept in the dark about the return of the 3rd respondent and the minor child.

2.5. Under these circumstances, the petitioner having no alternative except to resort to legal action informed the 3rd respondent about the same. The 3rd respondent sent a mail on 12.03.2015 to him informing that she was planning to return with the minor child by the middle of April 2015. Despite the same she did not return to USA. Hence the petitioner was continuously deprived of consortium with the child for over 10 weeks. When the petitioner asked her to reason out, the 3rd respondent refused to return back to USA along with minor child. Thereafter, the petitioner's calls were blocked and the Skype conversation was also abruptly discontinued. Being emotional distress caused by the 3rd respondent, the petitioner was constrained to initiate matrimonial action before the Supreme Court of New York County of Westchester (hereinafter referred to as Foreign Court) by Service of Summons and Verified Complaint for divorce against the 3rd respondent seeking various ancillary reliefs including custody and return of the minor child on 21.05.2015. This was necessitated since the 3rd respondent was on the intention of discerning to secret herself and the child. Further, the petitioner also moved for Ex-parte reliefs including an order seeking a direction for the immediate return of the child and to award the temporary custody of the child.



2.6. The Foreign Court was pleased to issue an order to show cause against grant of the reliefs and directed the appearance of the 3rd respondent and also for the production of the child on 02.06.2015. The 3rd respondent was served by personal service and other methods as directed by the Foreign Court for the hearing set on 02.06.2015. On due service she had chosen to appear through her attorneys M/s.Riebling, Proto & Sachs, LLP (by Keith M.Brown, Esq.). The said counsel appearing for the 3rd respondent admitted and acknowledged Service of Summons and Verified complaint, Order to Show Cause and supporting documentation. Thereafter, the Foreign Court heard both the counsels appearing for the petitioner and the 3rd respondent and the 3rd respondent neither appeared before the Court nor produced the child, as per the Court's direction. On 02.06.2015 the Foreign Court on the admission and acknowledgment of service on behalf of the 3rd respondent issued further directions to appear on 08.06.2015 along with the minor child.

2.7. Further the 3rd respondent having chosen to defend the matrimonial action by engaging an attorney, she failed to appear and the foreign Court fixed the hearing on the issue of the custody of the child on 12.06.2015. For non-compliance of its directions the foreign Court proceeded with the fact finding enquiry on the issue of the custody, the 3rd respondent counsel participated on her behalf in the proceedings including recording of oral testimony and cross examination.

2.8. A reasoned order was passed on 12.06.2015, the Foreign Court dwelt upon its jurisdiction to entertain the matrimonial action in the context of both the petitioner and the 3rd respondent being Indian citizens and green card holders and on employment in USA and the minor child was a natural citizen of USA from the date of birth i.e., on 26.05.2012. The minor child was taken away by the 3rd respondent during February 2015. The child has not been out of the state for a period of in excess of six months, the foreign Court observed that New York would be considered the home state of the child. Further, the foreign Court had taken into consideration of the petitioner's parental rights and access to the child and also granted sole custody of the child Meenakshi and further directed the 3rd respondent to return the child to the state of New York into the custody of the petitioner forthwith.

2.9. It is an admitted fact that the marriage between the petitioner and the 3rd respondent was taken place on 28.06.2006. After the marriage both were living as husband and wife in USA and they were residing at Connecticut State till 2009 and thereafter they moved to New York in the year 2011, where they purchased a house at New York in both their names. Due to medical complication, the conception of the child was delayed



and by way of IVF (Test Tube) a girl child was born to them on 26.05.2012 at New York. The petitioner, the 3rd respondent along with their minor child were living together till the 3rd respondent left USA on 05.02.2015.

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2.10. Since, the 3rd respondent had cancelled the return ticket and sent a mail to the petitioner that she would return to USA along with the minor child by the middle of April 2015 and finally she blocked the phone calls of the petitioner and the Skype conversation was also abruptly discontinued by her. Being emotional on the distress caused by the 3rd respondent, the petitioner was constrained to initiate matrimonial action before the Foreign Court and the notice being served along with the Memorandum of Acquisitions was received by the 3rd respondent. The 3rd respondent had engaged a counsel M/s.Riebling, Proto & Sachs, LLP (by Keith M.Brown, Esq.) and he appeared in this case and initially he sought for some time. Thereafter, the Foreign Court had also interacted with the 3rd respondent. The 3rd respondent questioned the jurisdiction of the foreign Court and had taken stand that the foreign Court has no jurisdiction to decide the matrimonial dispute and the child custody petition of the petitioner and she had also withdrew the authority given to her counsel.

2.11. After dwelling deep on the rival contentions of the parties, on 23.05.2016 the foreign Court had rendered a final decision, awarding the petitioner sole custody of his minor daughter apart from other findings. The relevant portion of the Judgment is extracted for the purpose of the case:-

"Based on the foregoing, including defendant's egregious conduct, plaintiff is awarded.

Defendant's conduct in refusing to return the parties' daughter as directed by this Court can only be interpreted as undertaken to maliciously injure plaintiff herein. Defendant's contention that this Court does not have jurisdiction is also frivolous. Defendant appeared in this action by counsel on the return date of the Order to Show Cause. Her counsel acknowledged personal service on defendant of the Summons with Notice, Verified Complaint and Order Show Cause seeking the return of the child to New York. Defendant counsel appeared multiple times before this Court, including at the custody hearing and the Preliminary Conference. Each time counsel acknowledged that he had provided his client with copies of this Court's order, including the order awarding plaintiff sole



stand that the foreign Court has no jurisdiction to decide the matrimonial dispute and the child custody petition of the petitioner and she had also withdrew the authority given to her counsel.

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6. The Foreign Court dwelt upon its jurisdiction to entertain the matrimonial action in the context of both the petitioner and the 3rd respondent being Indian citizens and green card holders on employment in USA and the minor child is a natural citizen of USA from the date of birth i.e., on 26.05.2012. The minor child was taken away by the 3rd respondent during February 2015. As per the foreign Court, the child has not been out of the state for a period of in excess of six months, New York would be considered the home state of the child. Further, the foreign Court had taken into consideration all the facts, entrusted the petitioner's parental rights and access to the child and also granted sole custody of the child Meenakshi to him. It further directed the 3rd respondent to return the child to the state of New York into the custody of the petitioner forthwith. He filed the Habeas Corpus Petition seeking for a direction to the respondents to produce the minor child, aged 3 years before this Court and set her at liberty and entrust the child into the custody of the petitioner as per the order of the foreign Court.

7. Further the learned counsel for the petitioner had filed a rejoinder, denying the allegations made in the counter filed by the 3rd respondent. In the rejoinder petition he has given an undertaking that he would file an affidavit for withdrawing all the legal proceedings in the Courts of USA initiated at his instance, if the 3rd respondent withdraws all the legal proceedings initiated at her instance before the Family Court at Chennai and on her returning back with his daughter to start their life afresh.

8. In order to substantiate his arguments, the learned counsel for the petitioner relied upon the following citations:-

i) Smt.Surinder Kaur Sandhu Versus Harbax Singh Sandhu and another reported in (1984) 3 Supreme Court Cases 692.

ii) Mrs.Elizabeth Dinshaw Versus Aravand M.Dinshaw and another reported in (1987)1 Supreme Court Cases 42.

iii) Dhanwanti Joshi Versus Madhav Unde reported in (1998) 1 Supreme Court Cases 112

iv) Surita Sharma Versus Sushil Sharma reported in (2000) 3 Supreme Court Cases 14.

v) Shilpa Aggarwal Versus Aviral Mittal and another repored in 2010 (1) CTC 359.



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iv) V.Ravi Chandran (DR) (2) Versus Union of India and Others reported in (2010) 1 Supreme Court Cases 174.

vii) Ruchi Majoo Versus Sanjeev Majoo reported in 2011(3) CTC 873.

viii) Arathi Bandi Versus Bandi Jagadrakshaka Rao and others repoted in (2013) 15 Supreme Court Cases 790.

ix) Lahari Sakhamuri Versus Sobhan Kodali reported in 2019 SCC Online SC 395."

The above citations relied upon by the learned counsel for the petitioner is not applicable to the facts and the principle of the present case.

9. The learned counsel for the 3rd respondent filed a suit in O.S.No.117 of 2015 on 22.04.2015 before the learned III Additional Family Judge, Chennai seeking permanent injunction restraining the petitioner, who is defendant therein, from taking illegal custody of the minor child Meenakshi by using force or any other illegal methods. Thereafter, she had filed O.P.No.2089 of 2015 on 08.06.2015 under Section 13(1) (1a) and (1b) of the Hindu Marriage Act, 1950, seeking dissolution of the marriage on the ground of cruelty and for permanent alimony. Thereafter, she filed O.P.No.2819 of 2015 before the Family Court, Chennai under Section 7 of the Guardians and Wards Act on 30.06.2015, seeking custody of the minor child to her. In these petitions the averments and allegations are made against the petitioner. The 3rd respondent primacy is for the custody of the minor child and its well being. He further contended that the Foreign Court without considering the paramount interest and welfare of the minor child forgetting the child was a Natural citizen of India entrusted the parental rights and access to the child and also granted sole custody of the child Meenakshi to the petitioner.

10. He would further submit that the in-laws of the petitioner, who were staying along with them in New York were ill-treating the 3rd respondent and they neither allowed her to visit her parental home in Chennai nor speak to her families over phone. The petitioner has not even cared for the minor child's wellbeing. She submits that both of them are Green Card Holders and likewise the petitioner's parents are also citizens of USA, who are also living with them. The attitude of the petitioner and his family members caused mental agony to her and created fear in the mind of the 3rd respondent as to whether their minor daughter would be properly taken care of by the petitioner. She further submits that being a traditional Indian women was tolerating all the acts done by the petitioner and his family members. Due to the wedlock, they begot a daughter



through IVF (Test Tube) and the 3rd respondent is subjected to cruelty. The petitioner was only a MBBS graduate at the time of marriage and after the marriage, with the 3rd respondent's help and support he pursued all his higher studies in USA and the expenses were borne from the income of the 3rd respondent. She had monetarily supported the petitioner to complete his higher studies at USA. She admits that on 07.02.2015 she had come to Chennai to arrange for her brother's wedding along with her minor child and on reaching Chennai, she was contemplating to file divorce petition on the ground of cruelty. The petitioner was calling upon the 3rd respondent to return to New York threatened her that he would abduct the minor child by any means and he has many sources at Pondicherry and also stating that he will take legal action from USA and he would see that the child is taken to his custody.

11. Further the petitioner was sending e-mails forcing her to return back along with minor child to USA and was also attempting to take away the minor child by force. Further states that the minor child is very fond of the 3rd respondent and there is no possibility of the minor child growing in a good atmosphere at the hands of the petitioner. It would be feasible and better for the girl child to be in the custody of the 3rd respondent. She had also sought for injunction against the petitioner in I.A.No.586 of 2015 in O.S.No.117 of 2018 from forcibly taking away the custody of the minor child.

12. Further the 3rd respondent has filed a divorce petition in O.P.No.2089 of 2015. Apart from the averments made in the earlier proceedings, she has stated that she was never permitted to see her sick mother and to attend funeral ceremonies of her grand mother during May 2011. The 3rd respondent alleged that prior to four years of filing of the divorce petition, there was no physical relationship between the petitioner and the 3rd respondent and had no verbal communication for the past three years with the petitioner. Despite the same, the 3rd respondent discharged her duty as a loving wife to the petitioner. The petitioner siphoned out the deposits from the joint account without any contribution and this really caused financial stress on the 3rd respondent.

13. The petitioner's only concern is to prosper in his career and profession and he has no affection and interest to take care the minor daughter. On one occasion, the petitioner spitted on the face of the 3rd respondent and assassinated her character in front of her mother and others. Even the first birthday of the minor child was not celebrated befittingly. The said Nanny



engaged for taking care of the minor child was abruptly stopped ignoring the welfare of the minor child. Hence, the 3rd respondent was subjected to cruelty.

14. Further the 3rd respondent had filed a petition to grant custody of the minor child under Section 7 of the Guardians and Wards Act in O.P.No.2819 of 2015, wherein she had disclosed the service of summons of the foreign Court and also the order passed by the foreign Court entrusting the custody of the minor child to the petitioner and freezing and restraining the bank account of the 3rd respondent and the cause of action for filing petition under the Guardians and Wards Act.

15. The learned counsel for the 3rd respondent filed the typed set of papers, in which she has enlisted the copy of the injunction plaint in O.S.No.117 of 2015 and petition in I.A.No.586 of 2015, divorce petition of the petitioner in O.P.No.2089 of 2015, the child custody petition in O.P.No.2819 of 2015 and the E-mail communications between the 3rd respondent and the petitioner, the documents received from foreign Court, E-mail correspondence between the 3rd respondent and her counsel, Affidavits of the 3rd respondent filed before the foreign Court dated 18.09.2005, in which she admitted that immediately after being served with the petitioner's initial Order to Show Cause, which was annexed with the Summons and Verified Complaint, she retained an attorney in USA. Further she categorically admitted that she will not come to USA and she had been prosecuting and taking action in the Family Court in India and also questioned the act of the petitioner to freeze her account and the petitioner illegally withdrawing huge sums of money. Further he submitted that India is not a signatory to Hague convention and hence the foreign Court order need not be a clog on the 3rd respondent's rightful cause.

16. In order to substantiate the case, the learned counsel for the 3rd respondent relied upon the following citations.

"i) Githa Hariharan (Ms) and another versus Reserve Bank of India and reported in (1992) 2 Supreme Court Cases 228.

ii) Rajiv Bhatia Versus Govt. of NCT of Delhi and others reported in (1998) 8 Supreme Court Cases 525.

iii) Sumedha Nagpal Versus State of Delhi and others reported in (2000) 9 Supreme Court Cases 745.

iv) Syed Saleemuddin Versus Dr.Rukhsana and others reported in (2001) 5 Supreme Court Cases 247.

v) Rajesh K.Gupta Versus Ram Gopal Agarwala and others reported in (2005) 5 Supreme Court Cases 359.



vi) Ruchi Majoo Versus Sanjeev Majoo reported in (2011)6 SCC 479.

vii) P.K.Srikumar Versus Harshitha Gopinathan reported in MANU/TN/2474/2015.

viii) Mark T.Mckee Versus Eleelyn Mckee reported in 1951 AC 352."

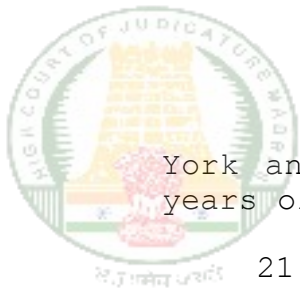
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17. The 3rd respondent would submit that the foreign Court was reckless in passing orders without any semblance of Judicial mind. The amount payable to the 3rd respondent by her USA employee was sought to be frozen and the amount lying to her credit and the assets in her individual name were inducted and Exparte Orders were passed by way of interim measure. Even the lowest Court in India will act in a more disciplined and Judicial way. Further submitted that the Law of Domicile alone applies, no order to have been passed against the 3rd respondent on the given facts and circumstances. The order of the foreign Court would not be binding, since the 3rd respondent had already approached the Family Court in Chennai for appropriate orders.

18. Heard Mr.T.R.Rajagopal, learned Senior Counsel on behalf of M/s.Usha Tholgappian, learned counsel for the petitioner and Mr.V.Raghavachari, the learned counsel for the 3rd respondent and the Mr.C.Iyyapparaj, Additional Public Prosecutor appearing for the respondents 1 and 2.

19. It is seen that this Court during the pendency of Habeas Corpus Petition had given a direction, enabling the petitioner to access his minor daughter Meenakshi and to meet her at a common place. The 3rd respondent was directed to make arrangement and not to cause any disturbance to the petitioner's visiting the minor child, denying the petitioner to access his parental rights, be that as it may.

20. This Court on the submissions made by the learned counsel for the petitioner and the 3rd respondent and also perused the affidavit and counter affidavit filed before this Court, finds that the marriage between the petitioner and the 3rd respondent was solemnized on 28.06.2006 at Vedapureeshwarar Temple, Pondichery according to Hindu Rites and Custom and it was an arranged marriage. Initially they lived stayed at Connecticut State till 2009 and thereafter they moved to New York in the year 2011, where they purchased a house at New York in both their name. The petitioner and the 3rd respondent are Green Card Holders in USA. Due to medical complication, the conception of the child was delayed and eventually through IVF (Test Tube) a girl child was born to them on 26.05.2012 at New



York and the child was named Meenkashi and presently she is 3 years old and the girl child is a citizen of USA by birth.

21. After the birth of the minor child, the 3rd respondent was nursing and taking care of the child till the time child came to India on 05.02.2015. When the 3rd respondent was living with the petitioner in USA, she was made to swallow all insults caused by him and undergo cruelty since she was isolated from her family and was without any moral support. The 3rd respondent and the minor child did not return back to USA taking into the paramount consideration of the well being of the minor child. On receipt of the foreign Court summons and Verified complaint, Order to Show Cause, the 3rd respondent made it clear to the foreign Court about its non-jurisdiction. The 3rd respondent's certain stand is that the foreign Court has no jurisdiction to decide the matrimonial dispute. The Foreign Court without considering the paramount interest and well being of the child entrusted the parental rights to the petitioner and access to the child and also granted sole custody of the child Meenakshi and further directed the 3rd respondent to return the child to the state of New York into the custody of the petitioner forthwith.

22. The 3rd respondent resists the contention of the petitioner for the following reasons:-

(i) Admittedly there was no proceedings initiated or pending in the foreign Court when the 3rd respondent left USA along with her minor daughter Meenakshi on 05.02.2015. Hence, there was no pre-existing order of foreign Court.

(ii) The petitioner as a counter blast on 3rd respondent informing that she had taken initiative to file cases in Family Court in India for custody of the minor child, seeking dissolution of the marriage on the ground of cruelty and for permanent alimony, he in pre-meditation had created a cause of action in foreign Court.

(iii) The petitioner and the 3rd respondent are Indian born natural citizens, due to their profession and employment they had acquired green card in USA. Both the petitioner and the 3rd respondent have not relinquished their Indian citizenship and since the minor child was born in USA, she will not loose her natural citizenship of India.

iv) The petitioner and the 3rd respondent are from India, who practice and follow the Tradition and Customs of Indian culture from their birth. Due to their employment and profession, they have acquired green card. The Traditional convention practice of Indian culture cannot be severed with.



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v) The minor child was brought up with Indian Tradition. When she was an infant, she is conversant with the 3rd respondent and her family members in India and hence, she was not exposed and accustomed to the American lifestyle.

vi) When the 3rd respondent left USA, her minor child was aged 2 ½ years and for the past four years she had blended and adopted to the Indian way of life and she is comfortable with the Indian traditional lifestyle.

vii) The Hon'ble Apex Court and High Courts in many cases undoubtedly have taken the role in Parens Patriae, Principles of Comity of Courts, Forum Convenience and had categorically held that minor child's best interest and the welfare of child as of Paramount Importance and had held that the order of a foreign Court is only a factor to be taken into consideration and not a decisive factor.

viii) The doctrines of Comity of Courts, intimate contact with the issues cannot over ride the consideration of best interest and welfare of child. On the facts of the above case, it is on a wrong premise to say that direction to repatriate the child to foreign jurisdiction does not cause moral, physical or social or cultural or psychological harm to child. Thus "Best interest of child is the primacy of concern".

23. Taking into consideration of the child welfare paramount, the minor child being a girl baby she has been all along with the 3rd respondent from her birth and her American citizenship is only by birth of place. In all aspects, the minor child is blended, accustomed in Indian culture and the best environment would be in the custody of her mother for both physical and physiological support. The 3rd respondent has all the means to take care of the minor child. It is also seen that the petitioner has entered appearance in all the proceedings initiated by the 3rd respondent in India including the proceedings under the Guardians and Wards Act. Hence, a detailed enquiry in such proceedings would only be appropriate in the given circumstance of the case.

24. Accordingly, the Writ of Habeas Corpus stands dismissed. No costs.

25. The understanding and the facilities of the petitioner in having contact with the minor child Meenakshi is to be continued as follows:-



(i) All the communications and facilities of the petitioner with the minor daughter is to be extended by the 3rd respondent without any hindrance and obstruction. The petitioner should have skype and other accessibility facilities through social media for accessing with his daughter on Saturday and Sunday and all holidays for one hour at 09.00 a.m to 10.00 a.m or at any other time, which is mutually convenient.

(ii) The petitioner shall inform the 3rd respondent, 15 days in advance about the travel and his availability in India and the 3rd respondent should facilitate the minor daughter to meet the petitioner at a common place or any other place which is mutually acceptable. On the days whenever the petitioner is in India, he is permitted to visit his daughter between 10.00 a.m and 01.00 p.m which should not exceed two days a week.

(iii) If the days happen to be a school time, the petitioner shall be permitted after 05.00 p.m for one hour. The restrictions of time can be modified and adjusted between the petitioner and the 3rd respondent mutually.

(iv) In any case, the interactions and communications through skype and social media etc and personal interactions of the petitioner with the minor daughter not to be disturbed by the 3rd respondent. The petitioner has to work out his Guardianship, custody right in the Guardians and Wards Act proceedings, which are pending in the Family Court in India, wherein the best interest of the child would be decided on detailed enquiry.

26. It is also made clear that the observations and findings given herein are only for the disposal of this Habeas Corpus Petition and this Court have not entered upon the merits of pending proceedings. The legal proceedings pending between the parties herein shall be adjudicated and disposed on its own merits.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar



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To

- 1.The Commissioner of Police,
Chennai.
- 2.The Inspector of Police,
C-2, Elephant Gate Police Station.
- 3.The Public Prosecutor,
High Court, Madras.

+1cc to M/s.V.Raghavachari, Advocate Sr.59525
+1cc to M/s.P.Veenasuresh, Advocate Sr.59410

H.C.P.No.1631 of 2015

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srg 21/08/2019