

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2019

CORAM:

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

H.C.P.No.1130/2018

V.Karthick @ Muthayan

...Petitioner

vs.

1.The Inspector of Police
Valasaravakkam Police Station
Chennai.

2.Mathumathi @ Mahalakshmi

...Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus directing the 1st respondent to produce the body of Minor K.Krish aged about 5 years before this Court and hand over to the petitioner.

For Petitioner .. Mr.P.Saravanan

For R1 .. Mr.C.Iyyappa Raj, APP

ORDER

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

The petitioner is the biological father of the minor detenu, viz, Krish, who is aged about 5 years and according to him, he married the 2nd respondent as per the wishes of the elders and Hindu Rites on 23.08.2012 at Puducherry and out of wedlock, the minor detenu was born. Thereafter, difference of opinion arose between them and therefore, the 2nd respondent / wife of the petitioner went to her parental home along with the child. It is further stated that she is employed in Cognizance Technology Solutions [CTS] and in connection with the same, she used to go to the United States of America and at present, she is residing at Door No.500 Frank W Burr Blvd, Teaneck, New Jersey 07666, USA. It is further stated by the petitioner that she had also

filed a petition for divorce and custody of the child in the Superior Court of California, Country of Ventura, and the same is not binding for the reason that admittedly, the marriage took place in India as well as the child was born in India. The petitioner, in this regard, on an earlier occasion, filed HCP.No.1552/2017 before this Court for the same relief and this Court, vide order dated 02.05.2018, has recorded the finding that the minor detenu is in the custody of the 2nd respondent who is none other than his mother and natural guardian and as such, the relief sought for by the petitioner cannot be granted and dismissed the petition.

2 The learned counsel for the petitioner has drawn the attention of this Court to the judgment rendered by the Hon'ble Supreme Court of India dated 03.07.2017 made in C.A.No.972/2017 [Nithya Anand Raghavan Vs. State of NCT of Delhi] and would submit that the order of divorce and custody

of the child obtained by the 2nd respondent in the Supreme Court of California, Country of Ventura, may not bind the petitioner and the child has been taken to USA without the consent of the petitioner - the biological father and hence, this petition is maintainable and prays for appropriate orders.

3 The Court heard the submission of Mr.C.Iyyappa Raj, learned Additional Public Prosecutor appearing for the 1st respondent / State and perused the materials placed before it.

4 The petitioner, in this regard, has also lodged a complaint as early as on 02.08.2017 to the Inspector of Police, Valasarawakkam Police Station, Chennai - 1st respondent herein and the contents of the same would disclose that after the birth of the child, there was a difference of opinion between the spouses and therefore, the 2nd respondent has left the company of the petitioner along with her child/minor detenu and at present, he is under the custody of the 2nd respondent - biological mother at USA. It is also brought to the knowledge of this Court that the petitioner herein has also filed FCOP No.4265/2015 before the learned II Additional Judge, Family Court, Chennai, for restitution of conjugal rights and it is pending.

5 The petitioner, who is also present before this Court, despite the fact that his counsel is appearing for him, made a submission that the 2nd respondent had also developed illicit intimacy with somebody and started living with him as a partner. However, this Court is not prepared to go into the legality or otherwise of the said statement made by the petitioner.

6 In the considered opinion of the Court, the minor detenu is under the care and custody of the 2nd respondent, who

happens to be the biological mother of the child and the remedy open to the petitioner, if any, is to seek the custody of the child by filing appropriate petition before the competent Forum. The petitioner has also filed HCP.No.1552/2017 for the very same relief and it also came to be dismissed on 02.05.2018.

7 In the light of the above facts and circumstances, the prayer sought for by the petitioner cannot be granted. Hence, the Habeas Corpus Petition stands dismissed, granting liberty to the petitioner to work out his remedy in accordance with law before the Court of competent jurisdiction for getting the custody of the child/his son, the minor detenu herein.

AP

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Inspector of Police
Valasaravakkam Police Station
Chennai.

2.The Public Prosecutor,
Madras High Court, Madras.

+lcc to Mr.P.Saravanan, Advocate, SR.No.27794

Kak (14/05/2019)

H.C.P.No.1130/2018

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