

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2019

CORAM:

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

H.C.P.No.656 of 2019

Murthy

.. Petitioner

Vs.

1.The State, rep by
The Superintendent of Police
Ariyalur District
Ariyalur.

2.The Inspector of Police
Udaiyar Palayam Village
Jayamkondam Taluk
Ariyalur District.

3.Chinnammal

4.Udhayakumar

5.Malarkannan

6.Selvaganesh

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus, directing the second respondent herein to produce the body and person of the detainee by name Nirmala, who is aged about 14 years, before this Court from the illegal custody of the respondents 3 to 6 and hand over to the petitioner.

For Petitioner .. Mr.Thirumoorthy.R

For Respondents.. Mr.C.Iyyappa Raj
Additional Public Prosecutor [R1 & R2]
Ms.P.V.Jeyakumari for
Mr.P.C.Harikumar [R3 to R5]

ORDER

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

The petitioner is the father of the minor detainee namely Nirmala, aged about 14 years [DOB:26.08.2004] and according to him, after the demise of his wife, the detainee who was only 9

months old then, was forcibly taken by his mother-in-law/maternal grand mother of the detainee and despite very many efforts made by him to see the child, the said basic request has been negatived and therefore, he was constrained to file a petition in G.O.P.No.76/2012 on the file of Principal District Court, Villupuram, seeking permanent custody of the minor child, and the said petition after contest, came to be dismissed on 06.01.2016. Challenging the dismissal of the said petition, the petitioner has approached this Court in CMA.No.1065 of 2016, and despite service of notices to the respondents (respondents 3 to 5 herein), they remained absent and therefore, CMA.No.1065 of 2016 came to be allowed vide order dated 22.06.2016 and by virtue of the said order, the petitioner contends that he is entitled to have permanent custody of the minor detainee.

2. The learned counsel appearing for the petitioner would submit that despite the petition filed by the petitioner before the Principal Sessions Court, Villupuram, to execute the order passed by this Court in CMA.No.1065 of 2016, the trial Court has returned the said petition raising the issue on maintainability of the Execution Petition and therefore, the petitioner is left with no other option and came forward to file the present Habeas Corpus Petition, seeking to have the custody of the minor child and prays for appropriate orders.

3. Mr.C.Iyyappa Raj, learned Additional Public Prosecutor appearing for the State has produced the detainee and she has been enquired by this Court, who would state that, she became aware of the existence of her father, only when she was studying 8th standard, and right from her birth, she has been looked after with care and love by her grandmother and her maternal uncles, and she also expressed her unwillingness to accompany her father and wanted to pursue her academic career by staying at her grandmother's house.

4. Mr.Selvaganesh, the sixth respondent herein, who is one of the detainee's maternal uncle is also present before this Court and he would state that he and the mother of the detainee are twins by birth. Due to the harassment and torture she had faced in her maternal home, the mother of the detainee had committed suicide, and on this ground, a criminal case has been foisted against the petitioner, but the same has ended in acquittal, for the reason that due to paucity of time, they are unable to prosecute both the criminal proceedings filed against the petitioner by his family members and GWOP petition filed by the petitioner, simultaneously. He would further add that he is employed in Life Insurance Corporation of India, and that he along with his other brothers namely, the respondents 4 and 5, are taking care of the detainee's well being and whatever career she is interested to pursue, they assured to render necessary

assistance to fulfil her dreams.

5. Ms.P.V.Jeyakumai, the learned counsel appearing for the private respondents would submit that the detenu was under the care and custody of her maternal grand parents right from 9 months old, and has now attained the age of 14 years and studying in 9th standard and that when she is not inclined to go with her father, this Court may not compel her to go with the petitioner/father of the detenu.

6. In response to the said submission, the learned counsel appearing for the petitioner would submit that the petitioner is the biological father of the detenu and his basic right claiming visitation of his daughter was denied to him, and hence, prays for appropriate orders in this regard.

7. The learned counsel appearing for the private respondents, on instructions would submit that the petitioner being a biological father of the minor detenu, he is entitled to have visitation rights and accordingly, the private respondents have acceded to the petitioner's request to have visitation rights of his daughter.

8. This Court has carefully considered the rival submissions and also perused the materials placed before it.

9. A perusal and consideration of the materials placed, and the rival submissions would disclose that the detenu is a minor and right from her age of 9 months, she is under the care and custody of her maternal grandmother/the third respondent herein and she was also supported by her maternal uncles to pursue her academic career, till now. It is also brought to the knowledge of this Court that to set aside the exparte order passed by this Court in CMA.No.1065 of 2016, a petition in CMP.No.18692/2018 has also been filed and the same is pending disposal. The detenu is not inclined to go with her father-petitioner, may be on account of the fact that she remained under the care of her grandmother for quite a long time.

10. In the light of the above facts and circumstances, this Court is of the considered view that though the detenu is a minor, she cannot be compelled to go with her father, the petitioner herein. However, if the petitioner is so advised, he is always at liberty to work out his remedy as to his visitation rights to see the detenu, in accordance with law before the appropriate forum.

11. This Habeas Corpus Petition is disposed of accordingly.

Sd/-

Assistant Registrar (CJ Conf)

//True Copy//

Sub Assistant Registrar

ds

To:

1.The Superintendent of Police
Ariyalur District, Ariyalur.

2.The Inspector of Police
Udaiyar Palayam Village
Jayamkondam Taluk
Ariyalur District.

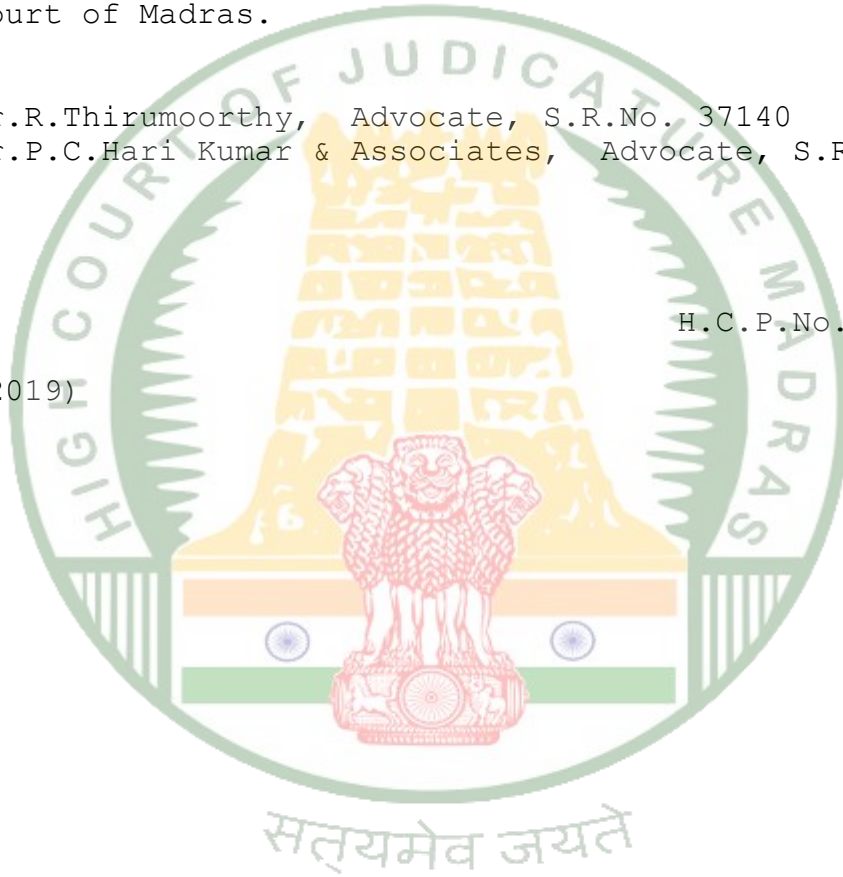
3.The Public Prosecutor
High Court of Madras.

+1cc to Mr.R.Thirumoorthy, Advocate, S.R.No. 37140

+1cc to Mr.P.C.Hari Kumar & Associates, Advocate, S.R.No. 37228

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LN(CO)
GN(03/06/2019)



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