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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 08.05.2019

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and

THE HONOURABLE MR.JUSTICE M.DHANDAPANI
H.C.P (MD) No.381 of 2019

Packiyalakshmi

... Petitioner

vs.

1.The Superintendent of Police,
Pudukottai District.

2.The Inspector of Police,
All Women's Police Station,
Aranthangi, Pudukottai District.

3.The Inspector of Police,
Manalmelkudi Police Station,
Pudukottai District.

4.Satheesh Kumar

... Respondents

PRAYER :The petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus or any other writ or direction or order in the nature of a writ directing the respondents 1 to 3 to produce the person or body of the detinue viz. the petitioner's Son, Minor Yoga Barikshith (1 year and 8 months) now in the illegal custody of respondent No.4 before this Court and hand over the custody to the petitioner.

For Petitioner : Mr.I.Robert Chandrakumar

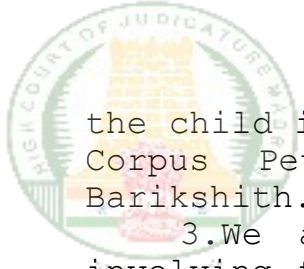
For Respondents : Mr.S.Chandrasekar
Additional Public Prosecutor

ORDER

(Order of the Court was made by G.R.SWAMINATHAN, J.)

The petitioner is the wife of the fourth respondent. They got married on 03.09.2015 and Yoga Barikshith was born through the said marriage. The petitioner and the fourth respondent have developed difference of opinion and they are living separately. The fourth respondent had filed a petition in H.M.O.P.No.177 of 2018 before the Subordinate Court, Pudukottai, seeking dissolution of his marriage. The said Hindu Marriage Original Petition is still pending.

2.In the meanwhile, according to the petitioner, the fourth respondent had forcibly taken away the child/Yoga Barikshith from the petitioner on 12.04.2019. According to the petitioner, the fourth respondent is keeping the child in illegal detention. Since



the child is a breast feeding baby, the petitioner filed this Habeas Corpus Petition, for causing production of the child/Yoga Barikshith.

3. We are of the view that since this is a family dispute involving the custody of child between the husband and wife, it is only the jurisdictional Civil Court that must be approached for relief.

4. In this case, the fourth respondent has already filed Hindu Marriage Original Petition against the petitioner, seeking divorce. The petitioner can very well file an interlocutory application in the said Hindu Marriage Original Petition for resolving the issue, now raised in the Habeas Corpus Petition, with regard to the custody of the minor child. Thus, this Habeas Corpus Petition can't be entertained. However, liberty is granted to the petitioner to approach the Family Court for appropriate relief. Upon filing of such petition in the said Hindu Marriage Original Petition, the Court shall dispose of the same, after issuing notice to the fourth respondent, as early as possible, preferably within a period of three weeks, thereafter.

5. Accordingly, the Habeas Corpus Petition stands disposed of.

Sd/-

Assistant Registrar(V.O)

/TRUE COPY/

Sub Assistant Registrar(CS)

To

1. The Superintendent of Police,
Pudukottai District.

2. The Inspector of Police,
All Women's Police Station,
Aranthangi,
Pudukottai District.

3. The Inspector of Police,
Manalmelkudi Police Station,
Pudukottai District.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s. I. ROBERT CHANDRA KUMAR, Advocate (SR-65323[F] dated 08/05/2019)

H.C.P(MD) No. 381 of 2019

CS (KM) : 10/05/2019/2P/6C