



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

H.C.P(MD)No.705 of 2019

D.Suganya

... Petitioner/Mother of the defendant

Vs.

1.State rep. by
The City Police Commissioner,
Madurai.

2.The Inspector of Police,
Jaihindpuram Police Station,
Madurai City.

3.T.Dhanuskodi

... Respondents

Prayer: Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, directing the 2nd respondent to produce the person or body of the petitioner's minor son, namely, Raja Manikandan, aged about 4 years before this Court and hand over the custody of the detainee to the petitioner.

For Petitioner : Mr.S.Muthalraj

For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor
for R.1 & R.2
Mr.C.Senthil Murugan
for R.3

ORDER

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

The petitioner is the mother of the minor detainee, namely, Raja Manikandan, aged about 4 years and alleging his illegal custody and detention at the hands of her own husband, namely, the third respondent herein, came forward to file this Habeas Corpus Petition.



2. The learned Additional Public Prosecutor made a "mention" today as to the production of the third respondent as well as the minor detainee and accordingly, the matter is taken.

3. The third respondent would state that there is a matrimonial discord between the petitioner and himself and all along, the minor detainee is under his care and custody and the petitioner, without any justifiable or reasonable cause, left the matrimonial home and if she is prepared to come back along with the two other children, he is prepared to take her into his hold and he would further add that the detainee is given best education in a reputed private School.

4. The petitioner is also present before this Court and on enquiry, she would state that the custody of the minor detainee has been forcibly taken away and out of wedlock, three children were born and two children are in her custody and if she is unable to have access to the minor detainee, the minor detainee, in all probability, will forget that she is the biological mother as well as his two sisters and therefore, prays for restoration of the custody of the minor detainee to her.

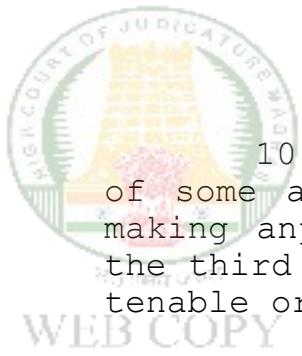
5. The learned Counsel for the petitioner would submit that the petitioner has also been ill treated by the third respondent and as such, she is forced to leave his company and since the minor detainee is of tender age, his custody should be given to the petitioner.

6. The learned Counsel for the third respondent would submit that the minor detainee has developed attachment with his father, namely, the third respondent and it will be very cruel to separate the minor child from the custody of the third respondent and he would further add that the remedy open to the petitioner, if any, is to initiate appropriate legal proceedings. The learned Counsel for the third respondent, on instructions, would also concede that the petitioner is entitled to have visitation right to see the minor detainee, as she being the biological mother and the third respondent has no objection for granting such visitation right.

7. The learned Additional Public Prosecutor, on instructions, would submit that since it is a pure case of matrimonial discord, no case has been registered, but C.S.R.No.278 of 2019 has been assigned.

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

9. It appears to be a case of matrimonial discord and the custody of the two girl children is with the petitioner and the minor detainee / minor boy is with the third respondent.



10. Though this Court has tried to find out the possibility of some amicable settlement through mediation process, it is not making any headway for the reason that the petitioner as well as the third respondent is sticking only to their own stand, maybe for tenable or untenable reasons.

11. As regards the custody of the child, the present proceedings may not be the right proceedings to decide the issue for the reason that it involves adjudication of disputed question of facts and therefore, it would require evidence.

12. Therefore, the Habeas Corpus Petition is closed. However, the petitioner and the third respondent are at liberty to work out their remedy before the competent Court, in accordance with law.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

gk/dsk
To

- 1.The City Police Commissioner,
Madurai.
- 2.The Inspector of Police,
Jaihindpuram Police Station,
Madurai City.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC TO MR.S.MUTHALRAJ, Advocate Sr. No.81113
+1CC TO MR.C.SENTHIL MURUGAN, Advocate Sr. No. 80523

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MR(CO)
TR (27.08.2019) 3P 6C