



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

H.C.P. (MD)No.1185 of 2019

S.Pandiselvi : Petitioner

Vs.

1.The Commissioner of Police,
Madurai,
Madurai District

2.The Inspector of Police,
Thallakulam Police Station,
Madurai District.

3.The Inspector of Police
All Women Police Station
Thallakulam,
Madurai District.

4.A.Sundaramahalingam : Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, to direct the respondents 1 to 3 herein to secure the detenues, namely, S.Pavithra daughter of Sundara Mahalingam aged 8 years and S.Nelwina daughter of Sundaramahalingam aged 7 years and produce the body of the detenues before this Court and handover the detenues to the petitioner.

For Petitioner : Mr.R.J.Karthick
For Respondents : Mr.K.Dinesh Babu for R1 to R3
Additional Public Prosecutor
Mr.H.Arumugam for R4

ORDER

S.VAIDYANATHAN, J.

AND

N.ANAND VENKATESH, J.

The petitioner, who is the mother of the detenues, viz., S.Pavithra, aged 8 years and Nelwina, aged 7 years, is before this Court with this Habeas Corpus Petition to direct the respondents 1 to 3 to produce the detenues before this Court.

2. Today, when the matter is taken up for hearing, the detenues



were produced before this Court. The fourth respondent, who is the father of the detenues and husband of the petitioner herein, was also present.

3. On enquiry, the petitioner and the fourth respondent would state that they are relatives even prior to the marriage. The petitioner would submit that out of the wedlock, the detenues were born to them. Both the petitioner and the fourth respondent are making allegations against each other. The petitioner stated that the fourth respondent is a Doctor and she joined a law course at Tirupati, which is a correspondence course and that the fourth respondent has also joined the law course in order to ensure that he competes with the petitioner.

4. The petitioner and the fourth respondent would submit that the law course is not a regular course and it is a correspondence course and that they used to attend two classes in a month, during which time alone the classes are conducted. Both of them have said to have joined the law course during the year 2015 and completed three year degree course in 2018.

5. We enquired the detenues. They catagorically stated that they want to go along with their mother/petitioner. The petitioner would submit that they have taken a house at Madurai at D.No.2/870, G.R.Nagar, West Street, Kannanenthal, Madurai District, and she has no inclination to go to her parental home and that she would ensure that the children are pursuing their education in the same school, namely, Mahatma Montessori Higher Secondary (CBSE) School, Madurai, where they have been admitted earlier.

6. In this Habeas Corpus Petition, we cannot decide the permanent custody of the children and the other issues that may arise out of the matrimonial dispute. Taking note of the age of the children and that the children are interested in going along with their mother/petitioner, as an interregnum, depending upon the outcome of any matrimonial dispute being raised before the appropriate forum or G.W.O.P. that may be filed by anyone of the party, we direct the petitioner to retain the children in her custody in the address mentioned supra and that the children should continue in the same school. It is open to the fourth respondent to periodically (during weekends) visit the children in a common place without causing hindrance to the petitioner and the education of the children. That apart, it is open to the fourth respondent to take the children during summer, christmas and winter holidays and that wherever he takes the children, the same should be intimated not only to the petitioner but also to the jurisdictional police, so that the movement are watched by the police, if required.

7. We do not want to say anything on the educational qualification said to have been obtained by both the petitioner as



decide as to whether such an enrolment can take place based on correspondence Course and not a regular course. If it is a regular course, how the fourth respondent, an employee of a Hospital at Madurai, is able to do law. He can't be in two States at a time. The Bar Council has also need to check as to how attendance in those Colleges are manipulated. Though it may be out of context in the Habeas Corpus Petition, since the statements are made by the petitioner and the fourth respondent, we will have to make an observation to that effect, more particularly in the interest of this profession.

8. The learned Additional Public Prosecutor, on instructions, submitted that based on the complaint made before the third respondent police CSR No.456/2019 is pending enquiry. In view of the present order passed by this Court, the third respondent is directed to close CSR No.456/2019. The order passed by this Court is only to tideover the interregnum period and it is made clear that the parties will have to approach the appropriate Court and work out their remedy and the appropriate Court shall independently consider the rights of the parties and also the welfare of the child and pass orders and the order passed by this Court will not have any bearing, while passing such orders.

9. With the above observations and direction, this Habeas Corpus Petition is disposed of.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

RR

To

1.The Commissioner of Police,
Madurai,
Madurai District

2.The Inspector of Police,
Thallakulam Police Station,
Madurai District.

3.The Inspector of Police
All Women Police Station
Thallakulam,
Madurai District.



4.The Bar Council of Tamil Nadu
Chennai.

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

+1 CC to M/s.R.J.KARTHICK, Advocate (SR-97253[F] dated 11/11/2019)

H.C.P. (MD)No.1185 of 2019

Dated: 11.11.2019

KK/SAR/27.11.2019/4P-7C/