

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2020

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice D.KRISHNAKUMAR

H.C.P. No. 551 of 2020

R.Basker

... Petitioner

-vs-

1.The Commissioner of Police
Vepery, Chennai 600 007

2.The Inspector of Police,
H-3, Police Station,
Old Washermenpet,
Chennai - 600 021.

3.Nargesh Banu

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus directing the second respondent herein to produce the petitioner Wife Syed Nisha, aged about 25 years, and the petitioner's son Dhashwanth, S/o.R.Baskar, aged about 1 ½ years, before this Court from the custody of the third respondent and set them at liberty within a stipulated period of time.

For Petitioner .. Mr.S.Vijay

For Respondents .. Mr.R.Prathap Kumar
Addl. Public Prosecutor
for R1 and R2
Mr.B.Balamurugan
for R3

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner herein is the husband of the detenue. The third respondent is the mother-in-law of the detenue. Alleging that the detenue, who is the wife and the minor child, born out of the wedlock, named, Dhaswanth, are in illegal custody of the

third respondent, the present habeas corpus petition has been filed.

2. During the last hearing - 13.10.2020, both the petitioner and the detinue were present. While, the petitioner expressed his desire to live with the detinue, the detinue is not willing. The problem has been compounded by the fact that the petitioner and the detinue belong to different faiths. Under those circumstances, we adjourned the matter so as to enable the petitioner to take a decision as to whether he is inclined to grant divorce in which case further orders could be passed by consent.

3. Today, once again, the petitioner and the detinue are present. The petitioner has agreed for divorce as sought for by the detinue. In turn, the detinue has agreed to give access to the petitioner the minor child born out of the wedlock during 10.00 a.m. to 1.00 p.m. of first and last Saturday of every Month. The petitioner has further agreed to meet out the school fees of the minor child.

4. On the request of the petitioner that the child may be permitted to be shown to his parents during the Deepavali, the detinue has accordingly agreed though she has stated that she does not want to part with the child for the entire day. In such view of the matter, the petitioner can have the custody of the child from 10.00 a.m. to 1.00 p.m. on the Deepavali day. The child can be handed over to the petitioner either by the detinue or her mother or their representative. In the event of the child being uncomfortable, though we do not find the said situation prevails as of now, by seeing the interaction between the petitioner and the child, it is well open to the detinue or her mother to be present in the nearby vicinity to create a comfort zone for the child.

5. We record the fact that the detinue, namely the wife and the son of the petitioner have been secured by the second respondent.

6. In view of the aforesaid order, the petitioner shall not make any visit to the place of the residence of the detinue unless as aforesaid. The three hours visitation/custody as aforesaid, is in a common place in the area in which the detinue is living. The detinue is also expected to inform about the place of residence and the school in which the minor child is likely to get admitted. However, as agreed by the petitioner, the school fees is to be paid by the petitioner directly to the School in which the child is expected to be admitted. We, further, permit the petitioner to be with the minor child today (28.10.2020) in the presence of the detinue, namely his wife.

7. The habeas corpus petition stands disposed of accordingly. The parties are at liberty to file a petition for divorce, if so advised.

Sd/-

Assistant Registrar(L.A)

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Sub Assistant Registrar

To

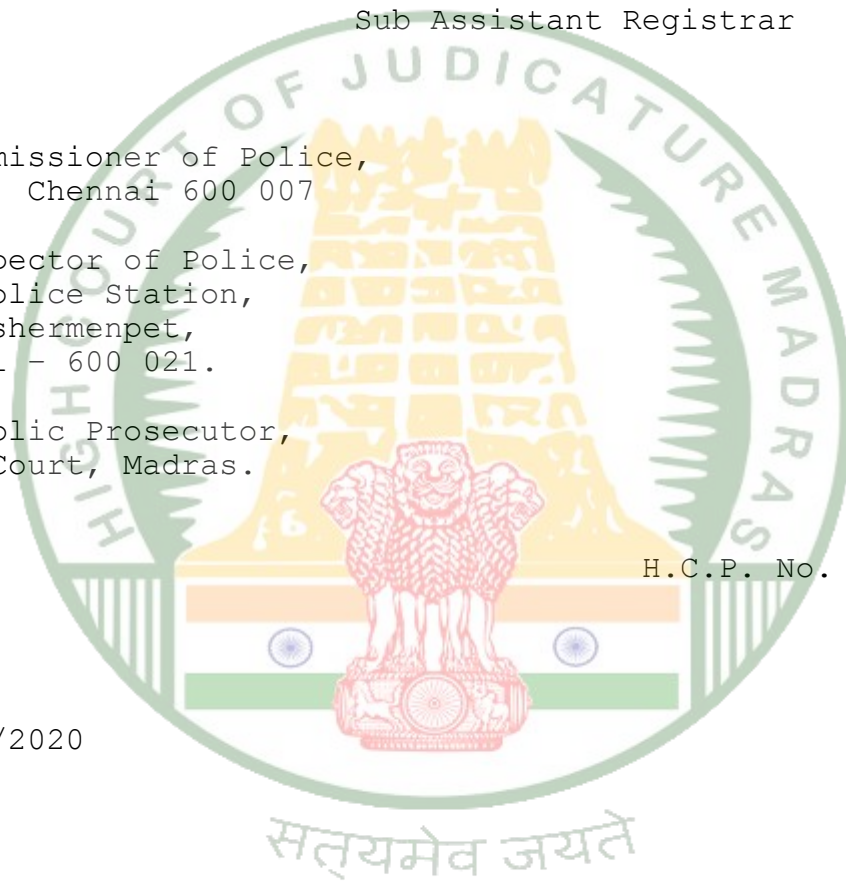
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High Court, Madras.

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