



WEB COPY

H.C.P.(MD) No.402 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.402 of 2020

Mary

W/o.Robert

... Petitioner/Mother of the Detenu

-vs-

1.The Commissioner of Police

Madurai City

Madurai

2.The Inspector of Police

Sellur Police Station

Madurai City

Crime No.1541 of 2020

3.Pandiarajan

Member

Madurai District Child Welfare Committee

(Social Security Department)

No.21, Kennet Nagar

Muthupatti

Madurai-625 003

4.Nagoorammal

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus directing the 1st and 2nd respondents to recover the minor children, namely, Angel Princy (aged about 3 years), D/o.Robert, Prince, S/o.Robert (aged about 1 year), from the illegal custody of the third respondent and to hand over the custody to the petitioner.

For Petitioner : Mr.V.Thirumal

For Respondents : Mr.V.Neelakandan

Additional Public Prosecutor for R1 to 3

Mr.S.Krishnan for R4

O R D E R

[Order of the Court was made by K.KALYANASUNDARAM, J.]

This habeas corpus petition has been filed seeking direction to the respondents 1 and 2 to recover the minor children, namely, Angel Princy, aged about 3 years and Prince, aged about 1 year, from the illegal custody of the third respondent and to hand over their custody to the petitioner.



2. The case of the petitioner is that her husband Robert is working as acting driver and they were having a female child, namely, Angel Princy and residing in a rental house. The income generated by her husband was not sufficient to meet out the day-to-day livelihood. Whiles, the petitioner got pregnancy second time in the year 2018 and during pregnancy, she suffered paralytic fits and delivered a male child, namely Prince on 14.08.2019. In the above fact situation, the petitioner could not take care of the new born child and hence, he was handed over to the fourth respondent, who is her neighbour and well-wisher. It is stated that the said decision was taken only considering the welfare of the minor child.

3. The petitioner would further state that she, her husband and the fourth respondent are illiterates and not having legal knowledge regarding adoption. Whiles, based on a complaint lodged by the third respondent, the second respondent registered a case in Crime No.1541 of 2020 under Section 80 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and forcibly taken the minor children from the custody of the petitioner and the fourth respondent. The petitioner would further state that she has now got employment in Madura Coats and she is physically fit to take care of the minor children and hence, she made a representation to the respondents 1 to 3, on 22.06.2020, praying for handing over the custody of her minor children. Since the representation was not considered by the respondents 1 to 3, the petitioner has filed the present habeas petition.

4. Mr.V.Thirumal, learned counsel for the petitioner, would argue that the petitioner was suffering paralytic fits before and after delivery of the second child and her husband was also having breathing problem. Hence, the custody of the minor child was handed over to the fourth respondent, who has readily agreed to take care of the minor child. It is the submission of the learned counsel for the petitioner that there was no formal adoption given to the fourth respondent and only temporary custody was given, but some deeds have been executed in the presence of a Notary Public.

5. Per contra, Mr.V.Neelakandan, learned Additional Public Prosecutor for the respondents 1 to 3, by referring to the counter affidavit filed by the third respondent, would state that the representation of the petitioner, dated 22.06.2020, would clearly establish that the petitioner was not in a position to take proper care and give protection to her minor children, namely, Angel Princy and Prince. He further added that during the course of enquiry, the Child Welfare Committee was able to receive adoption deed from the petitioner and after considering the enquiry report, the third respondent decided to order to keep the minor children under the care and custody of Clersian Mercy Home and there is no illegality as alleged by the petitioner in her affidavit. It is further stated



that when the habeas corpus petition was pending, based on the representation of the petitioner, the minor daughter, namely, Angel Princy was handed over the petitioner and only the minor son, namely, Prince is in the Home.

6. In reply, the learned counsel for the petitioner would state that the petitioner is withdrawing the allegations made against the third respondent and she is now ready to take proper care and give protection to the minor son. The learned counsel for the petitioner would also state that the custody of the minor daughter, namely, Angel Princy is already handed over to the petitioner.

7. The learned counsel for the fourth respondent submitted that the fourth respondent has no objection for handing over the custody of the minor son, namely, Prince to the petitioner.

8. Taking note of the facts and circumstances of the case, we are of the considered opinion that the petitioner is entitled to succeed in this habeas corpus petition. Accordingly, the habeas corpus petition is allowed. The respondents 1 and 2 are directed to recover the minor child of the petitioner, namely, Prince, son of Robert, aged about 1 year, from the custody of the third respondent and hand over to the petitioner forthwith.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

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To:

1.The Commissioner of Police,
Madurai City,
Madurai.

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

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

+1 CC to M/s.G.K. SUNDARAM, Advocate (SR-13355[F] dated
30/07/2020)

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KK(30.07.2020) 4P 5C

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