



WEB COPY

H.C.P.(MD) No.749 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P.(MD) No.749 of 2020

A.Abinesh

... Petitioner

-vs-

1. The Inspector of Police,
(Law and Order)
Koodal Pudur Police Station,
Madurai City.

2. S.Angelin @ Kameswari

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus directing the second respondent to produce the detenu namely minor Sreejith Harshadan aged about 4 years and entrust his custody to the petitioner for a period of one month to secure the ends of justice.

For Petitioner : Mr.R.Sankarasubbu

For Respondents : Mr.K.Dineshbabu

Additional Public Prosecutor (for R1)

Mr.N.Murugesan (for R2)

O R D E R

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

The prayer in this habeas corpus petition is to direct the second respondent to produce the detenu namely, minor Sreejith Harshadan aged about 4 years and entrust his custody to the petitioner for a period of one month.

2.The petitioner and the second respondent are husband and wife and their marriage was solemnized on 09.09.2015. During lawful wedlock, they are blessed with a child on 12.06.2016, who is the detenu in this case.

3.Mr.R.Sankarasubbu, learned counsel for the petitioner submitted that the second respondent herein is suffering from Chronic disease, namely, friedreich's ataxia and the said disease is incurable and hence, the petitioner filed HMOP No.172 of 2018 before the Sub-Court, Poonamallee seeking dissolution of marriage and the said case was transferred to the Family Court, Madurai.

<https://hcservices.ecourts.gov.in/hcservices/>



While so, the second respondent has filed HMOP No.190 of 2018 for Restitution of Conjugal Rights and both the cases are pending before the Family Court, Madurai.

4.It is the submission of the learned counsel for the petitioner that the petitioner as well as the second respondent were living together from the date of the marriage and only for the last one year, they were living separately and considering the interest of the minor child, an interim custody can be given to the petitioner for a period of one month. It is also argued that to prove his *bona fide*, the petitioner is ready to pay Rs.1,00,000/- (Rupees One Lakh only) to the second respondent and during that relevant time, the petitioner will not speak ill about the second respondent to the minor child.

5.Per contra, Mr.N.Murugesan, learned counsel for the second respondent would argue that this habeas corpus petition itself is not maintainable in view of the pendency of the divorce petition filed by the petitioner and the restitution petition filed by the second respondent and the interim applications filed for maintenance and custody of the minor child. It is also contended that the second respondent is not suffering from any illness and the second respondent is ready and willing to join with the petitioner along with minor child and the interim custody of the child alone would not be proper as the child has been with the second respondent from the date of his birth. Moreover, in view of the Covid - 19 pandemic, the interim custody as sought for by the petitioner need not be entertained.

6.In the case on hand, it is not in dispute that the petitioner and the second respondent are husband and wife and the detenu is their child. It appears that due to matrimonial dispute, two original petitions have been filed, one for divorce and another one for restitution of conjugal rights and both are pending before the Family Court, Madurai. It is relevant to note that an interim application seeking custody of the minor child is also pending and the petitioner is visiting the child once in a month, as per the arrangements made before the Family Court.

7.In the light of the above undisputed fact, it may not be proper and appropriate to entertain this habeas corpus petition and it is for the petitioner to work out his remedy either in the pending proceedings or by initiating separate proceedings. We find no merits in this habeas corpus petition and hence, the same is dismissed.

**Sd/-
13.10.2020**



This Petition having been posted on 20.11.2020 "For Being Mentioned" in pursuance to the order of this Court dated 13.10.2020 and made herein in the presence of the abovesaid Advocate, this Court made the following order:

This Habeas Corpus Petition was dismissed on 13.10.2020. However, at the instance of the learned counsel for the petitioner, it is listed today under the caption 'for being mentioned'.

2.Heard Mr.R.Sankarasubbu, learned counsel for the petitioner, Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the first respondent and Mr.N.Murugesan, learned counsel appearing for the second respondent.

3.It is submitted by the learned counsel for the petitioner that he sought for early disposal of HMOP Nos.172 and 190 of 2018 which were filed for dissolution of marriage and restitution of conjugal rights respectively. But inadvertently, no direction was issued by this Court.

4.The learned counsel for the second respondent has no objection for early disposal of HMOP Nos.172 and 190 of 2018 pending on the file of the Family Court, Madurai.

5.In the light of the above facts, the learned Judge, Family Court, Madurai is directed to dispose of both the petition in HMOP Nos.172 and 190 of 2018 pending on its file within a period of six months from the date of receipt of a copy of this order. Both parties are directed to cooperate for early disposal cases.

6.Registry is directed to issue fresh order copy after incorporating the above portion in the earlier order passed on 13.10.2020.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

skn

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.



To:

1. The Judge,
Family Court,
Madurai.
2. The Inspector of Police,
(Law and Order)
Koodal Pudur Police Station,
Madurai City.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+2 CC to Mr.N.MURUGESAN, Advocate (SR-19989[F] dated 14/10/2020)

H.C.P. (MD) No.749 of 2020
13.10.2020

KMV(CO)
CS(21.12.2020) 4P 6C