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H.C.P(MD) No.929 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.929 of 2020

Maduravalli

... Petitioner

-vs-

1.The Commissioner of Police
Madurai City Police Officer
Madurai

2.The Inspector of Police
All Women Police Station
South Gate
South Veli Street
Madurai

3.D.Alagarsamy

... 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 produce the body or person of the detainee [Akshaya@Akalya](#) D/o.Alagarsamy aged above 6 years, of detained by the 3rd respondent / adapted father holding illegal custody without any valid court order and keeping away from the petitioner / adapted mother and forcefully and secretly, detained the Minor girl child Miss.Akshaya @ Akalya, daughter of Alagarsamy, aged about 6 years, before this Court and set her at liberty.

For Petitioner : Mr.K.Guruchev

For Respondents : Mr.K.Dinesh Babu

Additional Public Prosecutor for R1 & R2
Mr.S.V.Shanmugarajan for R3

O R D E R

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

The petitioner is the wife of the third respondent and she has filed this habeas corpus petition seeking direction to the respondents 1 and 2 to produce her daughter Akshaya @ Akalya, aged about 6 years, before this Court and set her at liberty.

2. It is the case of the petitioner that the marriage between her and the third respondent was solemnized on 12.06.2000 and they adopted a female child / detainee herein on 16.05.2014. However, subsequently, the third respondent used to kidnap the minor child to



harass the petitioner. The complaint lodged with the respondent Police has not yielded any result and hence, this habeas corpus petition.

3. Today, when the matter is taken up for hearing, the third respondent along with the detainee Akshaya @ Akalya appeared before this Court through Video Conferencing.

4. The learned counsel appearing for the third respondent would state that due to matrimonial dispute between the third respondent and the petitioner, the third respondent has already approached the Family Court, Madurai, seeking divorce by filing a Hindu Marriage Original Petition. It is also stated that in respect of the minor child, G.W.O.P.No.45 of 2020 has been filed by the third respondent and the petitioner has also entered her appearance on 06.03.2020. According to the learned counsel, the petitioner made a false complaint against the third respondent and the same was registered by the Inspector of Police, All Women Police Station, Thilagar Thidal, in Crime No.9 of 2020, for the offence under Sections 498(A) and 406 I.P.C. So, the third respondent filed Crl.O.P.(MD) No.3922 of 2020 seeking anticipatory bail and this Court has also granted anticipatory bail to him vide order dated 02.03.2020. However, suppressing all these facts, this habeas corpus petition has been filed on 13.10.2020 and on the sole ground of suppression of material facts, this habeas corpus petition is liable to be dismissed.

5. The learned counsel appearing for the petitioner would contend that the petitioner being the mother of the detainee is entitled to have her custody especially when there is no interim order granted in favour of the third respondent to have the interim custody of the minor child in G.W.O.P.No.45 of 2020 filed by him. The learned counsel would further contend that in respect of the custody of the minor child, this Court has to take into consideration the paramount interest of the minor child.

6. Heard Mr.K.Guruchev, learned counsel appearing for the petitioner, Mr.K.Dinesh Babu, learned Additional Public Prosecutor appearing for the respondents 1 and 2 and Mr.S.V.Shanmugarajan, learned counsel appearing for the third respondent and carefully perused the materials available on record.

7. It is true that while ordering custody of the minor child, the Court has to take into consideration the paramount interest of the minor child. In the instant case, both the petitioner and the third respondent are the natural guardian of the minor child / detainee and admittedly, the minor child is with her father / third respondent herein. Since there is a rival claim, the issue with regard to who will be entitled for the custody of the minor child can be decided only after appreciating the evidence adduced by the



parties. So, this Court is of the view that the petitioner has to approach the Family Court, Madurai, by filing necessary application either in the pending G.W.O.P.No.45 of 2020 or by filing a fresh case seeking custody of the detinue. As rightly pointed out by the learned counsel appearing for the third respondent, the petitioner has suppressed the material fact of pendency of G.W.O.P.No.45 of 2020 before the Family Court, Madurai. So, we are of the opinion that this habeas corpus petition has no merit and the same is therefore liable to be dismissed.

8. Accordingly, the habeas corpus petition is dismissed.

Sd/-

Assistant Registrar (CSIII)

// 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 Police Officer,
Madurai.
- 2.The Inspector of Police,
All Women Police Station,
South Gate,
South Veli Street,
Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+2 CC to M/s.S.V.SHANMUGA RAJAN, Advocate (SR-23479[F] dated 01/12/2020)

H.C.P. (MD) No.929 of 2020
30.11.2020

SE(CO)

KB(09.12.2020) 3P 6C

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