



WEB COPY

H.C.P(MD) No.1050 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

H.C.P. (MD) No.1050 of 2020

C.Karthikeyan

... Petitioner/Father of Detenue

-VS-

1.The State rep.by
The Superintendent of Police
Dindigul, Dindigul District

2.The Inspector of Police
Kannivadi Police Station
Dindigul District

3.Sangeetha

4.Jayaraman

... 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 rescue from the illegal custody of the petitioner minor daughter from 3rd and 4th respondents and produce the petitioner minor daughter namely Dhuyuksha, daughter of Karthikeyan, aged about 8 years, before this Court and handover the custody to the petitioner.

For Petitioner : Mr.B.Elankumaran

For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor for R1 & R2
Mr.A.Prasanna Rajadurai for R3

O R D E R

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

The petitioner has filed this habeas corpus petition seeking direction to the respondents 1 and 2 to rescue his minor daughter, namely, Dhuyuksha from the respondents 3 and 4, produce her before this Court and handover her custody to him.

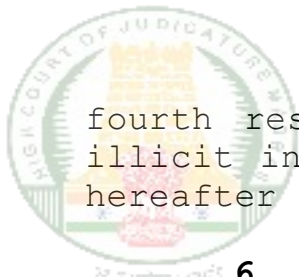


2. According to the petitioner, the third respondent is his wife and their marriage was performed on 23.05.2008 at Arulmigu Thiru Aavinnankudi Murugan Temple, Palani and it was a love marriage. The petitioner would claim that it is an inter-caste marriage and the same was not accepted by his parents. At the time of marriage, he was doing business as Sub Contractor in Water Management Scheme at Thuvarankuruchi Water Board and after marriage, they started their matrimonial life at Thuvarankuruchi, but he did not lead a peaceful marriage with the third respondent as she always picked up quarrels with him and also not acted as a dutiful wife. However, two children were born to them, namely, Rutharsshan on 08.05.2009 and the Dhuyuksha, detenue herein, on 31.03.2013.

3. The petitioner would further claim that in the year 2018, he decided to settle at Dindigul, where the third respondent developed illicit relationship with the fourth respondent herein. When he questioned the same, she was aggressive. While so, on 07.02.2020, the third respondent, without informing the petitioner and his mother, went to her parents house and sent a message to the petitioner to take care of the minor children and at that time, she took jewels weighing about 8 sovereigns, which was purchased by the petitioner and on 15.06.2020, she gave a complaint to the first respondent Police to see the children. The Inspector of Police, All Women Police Station, Dindigul, conducted enquiry on 29.06.2020 and 13.07.2020. During enquiry, the minor children were not willing to go with the third respondent and therefore, she stated that she would approach the concerned Court.

4. It is further stated that the third respondent filed a case against the petitioner before the learned Judicial Magistrate, Palani, under Domestic Violence Act and the petitioner has filed a divorce petition before the Family Court, Dindigul, on 04.11.2020. On 05.11.2020, when the petitioner was engaged in his work, the third respondent along with two henchmen came in a Totota Car bearing registration No.TN11 C9056 and forcibly kidnapped the detenue and in this regard, he gave a complaint to the second respondent Police and the same was registered in C.S.R.No.341 of 2020, but no action was taken till date. Hence, this habeas corpus petition.

5. When the matter came up for hearing on 26.11.2020, the petitioner and the third respondent along with their children appeared before this Court. On enquiry, the third respondent denied the entire allegations made in the affidavit filed in support of this petition and stated that the petitioner harassed and assaulted her on many occasions and therefore, she left Dindigul on 07.02.2020 and she is staying with her mother at Palani. While denying the allegation of illicit intimacy with the



fourth respondent, she stated that the petitioner has developed illicit intimacy with one Sangeetha and informed the detinue that hereafter the said Sangeetha is her mother.

6. When this Court sought opinion to refer the matter to mediation to settle the dispute between the parties, the petitioner expressed his readiness, but the third respondent stated that there is no possibility for settlement. Admittedly, the boy is with the petitioner and the detinue is with the third respondent. It is to be noted that the petitioner and the third respondent have made serious allegations against each other and it is also stated that they have proof to establish those allegations.

7. During enquiry, the detinue stated that she wants to be with her mother / third respondent herein. Indisputably, the detinue is in the custody of her mother and hence, it cannot be termed as illegal detention. Of course, who is entitled to have the custody of the detinue could be decided only by the competent Civil Court on appreciation of the evidence adduced by the parties and not in this habeas corpus petition filed under Article 226 of the Constitution of India.

8. In that view, this habeas corpus petition is dismissed granting liberty to both the parties to workout their remedy before the competent Civil Court. It is made clear that the observations made in this order are only for the purpose of disposal of this habeas corpus petition and the Civil Court shall decide the issue independently and in accordance with law.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

KRK

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.

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



To:

1.The Superintendent of Police,
Dindigul, Dindigul District.

2.The Inspector of Police,
Kannivadi Police Station,
Dindigul District.

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

+1 CC to Mr.B.ELANKUMARAN, Advocate (SR-24052[F] dated 04/12/2020
)

H.C.P. (MD) No.1050 of 2020
04.12.2020

MR (CO)

KM (15.12.2020) 4P 5C