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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2021

Coram

The Honourable Mr. Justice P.N.PRAKASH
and
The Honourable Ms. Justice R.N.MANJULA

H.C.P.No.232 of 2021

Fathima

.. Petitioner

Vs.

State represented by

1. The Commissioner of Police,
Vepery, Chennai.
2. The Inspector of Police,
M-5, Ennore Police Station,
Kathivakkam High Road,
Chennai - 600 057.

3. Uma

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus directing the 2nd respondent/police to produce the petitioner's minor children 1. Monesh, aged about 12 years and 2. Kavya, aged about 10 years, before this Court from the custody of the 3rd respondent and hand over the custody to the petitioner.

For Petitioner : Mr.A.Kripakaran

For RR 1 and 2 : Mr.R.Muniyapparaj
Govt.Advocate(Crl.Side)

ORDER

[Order of the Court was made by P.N.PRAKASH, J.]

This habeas corpus petition has been filed seeking to direct the 2nd respondent/police to produce the petitioner's



minor children 1. Monesh, aged about 12 years and 2. Kavya, aged about 10 years, before this Court from the custody of the 3rd respondent and hand over the custody to the petitioner.

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2. On 23.04.2021, this Court passed the following order:

"On 02.03.2021, this Court passed the following order :

"It is the case of the petitioner that she was in love with one Kumaravel and got married to him on 10.02.2007 and through the wedlock, she begot two children viz. Monesh and Kavya, who are now aged 12 and 10 years respectively. The family was living happily in door No.5/38(1), Blue Beach Road, Neelangarai, Periya Neelangarai Kuppam, Thiruvannamiyur, Chennai-41. Adversity struck the family, when Kumaravel committed suicide on 19.07.2020. After the death of Kumaravel, Kumaravel's sister Uma (3rd respondent herein) took the children to her house and thereafter, she refused to part the children with the petitioner. Therefore, the petitioner is before this Court seeking custody of her two children.

2. Today, Mr.A.Adhikesavan, HC 36007, having mobile No.9840837329 and Ms.M.Sudha, WPC 44733, having mobile No.9361484472, both attached to M-5 Ennore Police Station, Chennai-57, are present before this Court. Apart from Police personnel, the petitioner (Fathima's mobile No.9600792412), Uma (mobile No.7397277189) and the two children are also present before this Court.

3. When we interviewed the children, they stated that they are not willing to go with their mother. We were able to observe that their young minds have been brainwashed by Uma and they have been tutored to speak against their mother. However, we sent the parties to the Mediation Centre, where the petitioner was with her two children and they mellowed down little.

4. When enquired by us, Uma stated that she herself has three children and that, she would bring up these two children also. We are not convinced with the statement of Uma. Since the Children are now in the thrall of their aunt Uma, it is very difficult for the petitioner to take physical custody of them. When the petitioner attempted to take them, they started hollering in the open Court.



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5. Therefore, we grant visitation rights to the petitioner to visit her children on Saturdays and Sundays in the residence of Uma, who is residing at No.37, Chinnammal (Bhajanai) Koil Street, Ernavoorkuppam, Ennore, Chennai-57. The petitioner will be entitled to take the children to a nearby temple or a place of entertainment like park etc., but, drop the children in the night at the residence of Uma. If Uma does not permit access to the petitioner, it is open to the petitioner to approach the 2nd respondent Police, who shall ensure that our order is implemented in letter and spirit. We also direct the Child Welfare Committee, Chennai to keep track of this case from time to time and give counseling to the children.

Post this matter on 22.03.2021."

2. In paragraph 5 supra, we had granted visitation rights to the petitioner to visit her children on every Saturday and Sunday. On account of COVID-19 lockdown that has been recently announced by the Government on all Sundays, the order is modified to the effect that, "the petitioner shall have visitation rights on all Fridays and Saturdays, until further orders". Rest of the directions issued by us shall continue.

Post this matter on 28.06.2021."

3. On 28.06.2021, this Court passed the following order:

"When this matter was taken up for hearing, the learned counsel for the petitioner submitted that the petitioner was not able to avail of the visitation rights that was given by this Court in the order dated 23.04.2021, on account of COVID-19 lockdown and also due to the fact that there was no public transport.

2. Accepting the submission of the learned counsel for the petitioner, the petitioner shall avail of the visitation rights as and when normal inter-district transport resumes.

Post the matter on 26.07.2021."

4. On 05.08.2021, this Court passed the following order:

"On 03.08.2021, we passed the following order

:

"The 2nd respondent/police is directed to produce the 3rd respondent and children before this



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Court on 05.08.2021 at 02.30 p.m. through physical hearing.

2. Pursuant to our order referred above, today, A.Adhikesavan, HC 36007, attached to M-5, Ennore Police Station (mobile No.98408 37329) is present before this Court. Uma/3rd respondent and the children viz., Monesh and Kavya are produced by the police. The petitioner and her counsel are also present.

3. It appears that the petitioner's husband has a house in door No.5/38(1) Blue Beach Road, Neelangarai Kuppam, Thiruvannamiyur, Chennai-41, which is under the lock and key of Uma/3rd respondent. On account of that, the petitioner is not even able to have access to that house and therefore, she is forced to live in Puducherry. When questioned by us, Uma/3rd respondent stated that she will handover the key of that house to the petitioner. Accordingly, we direct the 2nd respondent/police to collect the key of the said house from Uma/3rd respondent and hand over the possession of the house to the petitioner and report to this Court.

Post this matter "for reporting compliance" by the police on 12.08.2021."

5. Today, C.Maheshkumar (Mobile No.99406 34500), Inspector of Police, J-8, Neelangarai Police Station and A.Adhi Kesavan (Mobile No.98408 37329), Head Constable 36007, M-5, Ennore Police Station, are present before this Court.

6. On instructions, the learned Government Advocate (Crl.Side) submitted that the order dated 05.08.2021 has been complied with by the police and the key of the Neelangarai house was collected from Uma, third respondent herein and handed over to the petitioner on 05.08.2021 and the petitioner is now in the possession of the house.

7. The learned counsel for the petitioner also accepted the same.

8. During our interaction with the children, they are very much reluctant to go with the petitioner for various reasons, about which, we do not want to elaborate. However, the third respondent stated that she has never prevented the petitioner from having free access to the children and it is the children, who are not wanting to go to the petitioner.

9. In such view of the matter, we are of the opinion that a writ of habeas corpus cannot be issued in a case of this



nature, where, the children cannot be said to be in the illegal custody of the third respondent per se.

10. Therefore, this habeas corpus petition is closed with liberty to the petitioner to work out her remedy before the appropriate Court. In the meanwhile, the visitation rights granted to the petitioner by order dated 23.04.2021 shall continue until appropriate orders are passed by the Court of competent jurisdiction. The petitioner shall not cause any disturbance or hindrance either to the third respondent or to the children during visitations. As legal heirs, the children are also having share in Neelankarai house and therefore, the petitioner cannot unilaterally encumber or alienate the property.

Sd/-
Assistant Registrar (CS-VII)

// True Copy//

Sub Assistant Registrar

nsd

To

1. The Commissioner of Police,
Vepery, Chennai.
2. The Inspector of Police,
M-5, Ennore Police Station,
Kathivakkam High Road,
Chennai - 600 057.
3. The Inspector of Police,
J-8, Neelankarai Police Station,
Chennai.
4. Uma,
W/o. Boopalan,
No.37, Chinnaamma (Bhajani) Koil Street,
Ernavoorkuppam, Ennore,
Chennai - 600 057.



5. The Public Prosecutor,
Madras High Court,
Chennai- 600 104.

May be furnished with two copies
of this order, one of which, will be
served on Uma through police

H.C.P.No.232 of 2021

RSV (CO)
SU (02/09/2021)
SU (29/09/2021)