

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.04.2021

Pronounced on : 22.04.2021

Coram

The Honourable Mr. Justice P.N.PRAKASH
and
The Honourable Mr. Justice R.PONGIAPPAN

H.C.P.No.316 of 2021

R.Venkatadri ... Petitioner

Vs.

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

2. The Inspector of Police,
West Tambaram Police Station,
Chennai - 600 045.

3. Aruldoss ... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Habeas Corpus directing the second respondent to secure the child Rabika aged 8 months D/o.R.Venkatadri, from the hands of third respondent herein and produce the child before the Honourable Court and entrust the custody of the Child Rabika to the petitioner.

For Petitioner : Mr.R.Sankara Subbu

For Respondents: Mr.R.Prathap Kumar, (for R1 & R2)
Additional Public Prosecutor

Mr.R.Balasubramanian (for R3)

ORDER

[Order of the Court was made by R.PONGIAPPAN.]

The present Habeas Corpus Petition has been filed seeking the relief of direction to the 2nd respondent to secure the child Rabika, aged about 8 months, D/o.R.Venkatadri, from the hands of 3rd respondent, produce the said child before this Court and entrust her custody to the petitioner.

2. The case of the petitioner is that he married one Vasanthi on 22.02.2019 and due to the wedlock the said Vasanthi gave birth to a female child viz., Rabika on 06.05.2020. After giving birth to the minor child/detenué, due to Covid-19, she expired on 20.06.2020 in Rajiv Gandhi Hospital, Chennai-3. Thereafter, the 3rd respondent, who is the father-in-law of the petitioner, took custody of the minor child/detenué and refused to hand over the custody of the minor child/detenué to the petitioner. According to the petitioner, he is the father of the minor child/detenué and thus, being the natural guardian, he is entitled to the custody of the minor child/detenué.

3. Repudiating the averments found in the affidavit filed by the petitioner, in support of this petition, the 3rd respondent Aruldoss, has filed a counter affidavit, wherein he states that during the relevant point of time, the petitioner developed friendship with his daughter Vasanthi and that the same turned into love. Consequentially, when at the time the petitioner approached the 3rd respondent for making arrangement for the marriage with the said Vasanthi, the 3rd respondent enquired about the details of his parents and native place, for which, he gave evasive reply and did not reveal his family background. Further, on 22.02.2019, at about 6.00pm, he brought one Pastor viz., Selvaraj from Purasawalkam, Chennai, and performed his marriage with the said Vasanthi in the 3rd respondent's house by tying the sacred thali. After tying thali, the petitioner prepared an Affidavit of Marriage in a 20 Rupee Non-Judicial Stamp paper purchased in the name of R.Vekatadri and A.Vasanthi, as if the marriage ceremony with one Vasanthi was held on 22.02.2019 in the 3rd respondent's residence.

4. When the 3rd respondent questioned the same with the petitioner, he stated before the 3rd respondent that his employer immediately wanted the marriage certificate. Thereafter, when the deceased Vasanthi was in the family way, the petitioner used to come to the 3rd respondent's house once in three weeks or once in a month. When the same was questioned, the petitioner did not answer properly. However, the deceased Vasanthi gave birth to a female baby on 06.05.2020. During that time also, the petitioner was lethargic and never showed any interest or affection towards the minor child/detenué. Only thereafter, the 3rd respondent and the deceased Vasanthi came to know that the petitioner has already got married to one Veena Devi and put up at West Tambaram, Chennai. After hearing about the first marriage of the petitioner, the deceased Vasanthi got mental agony and fell ill and resultantly, got deteriorated her health and she died on 20.06.2020.

5. Disputing the averments found in the counter affidavit, the petitioner filed a reply affidavit stating that the details

in respect of the first marriage of the petitioner with one Veena Devi was already informed to the deceased Vasanthi, that too prior to the marriage held in the 3rd respondent's residence.

6. Heard Mr.Sankara Subbu, learned counsel appearing for the petitioner, Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for respondents 1 and 2 and Mr.R.Balasubramanian, learned counsel appearing for the 3rd respondent.

7. Admittedly, the petitioner is the father and the 3rd respondent is the maternal grandfather of the minor child/detenué. The petitioner is very well aware that after the death of his wife, the minor child/detenué is in the custody of 3rd respondent, and further, the minor child/detenué is aged about 10 months only.

8. Therefore, as the minor child/detenué is aged about 10 months, before ordering this application, it is necessary to consider the welfare of the minor child/detenué. In this regard, it is relevant and useful to see the judgment in J. vs. C., reported in (1969) 1 All ER 788, 808, wherein the English House of Lords ruled as follows:

"First, in my view the law administered by the Chancery Court as representing the queen as parents patriae never required that the father's wishes should prevail over the welfare of the infant, The dominant consideration has always been the welfare of the infant."

Recently, the radical Swedes are contemplating enacting appropriate laws conferring rights on children to divorce their parents. "Our civilization adores above all else the symbol of child". This not without reason. Ever since Adam and Eve have lost the Paradise by being expelled from the Garden of Eden, Man is unable to free himself from the torments of alienation and to regain integrity and innocence except as a child."

9. Therefore, it is the well settled law that the State would not use its powers against the welfare of the children. Speaking positively, it will use that jurisdiction only for the promotion and welfare of the child.

10. Further, under the Hindu Minority and Guardianship Act, 1956 the custody of the child aged under five years should

ordinarily be with the mother. The mother is always the best and most suitable custodian of the child. But, herein it is the case that the mother of the minor child/detenué is no more. However, the petitioner herein already has a family with another woman viz., Veena Devi. In fact, the details of marriage with the said Veena Devi have been suppressed by the petitioner, in the affidavit filed in support of this petition. Only during the time of filing the reply affidavit, he has admitted the factum of first marriage, which shows that the petitioner herein has not approached this Court with clean hands.

11. In view of the above, we are of the firm opinion that the submission made by the learned counsel for the petitioner that the minor child/detenué is now in the illegal custody of the 3rd respondent, is not found correct. More than that, if the petitioner intends to have custody of the minor child/detenué, it is for him to file an appropriate application before the appropriate forum under the provisions of the Guardians and Wards Act, 1890. Instead of filing an application before the appropriate forum, filing this petition before this Court, is unwarranted.

Therefore, in the light of the above discussion, we are of the considered opinion that the prayer sought by the petitioner cannot be granted and thereby, the instant HCP No.316 of 2021, is dismissed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

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

2. The Inspector of Police,
West Tambaram Police Station, Chennai - 600 045.

3. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.R.Sankarasubbu, Advocate, sr no.24632

+2cc to M/s.R.Balasubramanian, Advocate, sr no.24819

H.C.P.No.316 of 2021

SSN(CO)

RMP(29/04/2021)