

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

DATED : 29.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

H.C.P.No.476 of 2021

Rameswaram Katta ... Petitioner

versus

1.The Commissioner of Police,
EVK Sampath Road, Vepery,
Chennai - 600 007.

2.The Inspector of Police,
E-5 Foreshore Estate Police Station,
Chennai - 600 028.

3.Prithiba Dhinakaran ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, seeking to issue a Writ of Habeas Corpus, directing the respondents to produce the petitioner's minor children, Tagore Janardana Katta and Ratna Nidhi Katta, both aged 11 and 9 years respectively, before this Court and hand over their custody to the petitioner.

For Petitioner : Ms.P.Buvaneswari
For Respondents : Mr.R.Prathap Kumar,
Additional Public Prosecutor
for R1 and R2
Mr.K.Raja for R3

O R D E R

(Order of this Court was made by T.RAJA,J.)

This Habeas Corpus Petition has been filed by the petitioner seeking a direction to the respondents to produce the petitioner's minor children, namely, Tagore Janardana Katta and Ratna Nidhi Katta, aged 11 and 9 years respectively, before this Court and set them at liberty.

2.Learned counsel appearing for the petitioner submitted that the petitioner and the third respondent got married on 28.08.2008 in Chennai and they started their matrimonial life in

United States of America and they were blessed with two children, namely, Tagore Janardana Katta and Ratna Nidhi Katta, aged 11 and 9 years respectively. Due to some misunderstanding crept in between them, the third respondent left the matrimonial home along with her children and settled down in Chennai at her parents' flat. Therefore, the petitioner filed a petition in F.C.O.P. No.1540 of 2019 for restitution of conjugal rights before the IV Additional Family Court, Chennai. After withdrawal of the said petition, the third respondent continued to live with the petitioner along with their children for some time. Thereafter, without any reason, the third respondent started to fight and quarrel with the petitioner even for trivial issues and left the flat located at No.88, Palace View Apartments, Flat 2B, Santhome High Road, R A Puram, Chennai-28, by taking away her children and started staying along with her parents. Since the petitioner's effort to contact the third respondent over the phone was failed and the whereabouts of the third respondent and the children are not known, the petitioner approached the second respondent by making his complaint in CSR No.235 of 2020 dated 19.10.2020 to know the whereabouts of his minor children. As there is no response, the petitioner has been advised to come to this Court seeking the above direction.

3.Opposing the above prayer, learned Additional Public Prosecutor appearing for respondents 1 and 2 submitted that since the complaint given by the petitioner in CSR No.235 of 2020 dated 19.10.2020 relates only to the matrimonial dispute, the petitioner cannot come to this Court to maintain this petition for writ of Habeas Corpus under Article 226 of the Constitution of India. As it is only a matrimonial dispute between the husband and wife, this Court cannot compel R1 and R2 to take away the children from the mother.

4.Learned counsel appearing for the third respondent, urging this Court to dismiss this petition, submitted that when it is an admitted case of the petitioner that the third respondent is the mother of the minor children, the paramount welfare of the minor children needs to be given to the mother of the children. Since the third respondent left the matrimonial house in U.S.A., the children are staying with their mother, who is taking care of the minor children by providing necessary amenities. As the husband and wife are facing matrimonial disputes, instead of filing an appropriate application before the Family Court seeking visitation rights, the petitioner approached this Court, by way of filing this petition for issuance of writ of Habeas Corpus, which is not maintainable.

5.Having heard learned counsel for the parties, in view of the misunderstanding and difference of opinion occurred between the husband and wife, they are living separately and the care

and custody of the minor children are with the mother. Besides, the filing of F.C.O.P.No.1540 of 2019 on the file of the IV Additional Family Court, Chennai on 3.4.2019 under Section 9 of the Hindu Marriage Act for restitution of conjugal rights by the petitioner and the subsequent withdrawal of the same admittedly, further speaks that the parties are at loggerheads. However, subsequently, the petitioner has given a complaint on 17.10.2020 to the Inspector of Police, E5, Foreshore Estate Police Station against the third respondent and the same also has been registered in CSR No.235 of 2020 on 19.10.2020. Naturally, when the children are with the mother during the period of matrimonial dispute, the petitioner cannot maintain the writ of habeas corpus to direct the respondents to produce the minor children. He has been wrongly advised. Instead he should have worked out the remedy before the competent forum. Therefore, for wasting the valuable and precious time of the Court, this Court is inclined to impose costs of Rs.25,000/- payable by the petitioner to the Tamil Nadu Advocate Clerks' Association, High Court, Madras within a period of four weeks from the date of receipt of a copy of this order.

6.As there is no element of illegal detention and finding no merit in the petition filed by the petitioner, the Habeas Corpus Petition is liable to be dismissed as not maintainable. Accordingly, the petition fails and the same is dismissed as not maintainable with costs as quantified above.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

vga

To

- 1.The Commissioner of Police,
EVK Sampath Road, Vepery,
Chennai - 600 007.
- 2.The Inspector of Police,
E-5 Foreshore Estate Police Station,
Chennai - 600 028.
- 3.The Public Prosecutor,
High Court, Madras.

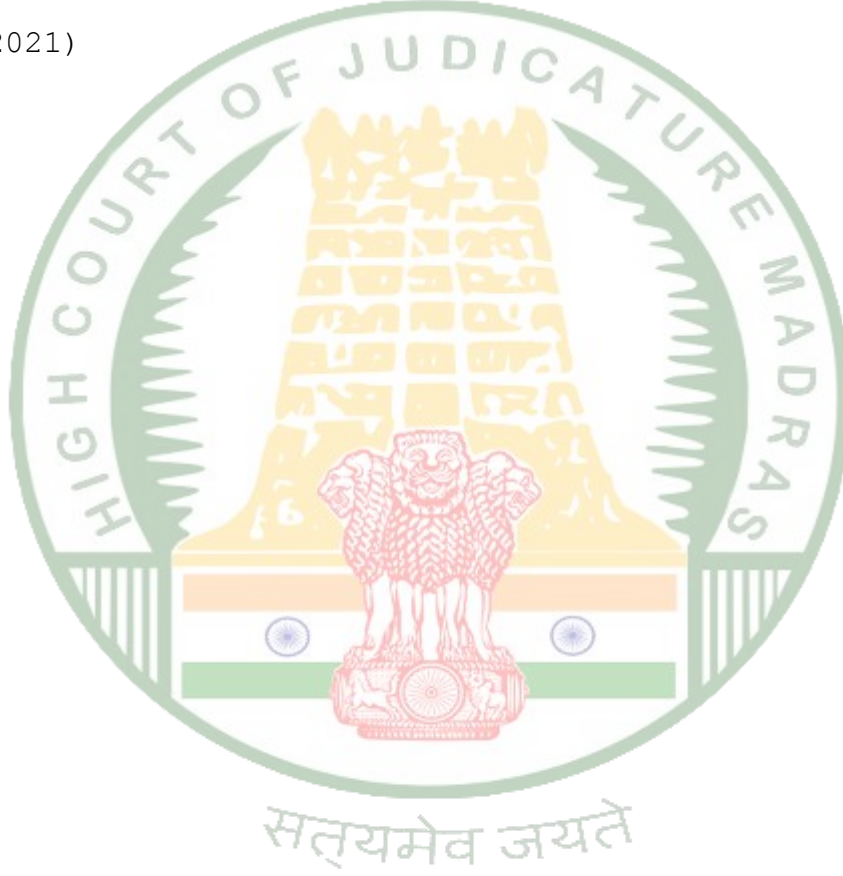
Copy To

The Secretary,
Tamilnadu Advocate Clerk Associates,
High Court, Madras 104.

+2cc to Mr.P.Buvaneswari, Advocate, S.R.No.20462

H.C.P.No.476 of 2021

SMI (CO)
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